Case No. 10-2418

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROBERT GENTRY, JONATHAN CARD, JOSEPH SKAPF
and JACK HERNANDEZ, et al.,
Creditors and Appellants

vs.

CIRCUIT CITY STORES, INC., et al.,
Debtors and Appellees

AMICUS CURIAE BRIEF Of
National Association of Consumer Bankruptcy Attorneys and National Association of Consumer Advocates

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On Appeal from the United States District Court, Eastern District of Virginia,
Richmond Division, Affirming Order of the Bankruptcy Court

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I. INTRODUCTION

a. Identity and Interest of Amici and Authority to File Brief

As more fully set forth in their Motion for Leave to file this brief, Amici are the National Association of Consumer Bankruptcy Attorneys (NACBA) and the National Association of Consumer Advocates (NACA). NACBA and NACA are professional associations of attorneys who specialize in representing individuals in, respectively, bankruptcy and consumer law matters. NACBA and NACA frequently file amicus curiae briefs on issues of importance to their members.

NACBA and NACA attorneys often represent classes of individuals in order to address efficiently business practices affecting large groups of consumers. Amici's interest in this particular matter is to ensure that class treatment of consumer creditor claims in business bankruptcies can, in appropriate circumstances, be pursued, as is done in other Circuits.

In filing this brief, Amici are not supporting a particular side in this appeal and take no position regarding its ultimate disposition. Instead, they seek to provide the Court with legal authorities and analysis beyond that which was provided by the parties in their briefs, in the event the Court decides to use this case to announce practice rules or guidelines governing the handling of class proofs of claim in bankruptcy.

The decision to file this brief was made by each of the amici organizations who communicated that decision via their respective officers and/or directors to the undersigned attorney.

b. Summary of Amici's Position

There is virtual agreement among those Circuits that have considered the question that class proofs of claim are permissible in bankruptcy practice, and that the ultimate determination whether to allow a class claim in a particular case is a matter of bankruptcy court discretion. However, the District Court's expressed formulation of the nature of that discretion was erroneous, and, if left uncorrected, risks adding confusion to an important practice area already burdened with substantial uncertainty. Whether this Court decides to reverse the district court's decision, or to affirm on other grounds , the important benefits provided by Rule 23 and the proper interaction between that rule and bankruptcy practice need to be clarified in a way that furthers the goals of justice and judicial economy.

Amici believe that such clarification should embrace the following principles. First, as decided by the other Circuits that have spoken on this issue, class proofs of claim are *not* generally disfavored in bankruptcy, and the bankruptcy courts have no discretion to hold otherwise. Second, the nature of the discretion assigned to the bankruptcy courts in this area is not to weigh, as a general matter, the benefits or detriments of Rule 23 procedures for notice and

claim determination of class proofs of claim, but rather, to engage in a fact-based inquiry that determines, based on the criteria enumerated in Rule 23, whether class treatment makes sense within the context of a particular bankruptcy case. Third, given that neither the Bankruptcy Rules or the Rules of Civil Procedure specify a particular deadline for filing a motion seeking class treatment of a proof of claim, a motion seeking class treatment of a proof of claim should be filed at some reasonable time after the putative class claim is filed. The contrary rule adopted by the lower courts here, that such a motion must be filed and granted before a class proof of claim may be filed, is unworkable and without legal basis.

II. AMICI'S ARGUMENT

A. The District Court Committed an Error of Law by Misconstruing the Nature of a Bankruptcy Court's Discretion to Allow a Creditor to Represent a Class of Similarly Situated Creditors.

Although the Bankruptcy Court disallowed Appellants' class proof of claim on various alternative grounds, the District Court affirmed on only one ground. The District Court held that the Courts of Appeals are split "over whether the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure authorize the filing of class proofs of claim." *In re Circuit City Stores, Inc.*, 439 B.R. 652, 657-58 (E.D. Va. 2010). It then held that the Bankruptcy Court acted within its discretion when it concluded that "[t]he superiority and efficiency of the bankruptcy claims resolution process over class litigation is well established." *Id.*

at 658-59. The District Court repeatedly described the Bankruptcy Court's conclusion as being ground in a "finding," notwithstanding that neither the creditor or the debtor submitted factual arguments to determine whether Rule 23 or the standard bankruptcy procedure would be more efficient in this case. These "findings" were simply an expression of the Bankruptcy Court's and District Court's views that the efficiencies of bankruptcy procedures are, as a general matter, superior to those provided by Rule 23.

The applicability of Rule 23, through Fed. R. Bankr. P. 7023, to the bankruptcy claims process is a question of law, not a matter of bankruptcy court discretion. Moreover, the supposed split among the Circuits on this question of law does not exist. The four Circuits that have decided the question have all concluded that class proofs of claim, under appropriate circumstances, are permitted by the Bankruptcy Code and the Bankruptcy Rules. *In re Birting Fisheries, Inc.*, 92 F.3d 939 (9th Cir. 1996) (per curiam); *In re The Charter Co.*, 876 F.2d 866 (11th Cir. 1989); *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989); *In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988).[1] These opinions all reject the reasoning of the District Court here that class claims are disfavored in bankruptcy. *See In re*

[1] The only Circuit that briefly took another view was the Tenth Circuit, In re Standard Metals Corp., 817 F.2d 625 (10th Cir. 1987), but that decision was vacated and reversed on other grounds *sub. nom., Sheftelman v. Standard Metals Corp.*, 839 F.2d 1383 (1987). The courts have generally interpreted the contrary views expressed in the earlier, superseded opinion as mere dicta. *See In re Birting Fisheries, Inc.*, 178 B.R. 849, 850-51 (W.D. Wash. 1995).

First Alliance Mortg. Co., 269 B.R. 428, 444-45 (C.D. Cal. 2001) ("The first flaw in the Bankruptcy Court's decision was its view that class actions were disfavored in Bankruptcy proceedings") (citing *In re The Charter* Co. and *In re American Reserve Corp.*).

The proper task of a bankruptcy court, when asked to allow class treatment of a proof of claim, is not to decide the theoretical benefits or detriments of class proofs of claim within a factual vacuum. Rather, when faced with a request by consumers,[2] employees[3] or investors[4] of a debtor company to allow them to assert claims on behalf of a class of others similarly situated, the role of the bankruptcy court is to apply Rule 23 considerations to the particular factual context before it. *Compare In re UCFC I with In re United Companies Financial Corp.*, 277 B.R. 596 (Bankr. Del. 2002) ("*UCFC II*") (in chapter 11 bankruptcy of subprime lender, court allowed one class of borrower claims to proceed while disallowing a

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[2] *See, e.g., In re American Reserve Corp.* (class of insurance policy holders); *In re United Companies Financial Corp.*, 276 B.R. 368 (Bankr. Del. 2002) ("*UCFC I*") (class of West Virginia mortgage borrowers); *In re Longo*, 144 B.R. 305 (Bankr. D. Md. 1992) (class of students of proprietary trade school); *In re Lividitis*, 122 B.R. 330 (Bankr. N.D. Ill. 1990) (same); *In re Friedman's, Inc.*, 356 B.R. 766 (Bankr. S.D. Ga. 2006) (class of West Virginia consumers).

[3] *See, e.g., Reid v. White Motor Co.; In re Birting Fisheries, Inc.*

[4] *See, e.g., In re The Charter Co.*; *In re Kaiser Group Int'l, Inc.*, 278 B.R. 368 (Bankr. D. Del. 2002); *In re First Interregional Equity Corp.*, 227 B.R. 358 (Bankr. D. N.J. 1998).

different class of borrower claims based on its application of Rule 23 criteria to the different claims alleged).

That is not how the District Court evaluated the decision of the Bankruptcy Court here. Instead, without reference to the relevant facts,[5] it determined that the Bankruptcy Court had the discretion to reject out of hand the availability of class proofs of claim, based on its view that "[t]he superiority and efficiency of the bankruptcy claims process over class litigation is well established." 439 B.R. at 658. While the "superiority and efficiency" of class treatment of a creditor claim is part of the ultimate burden facing the putative class representative, *see* Fed. R. Civ. P. 23(b)(3), incorporated by Fed. R. Bankr. P. 7023, meeting that burden depends on applying the Rule 23 criteria to a specific proof of claim filed within a specific reorganization or dissolution, not on the bankruptcy court's opinion that the

[5] The only facts referenced by the District Court were the number of claims filed and disposed of in the instant bankruptcy case, concluding that the potential addition of "several hundred" individual claims from members of the putative class which would not "negatively impact the claims resolution processes." 439 B.R. 659. Putting aside the fact that there was no evidence at all from which the court could reasonably conclude that the proposed class of former employees of Circuit City numbered only in the range of "several hundred," even a relatively small class might be appropriate for certification if the claims were sufficiently similar and if the determination of common issues in a single proceeding might produce compelling efficiencies. *See, e.g.*, *In re UCFC I* (certifying borrower who filed claim on behalf of class of 291 consumer borrowers of the same lender to pursue all of the claims as a class representative).

ordinary procedures used to administer a bankruptcy case are generally superior to anything offered by Rule 23. That error of law should be corrected by this Court.

B. This Court Should Clarify that a Motion Seeking Class Treatment of a Proof of Claim May Be Filed "at an Early Practicable Time" after the Filing of a Putative Class Claim

Had the District Court properly rejected the Bankruptcy Court's stated understanding of the scope of its discretion to disallow class proofs of claim generally, the court would have considered the alternative grounds cited by the Bankruptcy Court as a basis for refusing to apply Fed. R. Bankr. P. 7023 to Appellants' class proof of claim. The Bankruptcy Court held that a class claim proponent must file a Rule 7023 prior to the deadline for filing claims and that such a motion must be granted before the class proof is filed, citing another bankruptcy decision in the same district, *In re Computer Learning Centers, Inc.*, 344 B.R. 79 (Bankr. E.D. Va. 2006).[6] *In re Circuit City Stores, Inc.*, 2010 W.L. 2208014 at *3 (Bankr. E.D. Va. May 28, 2010). Although Appellants' class proof of claim was timely filed, and even though Appellants also subsequently filed a motion to make Fed. R. Bankr. P. 7023 applicable to their proof of claim, the court nonetheless ruled that the motion was untimely, having not been filed prior to the

[6] *In re Computer Learning Centers, Inc.* equivocated somewhat on the proper timing of a Rule 23 motion, stating, on the one hand, that the motion "should be filed as soon as practicable," 344 B.R. at 89, and, on the other, that the motion must be *granted* before the proposed class proof of claim can be filed. *Id.* at 88.

claims bar date. In the Bankruptcy Court's view, as a result of Appellants' failure to obtain prior court permission for their class proof of claim—a threshold requirement the court imposed in advance of considering the appropriateness of class treatment under Rule 7023—the class proof of claim was essentially an unauthorized nullity. *In re Circuit City Stores,Inc.*, 2010 WL 2208014 at *4.[7]

This strict procedural rule announced by the Bankruptcy Court exists nowhere in the Bankruptcy Rules or the Federal Rules of Civil Procedure. On the contrary, both sets of rules contemplate a flexible, case-specific approach to the timing of a creditor's request to seek class treatment of a proof of claim. Fed. R. Bankr. P. 9014(c) provides that a bankruptcy court "may at any stage in a particular [contested] matter direct that one or more of the other rules in Part VII shall apply." Thus, the rule is that the court may decide to apply Fed. R. Bankr. 7023 "at any stage," not only before the expiration of the bar date for filing the claim itself. Similarly, Rule 23 itself, incorporated in its entirety by Fed. R. Bankr.

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[7] The Bankruptcy Court reasoned that this prior authorization to file a class claim can occur in only one of two ways, either as a result of a pre-bankruptcy class certification order or by a Rule 7023 order granted by the bankruptcy court before the proof of claim is filed. 2010 WL 2208014 at *3. While the courts have generally regarded a pre-bankruptcy class certification as a factor favoring class treatment of a proof of claim under Rule 7023, *see, e.g., Trebol Motors Distrib. Corp. v. Bonilla (In re Trebol Motors Distrib. Corp.)*, 220 B.R. 500, 502 (1st Cir. B.A.P. 1998); *Jones v. Amedura Corp. (In re Amedura Corp.)*, 170 B.R. 445, 451 (D. Colo. 1994), it is not a pre-requisite for filing the class claim in bankruptcy. *See, e.g., In re American Reserve Corp.* (bankruptcy filed before class was certified); *In re The Charter Co.* (same).

P. 7023, provides that class certification motions should be filed "[*a*]*t an early practicable time* after a person sues or is sued as a class representative." F. R. Civ. P. 23(c)(1)(A) (emphasis added). This language, inserted by the 2003 amendments to the Rules of Civil Procedure, replaced the more restrictive, earlier language which required class certification motions to be filed "as soon as practicable after commencement of the action."

Besides being contrary to the temporal flexibility expressed by Fed. R. Bankr. P. 9014(c) and Fed. R. Civ. P. 23(c), the Bankruptcy Court's view that a motion to apply Fed. R. Bank. R. 7023 is subject to a strict time deadline is also contrary to all of the court of appeals decisions mentioned above. As described above, the other Circuits that have considered this issue are united in requiring the bankruptcy courts to apply the criteria of Rule 23—as incorporated into the Bankruptcy Rules by Fed. R. Bankr. P. 9014 and 7023—to a request for class treatment of a proof of claim, but they have reached different conclusions with regards to defining the proper method and timing for raising such a request. These differences turn on the courts' differing views concerning the point at which a "contested matter" exists within the meaning of Fed. R. Bankr. P. 9014. Despite these differences, there is no support in any of those decisions for the proposition that a Rule 7023 motion must be filed in advance of the proof of claim itself.

In the Seventh Circuit, the mere filing of a putative class claim is sufficient to frame a "contested matter." *In re American Reserve Corp.*, 840 F.2d at 488 ("Rule 9014 thus allows bankruptcy judges to apply Rule 7023—and thereby Fed. R. Civ. P. 23, the class action rule—to 'any stage' in contested matters. Filing a proof of claim is a 'stage.'"). The Sixth Circuit, in contrast, has held that the filing of the proof of claim is not procedurally sufficient to frame a "contested matter" for the court. *Reid v. White Motor Corp.*, 886 F.2d at 1471-72. In that Circuit's view, class proponents must file a motion requesting the court to consider the applicability of Rule 7023, and the failure of the class proponent to do so is fatal to the proof of claim, notwithstanding pre-bankruptcy class certification.[8] 886 F.2d at 1470-72. The Eleventh Circuit, for its part, has concluded that the proper time for invoking Rule 7023 is not at the time the proof of claim is first filed, but, instead, only in the event an objection is made to an already filed proof. It is the objection that, according to that court, frames a "contested matter" within which the bankruptcy court could properly consider whether or not to apply Rule 7023. *In re The Charter Co.*, 876 F.2d at 874. Under this approach, if the objection is filed

[8] *Reid* did not directly address the question of when, precisely, a Rule 7023 motion must be filed, since there the class proponent waited until after the bankruptcy court had already ruled against class treatment before filing its formal motion. Appellees cite *Reid* as an alternative basis for affirming the bankruptcy court's ruling in this case, but since Appellants here did file a Rule 7023 motion, *Reid* does not directly support Appellee's position either, unless *Reid* is viewed simply as an example of case where the class claimant delayed too long in filing its motion.

months or years after the proof of claim, that is the proper time for considering class certification issues. *Id.* ("The Bankruptcy Rules impose no time requirement with respect to filing a motion for application of Bankruptcy Rule 7023").

Whether this Court concludes that the requisite "contested matter" is framed by the filing of the class claim itself, by the motion seeking class treatment of the claim—presumably filed at "an early practicable time" after the filing of the proof of claim—or by an objection to the proof of claim, it should correct the erroneous rule announced by the bankruptcy court in this case. It is simply not true that a putative class claimant who has not been already certified as a class representation pre-bankruptcy must obtain court approval before it can file a class proof of claim. *See* 2010 WL 2208014 at *4 ("A proponent of a class proof of claim must obtain authorization to act as agent for unnamed claimants in order to file a valid proof of claim on their behalves.") That is like saying that a putative class representative is not authorized to file a class action unless a court first certifies a class. But no class action is filed with it already being established that the plaintiff is a proper class representative. That is what the Rule 23 motion, filed "[a]t an early practicable time *after* a person sues or is sued as a class representative," is designed to determine.

But while the Bankruptcy Court erred in concluding that the bar date for filing proofs of claim also functioned as a deadline for filing a motion to apply

Fed. R. Bankr. P. 7023, that does not mean that the court was without discretion to conclude that Appellants' motion was untimely. Amici suggest that the guiding principles for determining the proper timing of a Rule 7023 motion are found in Rule 23 itself. First is the rule's requirement that a class certification motion should be filed "[a]t an early practicable time after a person sues or is sued as a class representative." F. R. Civ. P. 23(c)(1)(A). For purposes of applying Rule 23 considerations to a proposed class proof of claim, the act of "suing as a class representative" is the filing of the class proof of claim. By claiming to represent similarly situated, absent creditors in addition to themselves, Appellants were effectively initiating a "contested matter." *In re American Reserve Corp.* But that triggers a responsibility to seek class certification "at an early practicable time."

While there is nothing in the Rules of Civil Procedure or the Bankruptcy Rules which requires a Rule 7023 motion to be filed *in advance of* the proof of claim, as the bankruptcy court incorrectly decided, that does not mean that a class claim proponent is free to delay filing its Rule 7023 motion unreasonably, to the prejudice of the bankruptcy estate administration or other creditors. The "superiority" test contained within Rule 23(b)(3) provides a bankruptcy court with ample discretion to conclude that, due to the passage of time in the administration of the particular case, class treatment of a claim would not be a "superior " method for "fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

See, e.g., In re Ephedra Products Liability Litigation, 329 B.R. 1, *5 (S.D. N.Y. 2005) (rejecting class claim filed after proposed chapter 11 plan had already been submitted to vote of creditors on grounds that "class litigation would have to be commenced at the earliest possible time to have a chance of being completed in the same time frame as the other matters that must be resolved before distributing the estate").

The delay that occurred in this case between Appellants' proof of claim and their motion requesting class treatment may or may not have been fatal to their efforts to represent a class of Circuit City employees. But that determination should have been made based on applying Rule 23 criteria to the nature of the claims being asserted within the context of a particular bankruptcy case administration. That determination does require, as Appellants argue, some fact-finding. The timing of the motion seeking class treatment, as Appellees argue, is also relevant. But the timing of the motion should have been measured against the ongoing bankruptcy case, not against an improper, nonexistent deadline.

Respectfully submitted,

Dated: August 2, 2011

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-2418 **Caption:** Gentry v. Circuit City Stores, Inc.

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[Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 14,000 words or 1,300 lines; Appellee's Opening/Response Brief may not exceed 16,500 words or 1,500 lines; any Reply or Amicus Brief may not exceed 7,000 words or 650 lines; line count may be used only with monospaced type]

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Attorney for Amici Curiae

Dated: 8/2/2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-2418 Caption: Gentry v. Circuit City Stores, Inc.

Certification under Fed. R. App. 29(c)(5)

I certify as follows:

(a) That no party's counsel authored the foregoing Amicus Curiae Brief in whole or in part;

(b) That no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(c) That no person—other than the amici curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

Dated: 8/2/2011

/s/ Irv Ackelsberg
Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Only one form needs to be completed for a party even if the party is represented by more than one attorney. Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case. Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements. Counsel has a continuing duty to update this information.

No. 10-2418 Caption: Gentry v. Circuit City Stores, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

NACBA (name of party/amicus) who is amicus (appellant/appellee/amicus), makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
   If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
   If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☑ YES ☐ NO
   If yes, identify any trustee and the members of any creditors' committee: See attached list

CERTIFICATE OF SERVICE

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I certify that on 8/2/2011 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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8/2/2011
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Only one form needs to be completed for a party even if the party is represented by more than one attorney. Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case. Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements. Counsel has a continuing duty to update this information.

No. 10-2418 Caption: Gentry v. Circuit City Stores, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

NACA (name of party/amicus) who is amicus (appellant/appellee/amicus), makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
   If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
   If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
   If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
   If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☑ YES ☐ NO
   If yes, identify any trustee and the members of any creditors' committee: See attached list

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I certify that on 8/2/2011 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	)	
Circuit City Stores, Inc. et al.	)	Case No. 08-35653
	)	Jointly Administered
Debtor.	)	Chapter 11

AMENDED APPOINTMENT OF UNSECURED CREDITORS COMMITTEE

Pursuant to 11 U.S.C. §1102, the following creditors are hereby appointed by the United States Trustee to serve on the Official Committee of Unsecured Creditors of **Circuit City Stores, Inc., et al.**

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Phone: 239-949-7688
Fax: 239-949-7689
Email: dbates@sourceinterlink.com

Garmin International, Inc.
Attn: Lisa Brauch
1200 East 151st Street
Olathe, KS 66062
Phone: 913-440-1911
Fax: 913-397-8282
Email: lisa.brauch@garmin.com

Simon Property Group, Inc.
Attn: Ronald M. Tucker
225 W. Washington St.
Indianapolis, IN 46204
Phone: 317-263-2346
Fax: 317-263-7901
Email: rtucker@simon.com

Weidler Settlement Class
Attn: Christopher Jones and Martin Fletcher
Whiteford Taylor & Preston LLP
3190 Fairview Park Drive, Suite 300
Falls Church, VA 22042
Phone: 703-280-9263
Fax: 703-280-8942
Email: cajones@wtplaw.com

Developers Diversified Realty Corp.
Attn: Eric C. Cotton
3300 Enterprise Parkway
Beachwood, OH 44122
Phone: 216-755-5660
Fax: 216-755-1660
Email: ecotton@ddrc.com

Pension Benefit Guarantee Corporation
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Email: eagle.sara@pbgc.gov

Toshiba America Consumer Products, LLC
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Fax: 973-628-1410
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Joe_shedlock@tacp.com

Paramount Home Entertainment
Attn: Andi Marygold
5555 Melrose Ave.
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Hollywood, CA 90038
Phone: 323-956-5489
Fax: 323-862-1183
Email: andi_marygold@paramount.com

W. CLARKSON MCDOW, JR.
UNITED STATES TRUSTEE FOR
REGION FOUR

Date: November 13, 2008

By: /s/ Robert B. Van Arsdale
Robert B. Van Arsdale
Assistant U.S. Trustee

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Shannon F, Pecoraro Trial Attorney (VBN 46864)
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I hereby certify that a true copy of the foregoing Appointment of Unsecured Creditors Committee was served via electronic delivery, fax or first class mail, postage prepaid, this 13th day of November 2008 to the members of the committee as listed above, and counsel for the debtor.

/s/ Robert B. Van Arsdale
Robert B. Van Arsdale
Assistant U.S. Trustee

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-2418 Caption: Gentry v. Circuit City Stores, Inc.

Certificate of Service

I, Irv Ackelsberg, certify that on this date I served all the parties in this matter with the foregoing Amicus Curiae Brief via ECF electronic mail.

Dated: 8/2/2011 /s/ Irv Ackelsberg

Counsel for Amici Curiae