

Bankruptcy 102: A More Detailed Focus on Unclaimed Property Issues

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Features of Zoom Webinar

- Today's presentation is being recorded
- All audience members are muted.
- Use “Q & A” to ask questions of the panelists and organizers.

Bankruptcy 102: A More Detailed Focus on Unclaimed Property Issues

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Presenting

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Bankruptcy 102: A More Detailed Focus on Unclaimed Property Issues

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- **UP Audits and Bankruptcy**
 - Refresher on the Automatic Stay
 - UP Audits and the Automatic Stay
 - Is the Automatic Stay applicable?
 - Application of the “Governmental Action Exemption” to the Automatic Stay
 - Negotiating carve-outs for moving forward with the Audit
 - Obtaining information to substantiate your claim despite the Automatic Stay
- **Restructuring Support Agreements (RSAs)**
- **Reporting of Bankruptcy Proceeds to the State**
- **Owner Claims, Including Remnant Assets**

Choosing Wisely—When To Pursue A Claim In Bankruptcy

- Determine whether there is “reason to believe” the impaired debtor has material amounts of unclaimed property
 - Confirmed information (e.g., 10-K filings, media) about the existence of unclaimed property
 - Reporting history (e.g., large amounts reported but then discontinued/no recent reporting/noteworthy types excluded)
 - Industry profile (peers report large volumes of property) and nature of business (consumer-facing)
 - Operating for sufficiently long period to generate unclaimed property
 - Sufficient footprint in your state
 - Decent odds for recovery (more than a few cents on the dollar)
 - Liabilities are not time-barred or exempted under your law

UP Audits and Bankruptcy

A. Refresher on the Automatic Stay

- As soon as a company files for bankruptcy, an automatic stay is placed that prevents creditors from taking any steps to recover monies owed.
 - It gives the debtor breathing room
 - Want all creditors to be treated alike
 - Want to count what is in the estate
 - Interpreted very broadly
- It provides a period of time in which all judgments, collection activities, foreclosure, and repossession of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the petition was filed.

Examples:

- Banks cannot call in their loans.
- Creditors cannot move forward with any collection efforts.
- Most lawsuits are also generally stayed.
- As it relates to UP, if the company filed a UP report but hadn't yet sent in payment, you would not be able to request payment.

A. Refresher on the Automatic Stay Con't:

- There are statutory exceptions to the automatic stay:
 - Criminal action
 - Collection of alimony and child support
 - **“Governmental Unit Exception”**:
 - Under this exception, **“governmental units,”** are not stayed from commencing or continuing actions “to enforce such governmental unit’s . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s . . . police or regulatory power.” See **11 U.S.C. § 362(b)(4)**.
- Under specific circumstances a party can move for relief from the automatic stay
- BUT: the court can still stay an action that would otherwise be except form the stay. See **11 U.S.C. § 105(a)**.



B. Is the Automatic Stay Applicable to UP Audits?

- On the few occasions where we have had direct experience with this in one of our audits, Holders (and their counsel) generally have been taking the position that once they file for bankruptcy the automatic stay provision would stay any audit, regardless of the stage of the audit.
- On one occasion the holder's bankruptcy counsel did not mention the automatic stay but said that our audit requests are "part and parcel of the claims allowance process that the Reorganized Debtors have launched in the Bankruptcy Court," and they will "only exchange any information relating to the [UP claims] as part of the formal discovery in connection with any filed response to any objection to the [UP claims]."
- In all instances, the state involved in the audit has had bankruptcy counsel handle the matter and we have conducted no further work on the audit.



C. Different Approaches for Responding to a Debtor's Invocation of the Automatic Stay:

1. Consider whether it falls within the “Governmental Action Exception” to the Automatic Stay

- Purpose of exception is to permit governmental units to commence or continue an action or proceeding to enforce its regulatory and police powers in spite of § 362(a)(1), and to permit enforcement of resulting judgments or orders, other than money judgments, in spite of § 362(a)(2).
- A governmental unit may pursue actions against the debtor or the estate, *but it may not enforce a money judgment or seize or seek control over property of the estate without first obtaining relief from the stay*. Thus, an action by a governmental unit seeking to enforce compliance with federal or state laws may proceed to a judgment or order. It may proceed even further, to enforcement of the judgment or order, but a governmental unit may not enforce a money judgment against the estate.
- To determine whether an action is excepted from the automatic stay as a police or regulatory power action the courts have developed two tests to judge the government's action:
 - (1) the pecuniary-purpose test (is the governmental unit pursuing a matter of public safety and welfare rather than a governmental pecuniary interest?); and
 - (2) the public policy test (is the government action designed to effectuate public policy rather than to adjudicate private rights?)
- Nevertheless, the governmental unit may be enjoined by the court if the exercise of its regulatory power would unduly hinder the rehabilitative process and alternative means of protecting the government's interest are available.
 - See In re Commonwealth Cos., 913 F.2d 518, 527 (8th Cir. 1990) (“It is important to recognize that debtors are not left without an avenue for relief if they or the estate would be harmed by a governmental action excepted from the automatic stay under §362(b)(4). The bankruptcy court has ‘ample other powers’ to stay such action, including the discretionary power under 11 U.S.C. § 105(a)”) (citation omitted).

C. Different Approaches for Responding to a Debtor's Invocation of the Automatic Stay Con't:

1. Consider whether it falls within the “governmental action exception” to the Automatic Stay

- As of now, we are not aware of any case law discussing the application of this exception to the state's enforcement of the unclaimed property laws.
- Analogous situations:
 - Tax Audit: There is a specific exception to the Automatic Stay that permits tax audits to proceed. See §362(b)(9)(A) (exempting “an audit by a governmental unit to determine tax liability”).
 - This was added as part of the “Bankruptcy Reform Act of 1994”
 - **H & H Beverage Distributors v. Department of Revenue**, 850 F.2d 165, 167 (3d Cir. 1988), *cert. denied*, 488 U.S. 994 (1988). Case was decided *before* the specific tax audit exception was enacted. Interestingly, the Appeals Court found that a sales tax audit and issuance of an audit assessment was NOT a violation of the automatic stay. The case is distinguishable, but it is telling that the court found that “[a]uditing a debtor's sales tax records does not by itself constitute an act to create a lien or collect a claim” which would violate the automatic stay.
 - See also **Wood v. Comm'r**, 328 B.R. 880, 888-89 (Bankr. S.D. Fla. 2005) (citing additional bankruptcy decisions finding that post-petition tax audits and assessments do not violate the automatic stay); **Carlson v. United States**, 126 F.3d 915, 924 (7th Cir. 1997) (“The IRS, like any other creditor, is entitled to determine whether it possesses a valid claim against a debtor. . . The audit requests in this case were mere inquiries about deficiencies rather than actions in the nature of assessments, and thus they did not violate the stay.”).

C. Different Approaches for Responding to a Debtor's Invocation of the Automatic Stay

Con't:

1. Consider whether it falls within the “governmental action exception” to the Automatic Stay

- Investigations by Government Agencies
- **United States ITC v. Jaffe**, 433 B.R. 538, 544 (E.D. Va. 2010): In finding that the U.S. International Trade Commission's (ITC) investigation of the debtor (for allegedly importing patent infringing goods in violation of the Tariff Act of 1930) was exempt from the automatic stay, the District Court noted:

To be sure, it may sometimes be difficult to distinguish between acts that promote the public interest and acts that further private interests. Recognizing this, the Fourth Circuit in [*Safety-Kleen, Inc. (Pinewood) v. Wyche*, 274 F.3d 846, 865 (4th Cir. 2001)]--a decision construing § 362(b)(4) to reach a state agency's suit to enforce a bond order--sought to provide guidance, stating that "[t]he fact that one purpose of the law is to protect the state's pecuniary interest does not necessarily mean that the exception is inapplicable. Rather, we must determine the *primary* purpose of the law that the state is attempting to enforce." *Id.* (emphasis in original). Notably, the inquiry is objective in that courts are instructed to "examine the purpose of the law that the state seeks to enforce rather than the state's intent in enforcing the law in a particular case." *Id.*

- **In re Farmers & Ranchers Livestock Auction, Inc.**, 46 B.R. 781, 795 (Bankr. E.D. Ark 1984): In finding an investigation of the debtor, a livestock auction house, by the Packers and Stockyards Administration (P&SA) (for alleged violations of The Packers and Stockyards Act) was exempt from the automatic stay, the Bankruptcy Court concluded that the P&SA's actions concerned the:

determin[ation of] the debtors' continued fitness to serve as market agencies and dealers [and thus] primarily concern regulations for the public welfare.

C. Different Approaches for Responding to a Debtor's Invocation of the Automatic Stay Con't:

2. Some states have negotiated a carve-out in a situation where they commenced an audit pre-petition.

- MONTANA

- 26. Notwithstanding section 362 of the Bankruptcy Code and the injunction contained in Article VIII.E of the Plan, after the Effective Date, MDOR and its agents may continue its audit of the Debtors in accordance with [MUUPA] and pursue recovery of any unremitted Montana Unclaimed Property identified pursuant to the Montana Unclaimed Property Audit. The Debtors and the Reorganized Debtors shall continue to abide by their obligations under the Montana Uniform Unclaimed Property Act and cooperate with the Auditors to enable them to accurately and timely perform and complete the Montana Unclaimed Property Audit by making the entities' employees, professionals, books, and records available for further examination and tracing of the accounts for any Montana Unclaimed Property.
- 27. The Debtors' rights and defenses with respect to any allegations and claims asserted against the Debtors arising from or relating to the Montana Unclaimed Property Audit are hereby reserved; provided, however, that upon agreement between the Debtors or the Reorganized Debtors and MDOR or a final non-appealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Montana Unclaimed Property, if any, that is due in connection with the Montana Unclaimed Property Audit, the Debtors or the Reorganized Debtors shall turn over such unremitted Montana Unclaimed Property to MDOR.
- 28. MDOR may file or amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any unclaimed property reports or as a result of the Montana Unclaimed Property Audit or any subsequent litigation or agreement on such audit.
- In re Whiting Petroleum Corp., No. 20-32021 (Bankr. S.D. Tex. Aug. 14, 2020) ("Order (I) Confirming the Joint Chapter 11 Plan of Reorganization of Whiting Petroleum Corporation and its Debtor Affiliates and (II) Granting Related Relief"), available at <https://plus.lexis.com/api/permalink/995d97ba-1d03-4b6a-8635-72bf1814664f/?context=1530671>.

C. Different approaches for responding to a debtor's invocation of the Automatic Stay Con't:

- TEXAS
 - 137. The following provisions of this Confirmation Order will govern the treatment of the Texas Comptroller of Public Accounts ("Texas Comptroller") with respect to the duties and responsibilities of the Debtors and Reorganized Debtors relating to unclaimed property presumed abandoned before the Petition Date ("Texas Unclaimed Property") under Texas Property Code, Title 6, Chapters 72-76 and other applicable Texas laws (the "Texas Unclaimed Property Laws").
 - 138. On or within fourteen (14) days after the Effective Date, the Debtors shall turn over to the Texas Comptroller any Texas Unclaimed Property presumed abandoned before the Petition Date and reflected in property reports delivered by the Debtors to the Texas Comptroller under the Texas Unclaimed Property Laws (the "Reported Unclaimed Property"). With respect to such Reported Unclaimed Property, the Texas Comptroller will not seek payment of any interest or penalty by the Debtors or Reorganized Debtors.
 - 139. Notwithstanding section 362 of the Bankruptcy Code and the injunction contained in Article VIII.H of the Plan, the Texas Comptroller and its agents may proceed with the audit of the Debtors in accordance with the Texas Unclaimed Property Laws (the "Texas Unclaimed Property Audit") and pursue recovery of any unremitted Texas Unclaimed Property identified pursuant to the Texas Unclaimed Property Audit.
 - 140. The Debtors' rights and defenses with respect to any allegations and claims asserted against the Debtors arising from or related to the Texas Unclaimed Property Audit are hereby reserved; provided, however, that upon agreement between the Debtors or the Reorganized Debtors and the Texas Comptroller or a final nonappealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Texas Unclaimed Property, if any, that is due in connection with the Texas Unclaimed Property Audit, the Debtors shall turn over such unremitted Texas Unclaimed Property to the Texas Comptroller.
 - 141. The Texas Comptroller may amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any property reports or in the ordinary course of the Unclaimed Property Audit.
 - *In re Sandridge Energy, Inc.*, 2016 Bankr. LEXIS 4622, at *111-12 (Bankr. S.D. Tex. Sept. 20, 2016) ("Amended Order Confirming the Amended Joint Chapter 11 Plan of Reorganization of Sandridge Energy, Inc. and its Debtor Affiliates")

D. Getting Information to Substantiate your Claim Despite the Automatic Stay:

- Review of Types of claims:
 - Fixed claims = amount of claim is known.
 - Contingent/Unliquidated claims = claimant doesn't know the amount.
 - Disputed claims = trustee can dispute a claim, burden on trustee/debtor to overcome presumption of validity, then court holds an evidentiary hearing and the bankruptcy court may disallow the claim if the objection is sustained.
 - Priority claims = different categories of priority, but first priority goes to “administrative expenses”— costs of preserving the estate (taxes, compensation for professional services, Trustee’s fees), other priority claims include wages and salaries.
 - Secured claims
 - General unsecured claims



D. Getting Information to Substantiate your Claim Despite the Automatic Stay Con't:

- When a party does not know exactly how much they are owed because that information is in the debtor's control, they can submit a claim for an unliquidated amount explaining the information needed to determine the amount of the claim is in the possession of the debtor
- After submitting the proof of claim in an unliquidated amount, States may consider taking one of the following steps to obtain the information for the specific amount:
 - Contact the debtor/debtor's counsel to request the information/come to some sort of agreement/compromise
 - File a motion pursuant to **Bankruptcy Rule 2004** to obtain the necessary discovery. Pursuant to this rule, "[o]n motion of any party in interest, the court may order the examination of any entity." Such an examination "may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge."
 - Move the court for an order estimating the claim at issue. Pursuant to the **Bankruptcy Code, 11 USC § 502(c)**, "[t]here shall be estimated for purpose of allowance under this section . . . any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case."
 - the Bankruptcy Code does not provide any guidance on what methods should be used to estimate a contingent or unliquidated claim. Case law shows they generally employ whatever method is best suited to the circumstances. They have employed various methods to estimate claims, ranging from summary trials and evidentiary hearings to a simple review of the pleadings. They have substantial discretion in making estimation determinations.

Restructuring Support Agreements ("RSAs")

What are Restructuring Support Agreements (RSAs)? Why do They Matter to State Unclaimed Property Programs?

RSAs Represent a Relatively New and Different Approach to Bankruptcy Reorganizations (Chapter 11 Proceedings)

Historical Chapter 11 Approach: filing for reorganization; litigation over disputes; one or more plans of reorganization; costly and drawn-out proceeding; uncertainty and chance

RSA Approach: consensus approach for addressing debt and reorganization reached between debtor and creditor(s) *prior to* filing; minimizes or eliminates disputes; may avoid need for formal plan; more expedient and economical.

An RSA is not a substitute for a Chapter 11 proceeding, but rather alters the manner in which a Chapter 11 proceeding unfolds. RSAs are not discussed in the Bankruptcy Code, but operate in a manner consistent with that set of laws.

RSAs Represent a Relatively New and Different Approach to Bankruptcy Reorganizations (Chapter 11 Proceedings)

In a classic bankruptcy reorganization, the entirety of a debtor's liabilities are addressed and typically discharged. In an RSA, the focus is typically on major borrowing (bank lending and debt securities); immaterial and "regular course of business" obligations *may* be (but not necessarily so) altogether disregarded. This may leave unclaimed property entirely unaffected by the proceeding.



While Some RSAs May Treat Unclaimed Property More Favorably, This Is Not Necessarily the Case

Under an RSA, vendor and unsecured claims may be paid at 100 percent, but to the extent they are unscheduled, they may be discharged, as would be the case in a traditional Chapter 11 proceeding.

If a claim is paid out, non-presentment of the claim payment results in an obligation that is not subject to state reporting (see Bankruptcy 101).

If unclaimed property liabilities are unscheduled, and the debtor is seeking to address/discharge all debts, the State **must** file a claim, as would be the case in a traditional bankruptcy proceeding. The debtor may then object to the claim, as disputed, unliquidated, contingent, etc.

Each RSA Will Be Unique, and the Impacts on Unclaimed Property Will Differ

In its audits of holders undergoing reorganization and utilizing an RSA, Kelmar has seen outcomes where 100 % of the value of audit findings have been remitted to the states (even where no claim was filed), to a very small percentage (3 to 4 %) of the property value being remitted but only where the State filed a claim.



Review Each RSA Carefully to Determine what Action, if Any, is Required

- Are general claims entirely unimpaired (unaffected)?
 - *Likely, no action is required*
- If unimpaired, is there nonetheless a requirement to file a claim?
 - *Failure to file a claim will result in non-payment and discharge*
- If the requirement to file a claim exists, are all unclaimed property liabilities scheduled?
 - *If liabilities are unscheduled, the State need to file a claim, and identify both the unscheduled liabilities and the basis for the State's claim*

Note: determining the treatment of unclaimed property may require review of the plan of reorganization (if any) and not the RSA itself



Reporting of Bankruptcy Proceed to States



Reconciling a State's Claim Payment in Bankruptcy to Unreported Property

- In most instances (and particularly where there is no Restructuring Support Agreement involved), a state will not receive payment of 100 percent of its claim, i.e., the amount paid will be less than the amount owed.
- This is consistent with the bankruptcy process, through which creditors receive something, rather than nothing from an insolvent debtor.
- Because state unclaimed property claims are considered general and not priority or secured claims, payment for unclaimed properties in bankruptcy will generally be less than 100%.



Approaches to Reconciliation

Depending on the approved plan of reorganization or liquidation, a state might receive:

- Cash
- Securities
- Some combination of the two

The type/percentage of compensation might vary, depending on the nature of the underlying claim (e.g., a higher percentage paid out for unclaimed wages, than unclaimed equity).



Approaches to Reconciliation

- Ideally, a state will be able to determine the amounts each individual lost owner would have received if they had filed a claim directly in the proceeding and allocate the claims payment accordingly.
- Where a state receives securities in lieu of cash, it is generally necessary to liquidate the securities to perform the allocation (even for states required to hold shares for a period of time, there is generally an exception where immediate sale is in the best interests of the state).
- In some situations, a state will simply receive a lump-sum payment in satisfaction of its claim, not tied to any actual formula. This leaves a state with no option other than to allocate the funds pro-rata.

Is There A Wrong Way to Reconcile?

State recoveries in bankruptcy only happen because a state takes the initiative. If the state did not intervene, in most cases the individual creditors included in the state claim would receive nothing.

It would seem that as long as the state performs a reconciliation in good faith, and absent gross negligence, an individual claimant should not be permitted to challenge the reconciliation.

Owner Claims

When a Claimant is a Debtor Currently in Bankruptcy

- Companies undergoing reorganization under bankruptcy may undertake efforts to identify and collect unclaimed property in the possession of the state
- Arguably, the debtor is obliged under bankruptcy laws to identify and schedule *all* assets, for the benefit of creditors and to promote orderly process
- There is no reason to treat a claimant which is currently undergoing reorganization or liquidation differently from any other claimant



When a Claimant Previously Was a Debtor in Bankruptcy

- Where a company or individual has gone through a bankruptcy reorganization (Chapters 11 and 13, respectively), they emerge from the proceedings having discharged some/all existing debts
- In exchange for the discharge of debt, the debtor was required to identify/schedule all assets, as well as debts
- The debtors may sometimes fail to be schedule assets, through inadvertence, nonfeasance, or even malfeasance
- *Unscheduled assets may find their way to the state as unclaimed property, to be claimed by the reorganized debtor*



When a Claimant Previously Was a Debtor in Bankruptcy

Should a state pay the claim of a reorganized debtor, if the property should have been, but was not scheduled as an asset in the now-completed bankruptcy proceeding?



The U.S. Trustee

“The United States Trustee Program is the component of the Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101, et seq. We are a national program with broad administrative, regulatory, and litigation/enforcement authorities whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. The USTP consists of an Executive Office in Washington, DC, and 21 regions with 90 field office locations nationwide.”

SOURCE: U.S. Department of Justice



When Might the U.S. Trustee Oppose State Payment of a Debtor-Claimant?

- Granted, the U.S. Trustee cannot (typically) object if the State does not apprise the Trustee of the claim. **BUT HOW WOULD THE STATE ITSELF KNOW?**

** What is the duty of the State to determine whether the claimant's previous debts were discharged through bankruptcy?

**Should the State inquire of the claimant, e.g., include a check-box on the claim form?



When Might the U.S. Trustee Oppose State Payment of a Debtor-Claimant?

- Claim involves property with substantial value
- Material amounts of debt discharged through bankruptcy
- Finite number of creditors or creditors with significant, unsatisfied claims
- Determination that allowance of the state claim would result in inequity



Remnant Assets

Remnant: “a small remaining quantity of something,” *Oxford Dictionary*

Remnant assets: “dormant, inactive, or unclaimed rights to payment and assets typically held in the names of non-operating, predecessor, and/or inactive affiliated entities,”
Oak Point Partners



Ames Department Stores: Remnant Assets Assigned to Oak Point

“Who owns Ames department stores Remnant assets?”

Oak Point Partners acquired the remnant assets of the Ames Department Stores, Inc., et al. Bankruptcy Estate in January 2013.

On August 20, 2001, Ames Department Stores, Inc. and its related entities (“Ames Department Stores”) filed a chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York, assigned case No. 01-42217. A Chief Wind Down Officer was appointed to liquidate the estate’s assets.”

SOURCE: Oak Point Partners website

Ames Department Stores: Remnant Assets Assigned to Oak Point

“Related Entities

460 Corp., 55 Gold, Almar Advertising Agency, Inc., Almar Caribe Corp., Almar Merchandise Corp., Alpine Express, Alpine Ridge, AMD, Inc., Ames Department Stores, Inc., Ames Dependable, Ames FS, Inc., Ames Merchandising Corporation, Ames Online, Ames Realty, Inc., Ames Stores, Ames Transportation Systems, Inc., Amesmeds, A-O.K., Inc., Are-Mart, Inc., Barker's, Bridge Finkel, Inc., Brownfield Realty Corp., Cag-Mart, Inc., Caribbe-Mart, Inc., Corona Jewelry Co., Coronet Cosmetics, Inc., Corporate Vision, Inc., Country Closet, Country Woodworks, Crafts & More, Cross Currents, Cuddle Towne, Discount City, Inc., Durachef, E.Z. Gear, Fixtron, Inc., Frank - Port Corp., Gaylords, Inc., Glen Square Realty Corp., Grant Odessa Realty Corp., HDS Transport, Inc., Hills Department Store Company, Hills Distributing Company, Hills Stores, HSC Acquisition Company, Jaclyn-Parklane Corp., Joseph Leavitt, Inc., Kaydak Realty Corporation, King's Department Stores, King's of Concord, Inc., King's-Mammoth, Inc., Lina-Mart, Inc., Maya-Mart, Inc., MBM Realty Corporation, Neisner Brothers, Inc., Northeast Carriers, Inc., Pawsitively Pets, Post Orange, Inc., Resolute Bay, Rex-Mart, Inc., Rio-Mart, Inc., Rose-Mart, SCOA Industries, Inc., Shoppers City, Inc., Sun-Mart, Inc., The Schiff Company, THL Industries, Inc., Zayre Central Corp., Zayre New England Corp., Zayre Tenth Realty Corp”

SOURCE: Oak Point Partners website

Ames Department Stores: Remnant Assets Assigned to Oak Point

“About Ames Department Stores

Founded in 1958 by two brothers, Ames Department Stores became the nation’s fourth largest discounter with over 700 stores in 20 states. The company focused on setting up stores in smaller towns in rural areas. The company sold quality merchandise at discount prices and relied upon its sales of housewares, automotive supplies, and hardware to generate growth. At its peak, the company employed 22,000 people.

Ames Department Stores also operated under several trade names including Hills Stores and Neisner Brothers.

The former headquarters of Ames Department Stores was located in Rocky Hill, CT.

SOURCE: Oak Point Partners website

HEADQUARTERS
Rocky Hill, CT

FOUNDED
1958

BANKRUPTCY FILING
August 20, 2001

OAK POINT ACQUISITION
January 2013”

Ames Department Stores: Remnant Assets Assigned to Oak Point

“Contact Info: Ames Department Stores

Inquiries regarding where to send:

Overpayments, Undeliverable Funds, Insurance Refunds, Refunds, Warrants, Unclaimed Funds, Rebates, Uncashed Checks, Restitution, Credit Balance, Escheat, Judgment Balance, Abandoned Property, Settlement Proceeds, or any other funds belonging to Ames Department Stores.

Requests for reasonable referral or finder fees will be considered.

Payment Address:

Oak Point Partners
P.O. Box 1033
Northbrook, IL 60065-1033

Please note that Oak Point did not acquire books and records. We are unable to assist with claim, warranty or product inquiries.

We have no information about retirement or other employee benefit plans (e.g., profit sharing or pension plans). Information may be available at the U.S. Department of Labor Employee Benefits Security Administration (866-444-3272) or Pension Benefit Guaranty Corporation (800-400-7242).

Phone Number: 847-483-8000

Email Address: remnants@oakpointpartners.com”

SOURCE: Oak Point Partners website

The Standing of a Purchaser/Assignee of Remnant Assets as a Claimant

“A person...claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator...”

“‘Person’ means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.”

SOURCE: 1995 Uniform Act



However, Claimant Standing ≠ Owner Standing

- A reported owner is merely an apparent owner. An apparent owner *appears* to be the entity entitled to reported property, but may not be the lawful owner
- An apparent owner must meet evidentiary requirements to satisfy actual rights of ownership
- Satisfaction of evidentiary requirements is more difficult when a business association is involved, particularly where the business association has ceased operations and no books and records were provided to the corporate successor
- Consider, however, *Avaya Inc. v. Ohio Dept. of Commerce*



Claims to Remnant Assets Checklist

- Is the assignment of assets authentic, unambiguous and otherwise legally conforming?
- Does the asset being claimed fall within the scope of the assignment?
- Are there questions concerning asset entitlement on the part of the owner of record?
- Are there any state setoffs (e.g., outstanding tax obligations)?
- If the owner of record underwent bankruptcy proceedings, do creditors have a superior claim (see U.S. Trustee slides, above)



Clawbacks

The Bankruptcy Code allows a trustee to recover, or “clawback,” certain payments made by the debtor prior to the bankruptcy filing. The payment is, in effect, “clawed back” to become part of the bankruptcy estate for the benefit of all creditors. Includes:

- Fraudulent transfers, intended to shift assets prior to a bankruptcy filing;
- Preferential transfers, where some creditors were intentionally paid and others were not; and
- Most other transfers made within 90 days of a filing

QUESTION: is an unclaimed property remittance subject to clawback?



Questions?

Thank You



NATIONAL ASSOCIATION OF

STATE TREASURERS