

FILED

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

2009 DEC 14 PM 3: 01

CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
EDDIE BAUER FULFILLMENT SERVICES, INC.,	:	Case No. 09-12101 (MFW)
	:	
Debtor.	:	(Jointly Administered)

**RESPONSE OF CARMEN'S DISTRIBUTION SYSTEMS, INC. TO
DEBTORS' SECOND OMNIBUS (NON-SUBSTANTIVE) OBJECTION TO CLAIMS
PURSUANT TO § 502(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1**

Administrative creditor Carmen's Distribution Systems, Inc. ("CDS") hereby responds to the Debtors' Second Omnibus (Non-Substantive) Objection to Claims Pursuant to § 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1 ("Objection") filed November 20, 2009.

STATEMENT OF FACTS

1. On July 20, 2009, this Court entered an order establishing September 21, 2009 ("Claims Bar Date") as the deadline for filing proofs of claims against the Debtors' estates.
2. On July 20, 2009, this Court entered an order appointing Kurtzman Carson Consultants LLC ("KCC") as the claims agent in these cases.
3. CDS timely prepared and mailed its Proof of Administrative Priority Claim ("Proof of Claim"), as evidenced by the September 18, 2009 cover letter addressed to



KCC at 2335 Alaska Avenue, El Segundo, California 90245 (Exhibit A) and the customer copy of the Express Mail receipt issued by the United States Postal Service (USPS) for item number RG068513635US ("parcel") dated September 18, 2009 (Exhibit B). The scheduled date of delivery of the parcel is noted on the receipt as Monday, September 21, 2009, the Claims Bar Date.

4. The USPS guaranteed delivery of the parcel by noon on the Claim Bar Date, which would have made the filing timely.

5. The tracking invoice obtained through the USPS website (<http://trkcnfrm1.smi.usps.com/PTSIInternetWeb/InterLabelInquiry.do>) also indicates that the parcel was accepted by the USPS at Columbus, Ohio at 6:12 p.m. on September 18, 2009. (Exhibit C).

6. Thereafter, the USPS tracked the parcel to Los Angeles, California on September 19, 2009, and to El Segundo, California, where it arrived at the Pick-Up-Point at 9:09 a.m. on September 19, 2009. (Exhibit C).

7. The parcel languished at the El Segundo Pick-Up-Point for nearly three full days before it was delivered to KCC at 6:57 a.m. on September 22, 2009, one day after the Claims Bar Date. (Exhibit C).

8. The Proof of Claim was assigned claim number 1160.

9. The delivery of the parcel to KCC was delayed through no fault of CDS, but through the sole fault of the USPS.

10. The Debtor filed its Objection to the Proof of Claim on November 20, 2009, which Objection is based solely on the fact that the Proof of Claim was filed one day after the Claims Bar Date.

ARGUMENT

Cases dealing with late-filed claims generally address the issue of inadvertence or excusable neglect. In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), the United States Supreme Court found that the neglect of the creditor's counsel was, under all the circumstances, excusable. It held that "Congress plainly contemplated that the courts would be permitted to accept late filings caused by inadvertence, mistake, or carelessness, *not just those caused by intervening circumstances beyond the party's control.*" *Id.* at syllabus (emphasis added).

The instant Objection does not present a case of inadvertence, mistake, or carelessness. The delay in filing the Proof of Claim was beyond the reasonable control of CDS, which acted at all times in good faith and did everything required of it and its counsel to file the Proof of Claim on or before the Claims Bar Date. Further, allowance of the late-filed Proof of Claim will cause no prejudice to the Debtor or to the interest of efficient judicial administration. These circumstances weigh strongly in favor of

permitting the tardy claim. This Court should, therefore, refuse to sustain the Debtor's Objection and deem CDS' Proof of Claim timely filed.

Respectfully submitted,

/s/ J. Steven Martin



J. Steven Martin
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Attorney for Carmen's Distribution Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I served a copy of the foregoing RESPONSE OF CARMEN'S DISTRIBUTION SYSTEMS, INC. TO DEBTORS' SECOND OMNIBUS (NON-SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO § 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1, by ordinary U.S. mail, upon the following:

Michael R. Nestor
Kara Hammond Coyle
1000 West Street
17th Floor
Wilmington, DE 19801

David S. Heller
Josef S. Athanas
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, IL 60606

Heather L. Fowler
355 South Grand Avenue
Los Angeles, CA 90071-1560

December 11, 2009

Date

JS
/s/ J. Steven Martin

J. Steven Martin

EXHIBIT A

ARTZ, DEWHIRST & WHEELER, LLP

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September 18, 2009

Eddie Bauer Claims Processing Center
c/o Kurtzman Caron Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

Re: Eddie Bauer Fulfillment Services, Inc.

Dear Sir or Madam:

I have enclosed for filing the administrative priority claim of Carmen's Distribution Systems, Inc. for your handling. Please contact me with any comments or questions.

Sincerely,

ARTZ, DEWHIRST & WHEELER, LLP



J. Steven Martin

c: Carmen's Distribution Systems, Inc. (via e-mail)

EXHIBIT B



EG 068513635 US



Customer Copy
Label 11-B, March 2004

UNITED STATES PL SERVICE Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)		
PO ZIP Code 43236	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> 2nd <input checked="" type="checkbox"/> 2nd Del Day	Postage \$ 17.50
Date Accepted	Scheduled Date of Delivery Month 9 Day 21	Return Receipt Fee
Mo. 9 Day 18 Year 09	Scheduled Time of Delivery	COD Fee Insurance Fee
Time Accepted <input type="checkbox"/> AM 6:15 PM	<input checked="" type="checkbox"/> Non Military <input type="checkbox"/> 3 PM	Total Postage & Fees \$ 17.50
Flat Rate <input type="checkbox"/> Weight <input checked="" type="checkbox"/>	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Acceptance Emp. Initials SM
lbs. 025.	Int'l Alpha Country Code	

DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

CUSTOMER USE ONLY	
PAYMENT BY ACCOUNT Express Mail Corporate Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Mail Only) Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.
Federal Agency Acct. No. or Postal Service Acct. No.	

FROM: (PLEASE PRINT) PHONE 614-314-0575

J. STEVEN MARTIN
560 E. TOWN STREET
COLUMBUS, OH 43215

NO DELIVERY
 Weekend Holiday

TO: (PLEASE PRINT) PHONE ()

KWATZMAN CARON
CONSULTANTS LLC
2335 ALASKA AVENUE
EL SEGUNDO, CA
ZIP * (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)
90245+

FOR PICKUP OR TRACKING
Visit www.usps.com
Call 1-800-222-1811

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

EXHIBIT C



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Track & Confirm

Search Results

Label/Receipt Number: **EG06 8513 635U S**
Class: **Express Mail®**
Status: **Delivered**

Track & Confirm
Enter Label/Receipt Number.

Your item was delivered at 6:57 AM on September 22, 2009 in EL SEGUNDO, CA 90245 to KURTZMAN AND CARSON. The item was signed for by W QUINTANILLA.

[Go >](#)

Detailed Results:

- **Delivered, September 22, 2009, 6:57 am, EL SEGUNDO, CA 90245**
- **Arrival at Pick-Up-Point, September 19, 2009, 9:18 am, EL SEGUNDO, CA 90245**
- **Arrival at Pick-Up-Point, September 19, 2009, 9:09 am, EL SEGUNDO, CA 90245**
- **Arrival at Post Office, September 19, 2009, 9:08 am, EL SEGUNDO, CA 90245**
- **Processed through Sort Facility, September 19, 2009, 7:48 am, LOS ANGELES, CA 90009**
- **Processed through Sort Facility, September 18, 2009, 6:48 pm, COLUMBUS, OH 43236**
- **Acceptance, September 18, 2009, 6:12 pm, COLUMBUS, OH 43236**

Notification Options

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