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BANKRUPTCY UPDATE

Expert Analysis

Apparel Companies' Filings Follow Drops in Sales and Stock Prices

By **Edward E. Neiger**

This article focuses on recent bankruptcy filings in the retail sector, particularly among teen and women's apparel companies. In recent months, The Wet Seal Inc., Delia's, Inc., Deb Stores Holdings LLC, and Cache Inc. all sought bankruptcy protection. The young adult retail sector continues to experience severe drops in sales and stock prices, as brick-and-mortar retail stores lose consumers to e-commerce. Specialty teen chains also face increasing competition from apparel discount department stores which are generally viewed as a better value by consumers.

Reorganization

On Jan. 15, 2015, teen retail chain The Wet Seal Inc. and affiliated debtors filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the District of Delaware. A week prior to the filing, Wet Seal closed more than half of its stores, planning to focus on website sales and its strongest locations to streamline business operations.

Wet Seal listed approximately $103 million in liabilities and $93 million in assets. Prior to the bankruptcy filing, Wet Seal entered into a plan support agreement with investment fund B. Riley outlining a proposed framework for its reorganization. Under the restructuring as originally contemplated under the plan support agreement, B. Riley would receive 80 percent of newly issued common stock in the reorganized debtors and would finance the debtors' operations in bankruptcy via a $20 million debtor in possession financing facility.

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Following its formation by the Office of the U.S. Trustee, the official committee of unsecured creditors negotiated an improved Debtor in Possession (DIP) financing arrangement with B. Riley resulting in $5 million in additional financing as well as an improved interest rate and fee structure. With committee support, the DIP financing facility was approved by the bankruptcy court over the objection of Versa Capital Management LLC which offered an alternative financing package.

In addition, the no-shop clause (prohibiting the debtors from exploring alternative transactions) contained in the plan support agreement was eliminated, allowing the debtors and the committee to actively solicit higher and better reorganization bids. Competing bids are due on March 5, 2015, with an auction planned for March 10, 2015, in the event qualified competing bids are received.

The Wet Seal (Bankr. D. Del. Case No. 15-10081)

Liquidation Sales

On Dec. 7, 2014, teen apparel company Delia's, Inc. and affiliated debtors filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the Southern District of New York.

Unlike Wet Seal, which hopes to reorganize and emerge as a more streamlined business, Delia's entered bankruptcy ready to conduct liquidation sales beginning over the holiday season. To that end, the debtors entered into an agency agreement with a joint venture composed of Gordon

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Brothers Retail Partners LLC and Hilco Merchant Resources LLC to serve as the debtors' exclusive liquidating agent at the store closing sales and promptly sought authority to assume the agency agreement and proceed with the store closing sales.

A modified version of the agency agreement (which provided for a more favorable split of proceeds in favor of the estate) was negotiated with input from the official committee of unsecured creditors and approved by the bankruptcy court. Liquidation sales are currently underway.

Delia's also sought approval of a $20 million DIP financing package to be provided by Salus Capital Partners LLC, consisting of $18.5 million rollup (or paydown) of prepetition secured debt owed Salus and $1.5 million in new money. The official committee of unsecured creditors objected to the DIP financing motion arguing that the financing was unnecessary and would only benefit Salus. Thereafter, the committee, the debtors and Salus negotiated a revised financing arrangement whereby Salus reduced its fees and eliminated provisions granting it a lien on potential avoidance actions as well as any litigation claims against the debtors' directors and officers.

The debtors also recently sought permission to sell their trademarks to investors that purchased the Alloy Apparel line from Delia's in 2013 for $2.5 million subject to higher and better bids. A hearing on approval of the sale is scheduled for Feb. 24, 2015.

Delia's (Bankr. S.D.N.Y. Case No. 14-23687)

Liquidity Crisis Cited

On Dec. 4, 2014, Deb Stores Holding LLC, parent of young women's clothing company Deb Shops, and affiliated debtors filed petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. The debtors cited a liquidity crisis resulting from declining sales and tight credit markets as the impetus for the bankruptcy filing.

This is Deb Shops' second chapter 11 filing in three years after the prior filing resulted in the sale of the company to its then lenders. Affiliates of Cerberus Capital Management LP hold an approximate 70 percent stake in the company while Guggenheim Partners, Credit Suisse Securities USA LLC and Lee Equity Partners make up the remaining equity group.

The debtors' liabilities include approximately $99.6 million in secured debt under revolving and term loans and $11.3 million in trade debt.

Prior to the bankruptcy filing, the debtors engaged in a marketing process beginning in October 2014 but failed to secure a going concern bid.

On Jan. 7, 2015, the debtors obtained court approval to enter into an agency agreement with a joint venture comprised of Gordon Brothers Retail Partners LLC and Hilco Merchant Resources LLC to act as the exclusive liquidating agent and conduct going-out-of-business sales at approximately 300 store locations. Pursuant to the agency agreement, the debtors are guaranteed a return of 82 percent of the cost value of the merchandise sold. The going-out-of-business sales are expected to continue through April.

Deb Stores Holding (Bankr. D. Del. Case No. 14-12676)

Bid Procedures

On Feb. 4, 2015, Cache Inc. and affiliated debtors filed petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The clothing boutique operator was forced to seek bankruptcy protection as a result of mounting operating losses and a lack of liquidity. The company suffered net losses of $12.1 million in 2012 and $34.4 million in 2013, and projected a $32.7 million net loss for 2014.

According to the debtors' filings, Cache's liabilities are comprised of secured debt of approximately $16.4 million under a prepetition credit facility provided by Salus Capital Partners LLC and $11.4 million in trade debt. The debtors sought approval of a $22 million DIP financing facility from Salus, with approximately $9.5 million available on an interim basis. A final hearing on the debtors' motion to approve the DIP financing was scheduled for Feb. 23, 2015.

The debtors are seeking approval of bid procedures in connection with an auction for the right to conduct going-out-of-business sales to liquidate their inventory and simultaneously solicit going concern bids.

As part of the bid procedures motion, the debtors are seeking bid protections for a joint venture of SB Capital Group LLC and Tiger Capital Group LLC who will act as their stalking horse bidder for the right to conduct going-out-of-business sales to liquidate the debtors' inventory. The stalking horse bid guarantees 82 percent of the cost value of the goods, estimated at between $13.5 million and $15 million. A hearing on the bid procedures motion was scheduled for Feb. 23, 2015.

Cache (Bankr. D. Del. Case No. 15-10172)