

# **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re:

KB TOYS, INC.  
a Delaware corporation, et al.,

Debtors.

Chapter 11

Case No.: 08-13269 (KJC)

Jointly Administered

-----X  
THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF KB TOYS, INC., *et al.*,

Plaintiff,

Adv. Pro. No. 09- 50944 (KJC)

v.

PKBT FUNDING LLC, PKBT LENDING LLC,  
PRENTICE CAPITAL MANAGEMENT, LP,  
GREGORY STALEY, JAMES C. SOLON, JOEL  
R. WIEST, SCOTT Z. HOCHFELDER, WM.  
GORDON PRESCOTT, CHARLES J. STENGL,  
JONATHAN DUSKIN, ROGER V. GODDU,  
MYRON LIEBERMAN, CHARLES PHILLIPS and  
MICHAEL ZIMMERMAN,

Defendants.

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**COMPLAINT**

The Official Committee of Unsecured Creditors (the "Committee" or "Plaintiff") of KB Toys, Inc. and its debtor affiliates (collectively, "KB Toys" or "Debtors"), by and through its lead counsel, Cooley Godward Kronish LLP, and local counsel, Ashby & Geddes, P.A., for its complaint against defendants (i) PKBT Funding, LLC ("PKBT Funding"), PKBT Lending, LLC ("PKBT Lending"), Prentice Capital Management, LP ("Prentice"), together with PKBT Funding and PKBT Lending, the "Prentice Entities") and (ii) Gregory Staley, James C. Solon, Joel R. Wiest, Scott Z. Hochfelder, Wm. Gordon Prescott, Charles J. Stengl, Jonathan Duskin, Roger V. Goddu, Myron Lieberman, Charles Phillips and Michael Zimmerman (collectively, the "Directors and Officers"), respectfully alleges as follows:

{00293239;v1}  
1525403 v7/NY

**DKT. NO.** 1/598

**DT. FILED** 4-30-09

## NATURE OF ACTION

1. This is an adversary proceeding filed to (a) recharacterize the claims of the Prentice Entities as equity interests, (b) avoid and recover as a fraudulent transfer, the \$25 million payment received by the Prentice Entities in or about December 2006, and (c) recover damages for breach of fiduciary duty by KB Toys' Directors and Officers.

## PRELIMINARY STATEMENT

2. On January 14, 2004, KB Toys filed their first chapter 11 bankruptcy cases in the Bankruptcy Court for the District of Delaware, Case No. 04-10120 (the "Predecessor Cases"). On May 13, 2005, KB Toys executed a Plan Funding Agreement with PKBT Funding, an affiliate of Prentice, which provided for the acquisition of the business of KB Toys by the Prentice Entities through the confirmation and consummation of a plan of reorganization of the Predecessor Cases.

3. On August 18, 2005, the Bankruptcy Court for the District of Delaware entered an order confirming that certain *First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated July 14, 2005 (together with related documents, the "KB1 Plan"). Pursuant to the KB1 Plan, upon the occurrence of the "Effective Date," KB Toys would emerge from chapter 11 under the ownership and control of the Prentice Entities.

4. The Effective Date of the KB1 Plan occurred on August 29, 2005. As of the date thereof, the Prentice Entities acquired substantially all of the equity of KB Toys (the "KB Toys Acquisition") for a (i) purchase price of \$20 million (the "Purchase Price") and (ii) seasonal overadvance facility of \$25 million (defined herein as, the Overadvance Facility), provided by PKBT Funding and PKBT Lending, respectively.

5. The Purchase Price was not used to capitalize the business of KB Toys on a go-forward basis, but rather was used to satisfy certain requirements of the KB1 Plan.

6. The only source of working capital for KB Toys upon emergence was (i) that certain Senior Secured Revolving Credit Facility with Bank of America, N.A., dated August 29, 2005 (together with related documents, the "Senior Secured Revolver") in the principal amount of \$175

million; and (ii) the Overadvance Facility (defined herein) provided by PKBT Lending, on behalf of the Prentice Entities.

7. Under the Senior Secured Revolver, if availability dropped below certain specified thresholds the Prentice Entities were obligated to provide funds to KB Toys under the Overadvance Facility, in their capacity as “Junior Lender” of KB Toys. Conversely, if availability exceeded certain specified thresholds, the Prentice Entities were entitled to receive payment of dividends, in their capacity as controlling and majority shareholders of KB Toys.

8. In or about July 2006, because of the requirements in the Senior Secured Revolver, the Prentice Entities were required to provide \$25 million to KB Toys under the Overadvance Facility.

9. The Prentice Entities caused KB Toys to repay the \$25 million outstanding under the Overadvance Facility in December 2006 (defined herein as, the \$25 Million Transfer), and then, over the course of the next 18 months, the Prentice Entities metered in an additional \$95 million to KB Toys under the Overadvance Facility pursuant to subsequent amendments thereto.

10. As set forth more specifically herein, the \$25 Million Transfer made by KB Toys to the Prentice Entities is avoidable as a fraudulent transfer pursuant to section 544(a) of title 11 of the United States Code (the “Bankruptcy Code”).

11. In addition, the \$95 million subsequently metered into KB Toys by the Prentice Entities under the subsequently amended Overadvance Facility was not debt, but rather a series of capital contributions made over a period of time from insiders who held significant membership interests in, and exercised dominion and control over, KB Toys when KB Toys was at all times insolvent. Accordingly, the Prentice Entities’ claims against KB Toys should be recharacterized as equity interests.

## **BACKGROUND**

### **A. The Debtors' Chapter 11 Cases**

12. On December 11, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and their properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

13. On December 17, 2008, the Committee was appointed in these cases by the Office of the United States Trustee for the District of Delaware, consisting of the following seven members: (i) Li & Fung Toy Island Manufacturing; (ii) Mattel, Inc.; (iii) Hasbro, Inc.; (iv) Simon Property Group, Inc.; (v) GGP Limited Partnership; (vi) Big Lots, Inc.; and (vii) JJ Bean, Inc.

14. On January 6, 2009, the Court entered that *Final Order (A) Authorizing Use of Cash Collateral, (ii) Granting Adequate Protection and (iii) Modifying the Automatic Stay* (the "Final Cash Collateral Order"), pursuant to which, *inter alia*, the Prentice Entities were granted, as adequate protection against any diminution in value of their purported interests in all Collateral (as defined in the Final Cash Collateral Order): (i) a replacement lien; (ii) a superpriority administrative expense claim; (iii) payment or reimbursement by the Debtors of certain legal and other professional fees paid or incurred by the Prentice Entities in connection with the Debtors' chapter 11 cases; and (iv) on a weekly basis, payment of all amounts in excess of 110% of aggregate of the "Total Cash Disbursements" as reflected on the Budget for the remaining term of the Budget, which amounts shall be held in escrow until the earliest to occur of (x) expiration of the Challenge Period (defined therein), (y) delivery by the Committee of written notice that it will not file or assert a Challenge (defined therein) against the claims of the Prentice Entities, or (z) a final determination is rendered by the Court with respect to all Challenges filed by the Committee.

15. The Final Cash Collateral Order provides the Committee with automatic standing to file a Challenge without further order of this Court. The Final Cash Collateral Order provides that any such Challenge must be filed by the Committee on or before March 13, 2009, subject to further extension by written agreement between the parties. The Committee's deadline to file a Challenge was extended through April 30, 2009 upon entry of that certain *Agreed Order Regarding (I) Extension of (A) Use of Cash Collateral and (B) Challenge Period and (II) Modification of Budget for Extended Use of Cash Collateral*, dated March 9, 2009.

**B. Committee Standing and Authority**

16. The Committee has standing and authority to file and prosecute the claims set forth herein pursuant to section 1103 of the Bankruptcy Code and paragraph 18 of the Final Cash Collateral Order.

**C. Jurisdiction and Venue**

17. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

18. This adversary proceeding arises under and relates to the chapter 11 case of *In re KB Toys, Inc., et al.* (Lead Case No. 08-13269), which is pending in this Court, and is a core proceeding pursuant to 28 U.S.C. § 157(b).

19. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**D. Parties**

20. Plaintiff is the Official Committee of Unsecured Creditors of the Debtors.

21. Defendant PKBT Funding LLC is a Delaware limited liability company, which owns all of the equity of KB Toys.

22. Defendant PKBT Lending LLC is a Delaware limited liability company.

23. Defendant Prentice Capital Management LP is a Delaware limited liability company, which is the direct or indirect owner of PKBT Funding, LLC and PKBT Lending, LLC.

24. Prentice, directly or through its affiliates, designated one or more officers of the Debtors.

25. PKBT Funding LLC was formed by Prentice Capital for the purpose of acquiring the equity of KB Toys in the KB Toys Acquisition.

26. PKBT Lending LLC was formed by Prentice Capital for the purpose of serving as collateral agent and lender under the Overadvance Facility in the KB Toys Acquisition.

27. The Prentice Entities were insiders of the Debtors within the meaning of section 101(31)(B)(iii) of the Bankruptcy Code at the time the Overadvance Facility was established and the \$25 Million Transfer (defined herein) was made by the Debtors to the Prentice Entities.

28. Defendant, Gregory Staley, is an individual who resides at 286 Autumn Terrace, Franklin Lakes, New Jersey 07417. At all times material hereto, Mr. Staley was the President and Chief Executive Officer of KB Toys, and a member of the board of KB Toys.

29. Defendant, James C. Solon, is an individual who resides at 60 Brunswick Street, Pittsfield, Massachusetts 01201. At all times material hereto, Mr. Solon was the Executive Vice President of KB Toys, and a member of the board of KB Toys.

30. Defendant, Joel R. Wiest, is an individual with a place of business at 100 West Street, Pittsfield, Massachusetts 01201. At all times material hereto, Mr. Wiest was the Senior Vice President of KB Toys, and a member of the board of KB Toys.

31. Defendant, Scott Z. Hochfelder, is an individual with a place of business at 100 West Street, Pittsfield, Massachusetts 01201. At all times material hereto, Mr. Hochfelder was the Secretary and General Counsel of KB Toys, and a member of the board of KB Toys.

32. Defendant, Wm. Gordon Prescott, is an individual who resides at 54 Taconic Avenue, Lenox, Massachusetts 01240. At all times material hereto, Mr. Prescott was the Assistant Secretary of KB Toys, and a member of the board of KB Toys.

33. Defendant, Charles Stengl, is an individual with a place of business at 100 West Street, Pittsfield, Massachusetts 01201. At all times material hereto, Mr. Stengl was the Assistant Treasurer of KB Toys, and a member of the board of KB Toys.

34. Defendant, Jonathan Duskin, is an individual with a place of business at 1270 Avenue of the Americas, New York, New York 10020. At all times material hereto, Mr. Duskin was a member of the board of KB Toys and a principal of Prentice.

35. Defendant, Roger V. Goddu, is an individual with a place of business at 601 Brannan Street, San Francisco, California 94107. At all times material hereto, Mr. Goddu was a member of the board of KB Toys.

36. Defendant, Myron Lieberman, is an individual with a place of business at 77 West Wacker Drive, Suite 3100, Chicago, Illinois 60601. At all times material hereto, Mr. Lieberman was a member of the board of KB Toys.

37. Defendant, Charles Phillips, is an individual with a place of business at 900 Third Avenue, New York, New York 10022. At all times material hereto, Mr. Phillips was a member of the board of KB Toys and a principal of Prentice.

38. Defendant, Michael Zimmerman, is an individual with a place of business at 900 Third Avenue, New York, New York 10022. At all times material hereto, Mr. Zimmerman was a member of the board of KB Toys and a principal of Prentice.

**E. The Overadvance Facility**

39. On or about August 29, 2005, KB Toys entered into that certain *Overadvance Credit Facility* (the "Overadvance Facility") in the principal amount of \$25 million.

40. Under the Senior Secured Revolver, the Prentice Entities were required to fund the Overadvance Facility, in their capacity as "Junior Lender," upon the occurrence of a "Junior Loan Liquidity Event," which was defined as whenever availability was less than (i) \$15 million during the period of July 1<sup>st</sup> through December 31<sup>st</sup> of any calendar year or (ii) \$10 million during the period of



January 1<sup>st</sup> through June 30<sup>th</sup> of any calendar year, as further reduced by certain specified “clean-down” amounts.

41. Conversely, in addition to requiring the provision of funds by Prentice Entities when availability drops below certain thresholds, the Overadvance Facility also provides for “permitted dividends” to the Prentice Entities, in their capacity as majority and controlling shareholders of KB Toys, when availability exceeds certain thresholds (specifically, \$40 million).

42. From August 2005 through June 2006, the Prentice Entities did not provide any funds to KB Toys under the Overadvance Facility.

43. In or about July 2006, upon the occurrence of a “Junior Loan Liquidity Event” under the Senior Secured Revolver, the Prentice Entities provided \$25 million to KB Toys under the Overadvance Facility.

44. As discussed more specifically below, in December 2006 KB Toys paid in full all amounts outstanding, including accrued fees and interest, under the Overadvance Facility.

45. In January 2007, less than 30 days after receiving repayment of all amounts outstanding under the Overadvance Facility, the Overadvance Facility was amended and the Prentice Entities began “re-lending” thereunder, initially providing \$5 million to KB Toys. From January 2007 through June 2007, the Overadvance Facility was amended on multiple occasions and amounts outstanding under the Overadvance Facility increased to \$95 million by September 2008.

46. As of the Petition Date, amounts outstanding under the Overadvance Facility were approximately \$95 million and such outstanding indebtedness forms the basis for the secured claims asserted by the Prentice Entities in these bankruptcy cases (the “Prentice Entities’ Claims”).

**F. The GECC Refinancing and Payments to the Prentice Entities**

47. On December 7, 2006, the Board of Directors of KB Toys convened a meeting to discuss, among other things, actual financial results for FY 2006. During the course of their review,

the Directors and Officers observed that KB Toys experienced negative comparative store sales and disappointing financial performance in FY 2006. Further, the Directors and Officers concluded that even if KB Toys managed to maintain flat comparative store sales with no operating improvement in FY 2007, KB Toys would still require additional funding of \$32 million above the \$25 million outstanding under the Overadvance Facility.

48. Despite recognizing the need for \$32 million in additional funding above the \$25 million outstanding to the Prentice Entities, KB Toys paid in full all amounts outstanding under the Overadvance Facility, including accrued fees and interest (the "\$25 Million Transfer") in December 2006.

49. Contemporaneously with the \$25 Million Transfer, pursuant to a resolution passed at a December 15, 2006 meeting of the Board of Directors of KB Toys, KB Toys was prohibited from paying amounts due the Prentice Entities under the Overadvance Facility prior to obtaining a waiver of and/or amendment to the Senior Secured Revolver with Bank of America, N.A..

50. Upon information and belief, KB Toys was insolvent at the time of the \$25 Million Transfer or was rendered insolvent as a result of the \$25 Million Transfer.

51. Upon information and belief, KB Toys had unreasonably small capital at the time of the \$25 Million Transfer or was left with unreasonably small capital as a result of the \$25 Million Transfer.

52. Upon information and belief, KB Toys was unable to pay its debts as such debts matured at the time of the \$25 Million Transfer or was left unable to pay its debts as such debts matured as a result of the \$25 Million Transfer.

53. In January 2007, KB Toys refinanced the Senior Secured Revolver by entering into a senior secured facility with General Electric Capital Corporation in the principal amount of \$200 million (the "GECC Refinancing"). As a result of the GECC Refinancing, KB Toys' credit limit under its first lien revolver increased by \$25 million enabling KB Toys to, *inter alia*, make the \$25 Million Transfer to the Prentice Entities.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Claim of Fraudulent Conveyance in Violation of  
New York Debtor and Creditor Law, NY-DCL § 273)**

54. The Committee repeats and realleges the allegations set forth above.

55. The Debtors' estates received less than fair consideration in exchange for the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities.

56. KB Toys was insolvent at the time of, or was rendered insolvent by, the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities.

57. At all times since the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities, actual creditors of KB Toys remained creditors of KB Toys and continued to remain creditors as of the date of the filing of the above-captioned bankruptcy cases.

58. The Committee is entitled to recover, for the benefit of the Debtors' estates, the property transferred by KB Toys in connection with the \$25 Million Transfer or the value of such property from the Prentice Entities pursuant to § 550 of the Bankruptcy Code.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Claim of Fraudulent Conveyance in Violation of  
New York Debtor and Creditor Law, NY-DCL § 274)**

59. The Committee repeats and realleges the allegations set forth above.

60. The Debtors' estates received less than fair consideration in exchange for the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities.

61. At the time of the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities, KB Toys was engaged in, or was about to engage in, business or a transaction for which the property remaining with KB Toys was unreasonably small capital.

62. The Committee is entitled to recover, for the benefit of the Debtors' estates, the property transferred by KB Toys in connection with the \$25 Million Transfer or the value of such property from the Prentice Entities pursuant to § 550 of the Bankruptcy Code.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Claim of Fraudulent Conveyance in Violation of  
New York Debtor and Creditor Law, NY-DCL § 275)**

63. The Committee repeats and realleges the allegations set forth above.

64. The Debtors' estates received less than fair consideration in exchange for the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities.

65. At the time of the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities, KB Toys had incurred debts, or was about to incur debts, beyond its ability to pay as such debts matured.

66. The Committee is entitled to recover, for the benefit of the Debtors' estates, the property transferred by KB Toys in connection with the \$25 Million Transfer or the value of such property from the Prentice Entities pursuant to § 550 of the Bankruptcy Code.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Breach of Fiduciary Duty Against the Directors and Officers)**

67. The Committee repeats and realleges the allegations set forth above.

68. KB Toys was insolvent at the time of, or was rendered insolvent as a result of, the GECC Refinancing and the \$25 Million Transfer to the Prentice Entities.

69. Upon KB Toys becoming insolvent, the Directors and Officers' fiduciary duty shifted from the Prentice Entities, as shareholders of KB Toys, to the unsecured creditors of KB Toys.

70. By virtue of their status as officers and directors of an insolvent company, the Directors and Officers owed a fiduciary duty to the unsecured creditors of KB Toys that included, among other duties: (i) to preserve and maximize the value of KB Toys' assets for the benefit of their unsecured creditors; and (ii) to act in a manner that would not injure KB Toys and its unsecured creditors.

71. The Directors and Officers breached their fiduciary duty to the unsecured creditors of KB Toys.

72. As a result of the Directors and Officers breach of fiduciary duty, the Debtors' estates and creditors suffered damages in an amount to be determined at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Recharacterization of the Prentice Entities' Claims)**

73. The Committee repeats and realleges the allegations set forth above.

74. The funding provided under the Overadvance Facility, which forms the basis for the Prentice Entities' Claims was made:

- a. by the Prentice Entities, insiders of KB Toys;
- b. at a time and in an amount unobtainable by KB Toys from independent sources on ordinary commercial loan terms;
- c. with no reasonable expectation of repayment by KB Toys; and
- d. as KB Toys was approaching bankruptcy.

75. The funding provided under the Overadvance Facility was intended to be, and was in fact, an equity contribution made by the Prentice Entities.

76. Accordingly, principles of equity require that the funding provided under the Overadvance Facility be recharacterized as equity capital and that any and all claims of the Prentice Entities arising from or related to the Overadvance Facility be recharacterized as equity interests in KB Toys.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an order:

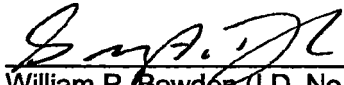
(i) recharacterizing any and all claims of the Prentice Entities arising from or related to the Overadvance Facility as equity interests in KB Toys;

(ii) directing the disgorgement of any and all transfers made to or for the benefit of the Prentice Entities on account of the Overadvance Facility including, without limitation, the \$25 Million Transfer, any and all interest and fees related and any adequate protection payments arising under the Final Cash Collateral Order, including fees and expenses of attorneys and advisors;

- (iii) amending the Final Cash Collateral Order to authorize and direct the release of all funds held in the escrow account to the Debtors and their estates; and
- (iv) granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware  
April 30, 2009

Respectfully Submitted,

By:   
William P. Bowden (I.D. No. 2553)  
Gregory A. Taylor (I.D. No. 4008)  
ASHBY & GEDDES, P.A.  
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(302) 654-1888  
(302) 654-2067 (Facsimile)

*Local Counsel For The Official Committee  
Of Unsecured Creditors Of KB Toys, Inc., et  
al.*

-and-

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Seth Van Aalten (SV 2663)

*Lead Counsel For The Official  
Committee Of Unsecured Creditors Of  
KB Toys, Inc., et al.*

**U.S. Bankruptcy Court  
District of Delaware**

Thank you. Your transaction in the amount of \$ 250.00 has been completed.

Please print a copy of your transaction receipt for future reference. The transaction number is 3904753.

**Detail description:**

Complaint(09-50944-KJC) [cmp,cmp] ( 250.00)

Close window

**Open Adversary Case****U.S. Bankruptcy Court****District of Delaware**

## Notice of Electronic Filing

The following transaction was received from Taylor, Gregory entered on 4/30/2009 at 2:45 PM EDT and filed on 4/30/2009

**Case Name:** The Official Committee of Unsecured Creditors for v. PKBT Funding LLC et al

**Case Number:** 09-50944-KJC

**Document Number:** 1

**Case Name:** KB Toys, Inc.

**Case Number:** 08-13269-KJC

**Document Number:** 598

**Docket Text:**

Adversary case 09-50944. Complaint by The Official Committee of Unsecured Creditors for KB Toys, Inc., et al. against PKBT Funding LLC, PKBT Lending LLC, Prentice Capital Management LP, Gregory Staley, James C. Solon, Joel R. Wiest, Scott Z. Hochfelder, Wm. Gordon Prescott, Charles Stengel, Jonathan Duskin, Roger V. Goddu, Myron Lieberman, Charles Phillips, Michael Zimmerman. Fee Amount \$250 (21 (Validity, priority or extent of lien or other interest in property)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)). AP Summons Served due date: 08/28/2009. (Taylor, Gregory)

The following document(s) are associated with this transaction:

**Document description:Main Document**

**Original filename:**C:\TEMP\WDGX\AAC\OPEN\0001\complaint (00293312).PDF

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=4/30/2009] [FileNumber=7187188-0] [a32c89065778f64f99600827018d853b93d2d19fafdcc91ecce0fd495a076daa3e6f99a003794d754178ec9093c3214963cafa33c50de69ce24e66a445a993b4]]

**Document description:Main Document**

**Original filename:**C:\TEMP\WDGX\AAC\OPEN\0001\complaint (00293312).PDF

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=4/30/2009] [FileNumber=7187189-0] [a4829ef1fa3aeb91ff5f7f1a0e0bb4a190416fea840476c09b0bff890f5369792b816da4b6bcce1c9856ee7ed06840ad935d83bc1554b8287b67a791dee74bec]]

**09-50944-KJC Notice will be electronically mailed to:**

Gregory Alan Taylor on behalf of Plaintiff The Official Committee of Unsecured Creditors for KB Toys, Inc., et al.

gtaylor@ashby-geddes.com

**09-50944-KJC Notice will not be electronically mailed to:**

Charles Phillips  
900 Third Avenue  
New York, NY 10022

Charles Stengel