

than the Bank claim, Rapid Press argues that there is inadequate representation of the smaller unsecured creditors.

The United States Trustee appointed the Creditors' Committee which includes trade suppliers of Richman Gordman Department Stores, Inc., and the 1/2 Price Stores, Inc., but no trade suppliers or any other type of unsecured creditors in the Richman Gordman Stores, Inc., case. In addition to the trade suppliers appointed to the Committee, the United States Trustee appointed Harris Trust & Savings Bank, which has an unsecured claim in all of the cases in the approximate amount of \$16.1 million.

The Unsecured Creditors' Committee, the United States Trustee, and the debtors have objected to the appointment of a separate committee. All of them point to the increased costs involved and to the failure of the moving party to present sufficient evidence to show that the Creditors' Committee as presently structured inadequately represents the interests of the unsecured creditor class.

From a review of the case law and the evidence presented, it appears to this judge that it would be appropriate and fair for the United States Trustee to appoint to the Committee a representative of the unsecured creditors class holding claims different from trade creditors in Richman Gordman Department Stores, Inc., and 1/2 Price Stores, Inc., and different from the Bank. This is because the type of claims represented on the Committee do not include, as far as can be ascertained from a review of the lists of members, any claimants having claims only against Richman Gordman Stores, Inc., or any claimants that are not trade creditors or Bank creditors.

However, the motion did not request this Court to delve into the murky area of the Court's authority to direct the United States Trustee to appoint additional members to a Committee. The motion, instead, requests the appointment of a separate committee under Section 1102(a)(2). That section provides that the Court may order the appointment of additional committees if such appointment is necessary to assure adequate representation of creditors. Therefore, it is the burden of the moving party to present sufficient evidence to convince the Court that the appointment of such committee is "necessary to assure adequate representation of creditors."

The evidence presented shows only that the movant and other unsecured creditors of Richman Gordman Stores, Inc., have not been appointed to the Committee. Instead, their representative on the Committee appears to be the Bank. Although it is arguable that the interest of the Bank and the interest of the movant and

other unsecured creditors is different, there is no evidence that a proposed plan will treat those interests differently or that the movant or any other creditors have been denied information concerning the case. In addition, although there is a potential conflict between the interest of the class representatives and those who have not been appointed to the Committee, "the presence of potential conflict may not always require separate committees for representation to be adequate." In re McLean Ind., Inc., 70 Bankr. 852 at 861 (Bankr. S.D.N.Y. 1987).

As the Court has mentioned above, there is a natural concern when one committee is appointed for two or more jointly administered cases that the committee not be overloaded with the creditors of one debtor to the detriment of the representational needs of creditors of another debtor. See McLean, at 862. In McLean, the court felt that there was a need for an evidentiary hearing to determine the adequacy of representation. At this stage of the case, it does not appear there is need for such an evidentiary hearing. Therefore, the motion is denied without prejudice. However, if the movant believes that it can present evidence in sufficient quantity and quality to meet its burden concerning "lack of adequate representation," the movant may request an evidentiary hearing on such issue.

It is, therefore, ordered that the motion is denied without prejudice.

Separate journal entry to be entered.

DATED: October 27, 1992.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RICHMAN GORDMAN STORES, INC.,	)	CASE NO. BK92-81073
RICHMAN GORDMAN DEPARTMENT	)	CASE NO. BK92-81074
STORES, INC.,)	
1/2 PRICE STORES, INC.,	)	CASE NO. BK92-81075
	)	A
<u>DEBTOR(S)</u>)	
	)	CH. 11
	)	Filing No. 92, 134, 146,
	)	& 169
Plaintiff(s))	
vs.	)	<u>JOURNAL ENTRY</u>
)	
)	
<u>Defendant(s)</u>	)	DATE: October 27, 1992
	)	HEARING DATE: September
	)	24, 1992

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Appointment of Separate Creditors' Committee for Richman Gordman Stores, Inc., and Request to Expedite Hearing; Objection by Unsecured Creditors' Committee; Objection by UST; Objection by Debtor.

APPEARANCES

Harry Dixon, Attorney for debtor
Kathryn Derr, Attorney for debtor
Jerry Jensen, Attorney for UST
Robert Bothe, Attorney for Unsecured Creditors' Committee
Don Swanson, Attorney for movant

IT IS ORDERED:

Motion to appoint separate committee denied without prejudice.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge