

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:) Case No. 19-40833-659
) Chapter 11
Payless Holdings LLC, *et al.*,)
) Jointly Administered
Debtors.)
) **Hearing Date and Time:** February 25, 2019
) at 9:30 A.M. (Central Time)
) **Objection Deadline:** February 25, 2019 at
) 9:30 A.M. (Central Time)
) **Hearing Location:** Courtroom 7 North

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) SCHEDULING AN EXPEDITED HEARING, (II) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (this "Motion"):

Relief Requested

1. By this Motion, and pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, 9006(c), and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9013-2(A) of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the "Local Bankruptcy Rules"), the Debtors seek entry of an order (a) shortening the notice period and scheduling an expedited hearing on the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 216] (the "DIP Motion"), filed by the Debtors

contemporaneously herewith, for **February 25, 2019 at 9:30 a.m. (Central Time)** and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. The Debtors and their non-debtor affiliates (the “Company”) are the largest specialty family footwear retailer in the Western Hemisphere, offering a wide range of shoes and accessory items at affordable prices. The Company operates approximately 3,400 stores in more than 40 countries. The Debtors are headquartered in Topeka, Kansas, with extensive operations that span across the United States, Canada, Latin America, Asia, the Middle East and Europe.

5. On February 18, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Debtors’ cases are being jointly administered and have been consolidated for procedural purposes only. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

6. The Debtors commenced these chapter 11 cases approximately 18 months after completing a restructuring and emerging from chapter 11 protection with a reduced debt burden.¹ The Debtors, however, have been unable to sustain profitable operations in the current retail environment as a result of various factors more fully described in the *Declaration of Stephen Marotta, Chief Restructuring Officer of Payless Holdings LLC, in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* (the "First Day Declaration").² Accordingly, the Debtors have determined that the best way to maximize value for all of their stakeholders is to liquidate all North America brick and mortar locations through the immediate commencement of going out of business sales. The Debtors believe, in the exercise of their business judgment, that such measures are in the best interests of the Debtors' estates.

7. A description of the Debtors' businesses and operations, capital structure and events leading to the commencement of these chapter 11 cases is set forth in the First Day Declaration, and incorporated herein by reference.

Basis for Relief

8. Section 105(a) of the Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Further, Bankruptcy Rule 9006(c) provides that the Court, for cause shown, may in its discretion reduce the notice period normally required for motions. Finally, Local Bankruptcy Rule 9013-2(A) allows a hearing to be scheduled on an

¹ On April 4, 2017, the Debtors' predecessors-in-interest commenced chapter 11 cases (the "Prior Cases") before the United States Bankruptcy Court for the Eastern District of Missouri, which were jointly administered under the caption *In re Payless Holdings LLC*, No. 17-42267. A plan of reorganization was confirmed in the Prior Cases on July 26, 2017, and such plan went effective on August 10, 2017.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Motion or First Day Declaration, as applicable.

expedited basis “by written motion, setting forth the reason the matter should be considered on an expedited . . . basis.”

9. The Debtors request that this Court shorten the notice period and hear the DIP Motion on an expedited basis. The Debtors have an immediate need to access incremental liquidity in the form of postpetition financing to preserve the value of the Debtors’ estates and maximize recoveries for stakeholders. The postpetition financing will be used to purchase finished goods and inventory from suppliers at significant discounts (the “Augmentation Inventory”) to further maximize proceeds being generated during the Store Closing Sales. While the DIP Facility and Augmentation Inventory are being used to directly fund the operations of and benefit the Debtors in the context of the ongoing Store Closing Sales, the purchases will also help to support the Debtors’ key suppliers, who the Debtors believe provide goods and inventory to the Debtors on advantageous terms and may be critical to the support of the Debtors’ affiliated international retail operations in the context of any reorganization scenario.

10. The parties in interest have been engaged in ongoing negotiations regarding the DIP Motion and relief requested therein. At this time, the Debtors are requesting that the Court grant the DIP Motion on an interim basis and schedule a final hearing at a later date. Accordingly, no party will be prejudiced by an emergency hearing on the DIP Motion. Because the relief requested in the DIP Motion is crucial to the Debtors’ operations and preserving value in the Debtors’ estates, an expedited hearing is warranted.

11. Courts in this district have granted similar relief concerning expedited consideration in other large chapter 11 cases. See, e.g., In re Armstrong Energy, Inc., et al., Case No. 17-47541 (Bankr. E.D. Mo. Jan. 31, 2018) (granting an expedited hearing on the debtors’ motion to seal); In re Abengoa Bioenergy US Holding, LLC, Case No. 16-41161 (Bankr. E.D.

Mo. June 16, 2016) (granting expedited hearing on debtors' motion to pay certain prepetition claims); In re Peabody Energy Corp., Case No. 16-42529 (BSS) (Bankr. E.D. Mo. Dec. 14, 2016) (granting an expedited hearing on to hear DIP repayment motion); In re Arch Coal, Inc., Case No. 16-40120 (CER) (Bankr. E.D. Mo. Aug. 11, 2016) (granting expedited hearing on debtors' motion to enter into a new insurance premium finance agreement).

Notice

12. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Missouri; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition ABL Administrative Agent, (i) Choate Hall & Stewart LLP (Attn: Kevin Simard, Douglas Gooding and Jonathan Marshall) and (ii) Thompson Coburn LLP (Attn: Mark Bossi); (d) counsel to the FILO Agent, Greenberg Traurig, LLP (Attn: Jeffrey M. Wolf); (e) counsel to certain Prepetition Term Loan Lenders (i) Kramer Levin Naftalis & Frankel LLP (Attn: Stephen D. Zide), (ii) Doster, Ullom & Boyle, LLC (Attn: Gregory D. Willard) (iii) Stroock & Stroock & Lavan LLP (Attn: Kristopher M. Hansen and Daniel A. Fliman) and (iv) Lewis Rice LLC (Attn: Sonette T. Magnus); (f) counsel to the Prepetition Term Loan Agent, Norton Rose Fulbright US LLP (Attn: Stephen Castro and David Rosenzweig); (g) the proposed Monitor, FTI Consulting Canada, Inc. (Attn: Paul Bishop, Greg Watson and Jim Robinson); (h) counsel to the proposed Monitor, Bennett Jones LLP (Attn: Sean Zweig, Kevin Zych and Aiden Nelms); (i) counsel to any statutory committee appointed in the chapter 11 cases; (j) the United States Attorney's Office for the Eastern District of Missouri; (k) the Internal Revenue Service; (l) the United States Securities and Exchange Commission; (m) the state attorneys general for all states in which the Debtors conduct business; and (n) any party that has requested notice pursuant to

Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: February 22, 2019
St. Louis, Missouri

/s/ Richard W. Engel, Jr.

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