

## **GENERAL INFORMATIONAL DISCUSSION OF THE CONSUMERS TRUST BANKRUPTCY CASE**

On December 5, 2005, The Consumers Trust filed a Voluntary Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the Southern District of New York, Manhattan Division in Case No. 05-60155. When a person or an entity files bankruptcy, they are called the "debtor" or sometimes in chapter 11 cases, the "debtor-in-possession." The date that the debtor files a voluntary bankruptcy petition is called the "Petition Date," and events are sometimes described as pre petition or post petition.

On December 29, 2005, the Official Committee of Unsecured Creditors (the "Committee") was appointed in the Consumers Trust bankruptcy case pursuant to 11 U.S.C. §§ 1102(a) and 1102(b). The Committee's constituency is the body of the general unsecured creditors as a whole, not any one creditor, not any secured creditor, and not the debtor. The Committee does not provide individual legal advice to any single creditor, or to any group of creditors. Individual creditors should seek their own legal advice.

Creditors should be aware of the automatic stay occurring as a result of the bankruptcy filing. Generally speaking, upon the filing of the bankruptcy case, an automatic stay, which has the effect of a court order, issues by operation of law, preventing all creditors of the debtor from taking any acts outside of the bankruptcy case to collect their debts (guarantors, co-debtors, and nondebtors are not protected by the automatic stay, absent a specific court order stating so).

Prior to filing its bankruptcy petition, The Consumers Trust engaged in a voucher promotion program called the Cashable Voucher Program, involving the sale of consumer goods in the United States and Canada. Generally speaking, the Cashable Voucher Program involves situations where the consumer purchases goods from a merchant, the merchant issues a voucher to the consumer for a rebate of all or part of the purchase price, and under certain conditions, The Consumers Trust agrees to pay the rebate to the consumer. Some state attorneys general have alleged that the Cashable Voucher Program is illegal. Consumers may have a claim in the bankruptcy case against the debtor if they participated, or are participating in, the Cashable Voucher Program, whether or not the time for redemption of the vouchers has come.

By Order dated December 13, 2005, Judge Gerber set the form and procedures for voucher holders to assert claims against the Debtor. Voucher holders must complete the Proof of Claim form, which was previously mailed by the Debtor to all voucher holders and is also available on the Bankruptcy Court's website, sign the form and send it to the United States Bankruptcy Court. There is no requirement to attach any supporting documentation to the Proof of Claim.

The Proof of Claim must be filed with the Bankruptcy Court by March 15, 2006. Any voucher holder who fails to file their proof of claim by that date will forever lose their right to assert a claim due and owing by the Debtor to that party.

The goal of a chapter 11 bankruptcy case is to "confirm" a chapter 11 plan of reorganization. Such a chapter 11 reorganization could either be a rehabilitation of an operating debtor company that will continue in business, or it may entail the going out of business and a

liquidation of the debtor company. A chapter 11 plan is basically a new contract between the debtor and all its creditors. In a plan, the debtor must place its creditors in classes according to the nature of the claims, and provide for treatment of each of the creditors' claims. The treatment of creditors' claims in a plan may entail a payment of some or all of the creditors' claims, or possibly no payment, depending on the assets available and the amount and number of claims.

The chapter 11 plan confirmation process involves two basic steps. The first step is creditor voting. The second step is the plan confirmation hearing, which is an evidentiary hearing held by the bankruptcy court on whether the chapter 11 plan meets the legal requirements for confirmation.

The voting step. Accompanying a plan is a disclosure statement. The disclosure statement provides information about the debtor's business and financial affairs so that the creditors can decide whether to vote for or against the plan and whether to file legal objections to the plan. Court approval for the disclosure statement is required. If the court finds that the disclosure statement contains "adequate information," it will approve the disclosure statement and set a hearing on confirmation of the plan, along with the deadline to vote and object. Once the disclosure statement is approved, the debtor must provide notice of the plan, the disclosure statement, the order approving the disclosure statement, and a ballot to each creditor. The creditors then vote on whether to accept or reject the plan and the creditors may file with the court objections to confirmation of the plan, raising legal and factual reasons why the plan should not be confirmed.

The confirmation step. After the disclosure statement is approved, the court will set a hearing to determine whether the plan should be confirmed. A plan may be confirmed if the plan is feasible and meets the requirements of the bankruptcy code.

Once the plan is confirmed, the plan is a new contract binding on the debtor and all creditors and parties in interest, regardless of how they voted. Pre-petition obligations and rights are replaced by the obligations and rights described in the plan.

As of February 2, 2006, no plan or disclosure statement has been submitted. The Committee plans to seek input into the plan drafting process in order to protect the rights of general unsecured creditors, and will likely make recommendations on whether general unsecured creditors should support or oppose the plan.