

Client Alert

August 2017

Creditors' Committee in H.H. Gregg Initiates Preference Demands and Litigation Against Creditors

In March of this year, consumer electronics and home appliance retailer Gregg Appliances, Inc., better known as "H.H. Gregg," filed for Chapter 11 bankruptcy in Indianapolis, Indiana. H.H. Gregg, which took over many of the retail spaces previously occupied by Circuit City, is one of many big-box retailers that have sought Chapter 11 bankruptcy over the past several years. Like Circuit City, H.H. Gregg was unsuccessful in reorganizing in bankruptcy and is now seeking to recover payments made to vendors and other creditors within 90 days prior to the bankruptcy filing.

In early April 2017, H.H. Gregg announced that it would commence closing all its remaining locations and begin the process of liquidating its assets. H.H. Gregg's latest financial statements suggest that general unsecured creditors are likely to recover only a few cents on the dollar from the liquidation. We expect that the failure of H.H. Gregg to successfully reorganize combined with the potential for a very low recovery for unsecured creditors will result in the aggressive pursuit of preferences and other avoidance actions.

The Official Committee of Unsecured Creditors (the Committee) in the bankruptcy case was granted the exclusive right to bring certain claims, including to recover payments made by H.H. Gregg to vendors and other creditors within 90 days prior to the commencement of the bankruptcy case, known as "preference payments." Creditors subject to preference claims can often raise substantial defenses to these claims. For example, a creditor can avoid liability or reduce exposure by showing that the challenged payments were received in the ordinary course of business or that the creditor provided H.H. Gregg with "new value" after the preference payment was received.

The bankruptcy court recently approved the Committee's retention of ASK LLP (ASK), a law firm that specializes in recovering preferences and other avoidance actions. Prior to filing a complaint initiating an avoidance action, ASK will generally first send a demand package to a potential defendant consisting of: (i) a demand letter explaining the basis for potential liability; (ii) a draft complaint; and (iii) a settlement offer and settlement acceptance form. ASK will generally make an attempt to consensually resolve these matters prior to filing a complaint and initiating a lawsuit.

ASK has begun the process of sending out these demand packages to potential defendants and we anticipate that ASK will commence filing complaints in the near future.

Retaining experienced bankruptcy counsel as early as possible in this process is important to ensure adequate exploration of all potential defenses to the preference claims, and to explore the possibility of settlement prior to the commencement of expensive litigation. Hunton & Williams LLP has extensive experience successfully defending clients in preference actions, including in connection with the Circuit City bankruptcy, the largest consumer electronics retailer bankruptcy in history.

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