

HONORABLE SAMUEL J. STEINER

HEARING DATE: FRIDAY, JANUARY 26, 2007
HEARING TIME: 9:30 A.M.
LOCATION: COURTROOM 8206, SEATTLE
RESPONSE DUE: FRIDAY, JANUARY 19, 2007

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

BROWN & COLE STORES, LLC
1331 COMMERCIAL ST.
BELLINGHAM, WA 98225
Tax ID 91-2122791,

Debtor.

No. 06-13950

DEBTOR'S MOTION TO APPROVE
PROCEDURES FOR ADMINISTERING
CLAIMS UNDER BANKRUPTCY CODE
SECTION 503(b)(9) AND NOTICE OF
HEARING

I. NOTICE

TO: THE CLERK OF THE COURT
AND TO: THE HONORABLE SAMUEL J. STEINER
HEARING DATE: FRIDAY, JANUARY 26, 2007
HEARING TIME: 9:30 A.M.
RESPONSE DUE: FRIDAY, JANUARY 19, 2007
LOCATION: UNITED STATES BANKRUPTCY COURT, COURTROOM 8206
700 STEWART STREET, SEATTLE, WASHINGTON 98101

PLEASE TAKE NOTICE that Brown & Cole Stores, LLC, debtor-in-possession herein ("Debtor"), has filed the below motion with the Court for an Order approving procedures for administering claims under Bankruptcy Code section 503(b)(9).

IF YOU OPPOSE the motion, you must file your written response with the court clerk, serve two copies on the Judge's chambers and deliver copies to the undersigned NOT LATER THAN THE RESPONSE DATE, which is **January 19, 2007**. IF NO RESPONSE IS TIMELY FILED AND

DEBTOR'S MOTION TO APPROVE PROCEDURES FOR
ADMINISTERING CLAIMS UNDER BANKRUPTCY CODE
SECTION 503(b)(9) AND NOTICE OF HEARING

1 SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING,
2 WITHOUT FURTHER NOTICE, and strike the hearing.

3 **II. MOTION**

4 In order for a determination to be made of the extent of claims under Bankruptcy Code
5 § 503(b)(9), the Debtor seeks an Order approving the following proposed procedures (“Section
6 503(b)(9) Procedures”):

7 1. Section 503(b)(9) Notice. Within three (3) business days following entry of the order
8 granting this Motion (“Section 503(b)(9) Order”), the Debtor shall send a Notice of the Section
9 503(b)(9) Procedures (“Section 503(b)(9) Notice”) by first-class mail to all parties on its creditor
10 matrix, all parties who have filed a request for special notice, counsel for the Secured Lenders, the
11 Office of the United States Trustee, and counsel for the Unsecured Creditors’ Committee.

12 2. Section 503(b)(9) Claim Deadline. Any vendor asserting a prepetition claim under 11
13 U.S.C. § 503(b)(9) (“Section 503(b)(9) Claim”) must demonstrate that it has satisfied the
14 requirements of section 503(b)(9) by submitting the amount of such Section 503(b)(9) Claim,
15 sufficient documentation and information evidencing delivery of goods to the Debtor between the
16 dates of October 18, 2006 and November 7, 2006, including all referenced invoices and a statement
17 that such invoices remain unpaid, to the Debtor no later than thirty (30) days following entry of the
18 Section 503(b)(9) Order (the “Section 503(b)(9) Claim Deadline”). Information should be sent to
19 Aimee S. Willig, Bush Strout & Kornfeld, 601 Union St., Suite 5500, Seattle, WA 98101. Any
20 Section 503(b)(9) Claim not asserted within the Section 503(b)(9) Claim Deadline shall be deemed
21 invalid without further order of this Court. The Debtor shall supply counsel for Secured Lenders
22 copies of the documentation and information supplied by the Section 503(b)(9) Claimants within five
23 (5) business days of receipt.

1 3. Section 503(b)(9) Report. As soon as practicable, but in no event later than twenty-one
2 (21) days after the Section 503(b)(9) Claim Deadline, the Debtor will file a report (“Section 503(b)(9)
3 Report”) with the Court listing:

- 4 a. Section 503(b)(9) Claims which the Debtor has determined are valid in whole
5 or in part, with the amounts asserted; and
6 b. Section 503(b)(9) Claims of which the Debtor asserts all or a portion are
7 invalid, setting forth the legal and factual reasons for such assertion with
8 specificity (“Debtor Objection”).

9 In addition to the filing with the Court, the Section 503(b)(9) Report shall be sent by first-class
10 mail to all Section 503(b)(9) Claimants whose Section 503(b)(9) Claims are listed in the Section
11 503(b)(9) Report and to counsel for the Secured Lenders.

12 4. Section 503(b)(9) Claimant Response. On or before fifteen (15) days after the Section
13 503(b)(9) Claim Report is filed with the Court, any Section 503(b)(9) Claimant or any other party-in-
14 interest, including the Secured Lenders, who disputes amounts listed in the Section 503(b)(9) Report
15 and/or who is responding to a Debtor Objection shall file and serve on counsel for the Debtor a
16 response (“Response”), including a verified statement identifying which information on the Section
17 503(b)(9) Report is incorrect and stating any legal or factual basis for the Response.

18 5. Allowed Section 503(b)(9) Claims and Section 503(b)(9) Claims Deemed Invalid.

- 19 a. Response Filed/Dispute Resolved. With respect to each Section 503(b)(9)
20 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
21 as to which a Response is timely filed, to the extent the parties resolve the
22 dispute by agreement, such Section 503(b)(9) Claim shall be treated as an
23 Allowed Section 503(b)(9) Claim or invalid Section 503(b)(9) Claim, in whole

1 or in part, as agreed to by the parties, without further order of the Court, upon
2 the filing by the Debtor of a notice setting forth the agreement of the parties.

3 b. Response Filed/Dispute Not Resolved. With respect to each Section 503(b)(9)
4 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
5 as to which a Response is timely filed, and resolution is not reached by the
6 parties by at least thirty (30) days after the date the Section 503(b)(9) Report is
7 filed (“Resolution Period”), or such longer period as agreed to by the Section
8 503(b)(9) Claimant, the Debtor shall file a motion for determination of the
9 Section 503(b)(9) Claim with ten (10) days from the end of the Resolution
10 Period.

11 c. Response Not Filed.

12 (1) With respect to each Section 503(b)(9) Claim listed in the Section
13 503(b)(9) Report as valid (in whole or in part) and as to which no
14 Response is timely filed, such Section 503(b)(9) Claim shall thereafter,
15 without further order of the Court, be deemed an Allowed Claim
16 (“Allowed Section 503(b)(9) Claim”) in whole or in part as specified in
17 the Section 503(b)(9) Report.

18 (2) With respect to each Section 503(b)(9) Claim listed in the Section
19 503(b)(9) Report as invalid (in whole or in part) and as to which no
20 Response is timely filed, such Section 503(b)(9) Claim shall, without
21 further order of the Court, be forever deemed invalid (in whole or in
22 part as specified in the Section 503(b)(9) Report) and not entitled to the
23

1 priorities provided under Section 503(b)(9) with respect to any invalid
2 portion.

3 d. Disputed Claims Resolved by Court Decision. With respect to any sum listed
4 in the Section 503(b)(9) Report or Response which is disputed by the Debtor or
5 any other party in interest, including the Secured Lenders and is not resolved,
6 such Section 503(b)(9) Claim shall be an Allowed Section 503(b)(9) Claim to
7 the extent it is determined to be a valid Section 503(b)(9) Claim by the Court in
8 a final order which is not subject to an appeal and the time for appeal has
9 expired.

10 6. Additional Section 503(b)(9) Order Provisions. In addition to the above outlined relief,
11 the Section 503(b)(9) Order provides for the following relief:

12 a. The Section 503(b)(9) Procedures are the sole and exclusive method permitted
13 with respect to the resolution and payment of Section 503(b)(9) Claims. All
14 Section 503(b)(9) Claimants are prohibited from seeking any other remedy than
15 is permitted by the Section 503(b)(9) Procedures.

16 b. In complying with the Section 503(b)(9) Procedures, the Debtor does not waive
17 any rights to assert any defenses, claims, counterclaims or offsets based on facts
18 or law other than under Section 503(b)(9).

19
20 DATED this 3rd day of January, 2007.

21 BUSH STROUT & KORNFIELD

22 By /s/ Aimee S. Willig

Aimee S. Willig, WSBA #22859

23 Attorneys for Brown & Cole Stores, LLC

DEBTOR'S MOTION TO APPROVE PROCEDURES FOR
ADMINISTERING CLAIMS UNDER BANKRUPTCY CODE
SECTION 503(b)(9) AND NOTICE OF HEARING

HONORABLE SAMUEL J. STEINER

HEARING DATE: FRIDAY, JANUARY 26, 2007
HEARING TIME: 9:30 A.M.
LOCATION: COURTROOM 8206, SEATTLE
RESPONSE DUE: FRIDAY, JANUARY 19, 2007

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

BROWN & COLE STORES, LLC
1331 COMMERCIAL ST.
BELLINGHAM, WA 98225
Tax ID 91-2122791,

Debtor.

No. 06-13950

{PROPOSED} ORDER GRANTING
DEBTOR’S MOTION TO APPROVE
PROCEDURES FOR ADMINISTERING
CLAIMS UNDER BANKRUPTCY CODE
SECTION 503(b)(9)

THIS MATTER came before the Court on the 26th day of January, 2007, on the motion (“Motion”) of Brown & Cole Stores, LLC, debtor-in-possession herein (“Debtor”), for an Order approving procedures for administering claims Bankruptcy Code § 503(b)(9). The Court has reviewed the files and records herein and finds that cause exists for the relief requested. Therefore, it is hereby

ORDERED as follows:

1. The Motion is granted.

1 2. The Section 503(b)(9) Notice¹ in the form attached to this Order as Exhibit A is hereby
2 approved as providing adequate notice to Section 503(b)(9) Claimants of the Section 503(b)(9) Claim
3 Procedures.

4 3. Section 503(b)(9) Notice. Within three (3) business days following entry of the order
5 granting this Motion (“Section 503(b)(9) Order”), the Debtor shall send a Notice of the Section
6 503(b)(9) Procedures (“Section 503(b)(9) Notice”) by first-class mail to all parties on its creditor
7 matrix, all parties who have filed a request for special notice, counsel for the Secured Lenders, the
8 Office of the United States Trustee, and counsel for the Unsecured Creditors’ Committee.

9 4. Section 503(b)(9) Claim Deadline. Any vendor asserting a prepetition claim under 11
10 U.S.C. § 503(b)(9) (“Section 503(b)(9) Claim”) must demonstrate that it has satisfied the
11 requirements of section 503(b)(9) by submitting the amount of such Section 503(b)(9) Claim,
12 sufficient documentation and information evidencing delivery of goods to the Debtor between the
13 dates of October 18, 2006 and November 7, 2006, including all referenced invoices and a statement
14 that such invoices remain unpaid, to the Debtor no later than thirty (30) days following entry of the
15 Section 503(b)(9) Order (the “Section 503(b)(9) Claim Deadline”). The Debtor shall supply counsel
16 for Secured Lenders copies of the documentation and information supplied by the Section 503(b)(9)
17 Claimants within five (5) business days of receipt.

18 5. Section 503(b)(9) Report. As soon as practicable, but in no event later than twenty-one
19 (21) days after the Section 503(b)(9) Claim Deadline, the Debtor will file a report (“Section 503(b)(9)
20 Report”) with the Court listing:

- 21 a. Section 503(b)(9) Claims which the Debtor has determined are valid in whole
22 or in part, with the amounts asserted; and

23 _____
¹ Capitalized terms not defined herein shall have their meanings as ascribed in the Motion.
{PROPOSED} ORDER GRANTING DEBTOR’S MOTION TO
APPROVE PROCEDURES FOR ADMINISTERING CLAIMS
UNDER BANKRUPTCY CODE SECTION 503(b)(9) – Page 2

- 1 b. Section 503(b)(9) Claims of which the Debtor asserts all or a portion are
2 invalid, setting forth the legal and factual reasons for such assertion with
3 specificity (“Debtor Objection”).

4 In addition to the filing with the Court, the Section 503(b)(9) Report shall be sent by first-class
5 mail to all Section 503(b)(9) Claimants whose Section 503(b)(9) Claims are listed in the Section
6 503(b)(9) Report and to counsel for the Secured Lenders.

7 6. Section 503(b)(9) Claimant Response. On or before fifteen (15) days after the Section
8 503(b)(9) Claim Report is filed with the Court, any Section 503(b)(9) Claimant or any other party-in-
9 interest, including the Secured Lenders, who disputes amounts listed in the Section 503(b)(9) Report
10 and/or who is responding to a Debtor Objection shall file and serve on counsel for the Debtor a
11 response (“Response”), including a verified statement identifying which information on the Section
12 503(b)(9) Report is incorrect and stating any legal or factual basis for the Response.

13 7. Allowed Section 503(b)(9) Claims and Section 503(b)(9) Claims Deemed Invalid.

14 a. Response Filed/Dispute Resolved. With respect to each Section 503(b)(9)
15 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
16 as to which a Response is timely filed, to the extent the parties resolve the
17 dispute by agreement, such Section 503(b)(9) Claim shall be treated as an
18 Allowed Section 503(b)(9) Claim or invalid Section 503(b)(9) Claim, in whole
19 or in part, as agreed to by the parties, without further order of the Court, upon
20 the filing by the Debtor of a notice setting forth the agreement of the parties.

21 b. Response Filed/Dispute Not Resolved. With respect to each Section 503(b)(9)
22 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
23 as to which a Response is timely filed, and resolution is not reached by the

1 parties by at least thirty (30) days after the date the Section 503(b)(9) Report is
2 filed (“Resolution Period”), or such longer period as agreed to by the Section
3 503(b)(9) Claimant, the Debtor shall file a motion for determination of the
4 Section 503(b)(9) Claim with ten (10) days from the end of the Resolution
5 Period.

6 c. Response Not Filed.

7 (1) With respect to each Section 503(b)(9) Claim listed in the Section
8 503(b)(9) Report as valid (in whole or in part) and as to which no
9 Response is timely filed, such Section 503(b)(9) Claim shall thereafter,
10 without further order of the Court, be deemed an Allowed Claim
11 (“Allowed Section 503(b)(9) Claim”) in whole or in part as specified in
12 the Section 503(b)(9) Report.

13 (2) With respect to each Section 503(b)(9) Claim listed in the Section
14 503(b)(9) Report as invalid (in whole or in part) and as to which no
15 Response is timely filed, such Section 503(b)(9) Claim shall, without
16 further order of the Court, be forever deemed invalid (in whole or in
17 part as specified in the Section 503(b)(9) Report) and not entitled to the
18 priorities provided under Section 503(b)(9) with respect to any invalid
19 portion.

20 d. Disputed Claims Resolved by Court Decision. With respect to any sum listed
21 in the Section 503(b)(9) Report or Response which is disputed by the Debtor or
22 any other party in interest, including the Secured Lenders and is not resolved,
23 such Section 503(b)(9) Claim shall be an Allowed Section 503(b)(9) Claim to

1 the extent it is determined to be a valid Section 503(b)(9) Claim by the Court in
2 a final order which is not subject to an appeal and the time for appeal has
3 expired.

4 8. Additional Section 503(b)(9) Order Provisions. In addition to the above outlined relief,
5 the Section 503(b)(9) Order provides for the following relief:

- 6 a. The Section 503(b)(9) Procedures are the sole and exclusive method permitted
7 with respect to the resolution and payment of Section 503(b)(9) Claims. All
8 Section 503(b)(9) Claimants are prohibited from seeking any other remedy than
9 is permitted by the Section 503(b)(9) Procedures.
- 10 b. In complying with the Section 503(b)(9) Procedures, the Debtor does not waive
11 any rights to assert any defenses, claims, counterclaims or offsets based on facts
12 or law other than under Section 503(b)(9).

13
14 DATED this _____ day of January, 2007.

15
16
17 _____
18 HONORABLE SAMUEL J. STEINER
19 United States Bankruptcy Judge

20 Presented by:

21 BUSH STROUT & KORNFELD

22 By _____
23 Aimee S. Willig, WSBA #22859
Attorneys for Debtor in Possession

EXHIBIT A – PROPOSED FORM OF NOTICE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

BROWN & COLE STORES, LLC
1331 COMMERCIAL ST.
BELLINGHAM, WA 98225
Tax ID 91-2122791,

Debtor.

No. 06-13950

NOTICE OF DEADLINE AND
PROCEDURES FOR CLAIMS UNDER
BANKRUPTCY CODE SECTION
503(b)(9)

IF YOU ARE CLAIMANT UNDER BANKRUPTCY CODE SECTION 503(b)(9) BECAUSE YOU DELIVERED GOODS TO BROWN & COLE STORES, LLC WITHIN 20 DAYS BEFORE THE BANKRUPTCY FILING OR BETWEEN THE DATES OF OCTOBER 18, 2006 AND NOVEMBER 7, 2006, YOU MUST TAKE ALL ACTIONS STATED IN THIS NOTICE OR YOUR RIGHTS WILL BE AFFECTED

NOTICE OF SECTION 503(b)(9) CLAIM DEADLINE AND PROCEDURES

THIS NOTICE IS PROVIDED BY BROWN & COLE STORES, LLC, INC. AND HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

1 **A. CHAPTER 11 BANKRUPTCY**

2 On November 7, 2006, Brown & Cole Stores, LLC (“Brown & Cole ”) filed for Chapter 11
3 bankruptcy in order to sell its stores which continue to operate.

4 **B. PRE-BANKRUPTCY CLAIMS UNDER BANKRUPTCY CODE SECTION 503(b)(9)**

5 Certain of Brown & Cole’s vendors assert claims under Bankruptcy Code section 503(b)(9) for
6 payment for goods delivered to and received by Brown & Cole within 20 days before the bankruptcy
7 filing or between the dates of October 18, 2006 and November 8, 2006. The Bankruptcy Court has
8 entered an Order (“Section 503(b)(9) Order”) setting the following deadlines and procedures for
9 asserting claims under Bankruptcy Code section 503(b)(9).

10 **C. DEADLINES AND PROCEDURES FOR VENDORS MAKING CLAIMS UNDER**
11 **BANKRUPTCY CODE SECTION 503(b)(9)**

12 **1. Section 503(b)(9) Claim Deadline.**

13 Any vendor asserting a claim under Bankruptcy Code section 503(b)(9) for goods delivered to
14 and received by Brown & Cole within 20 days before the bankruptcy filing, between the dates of
15 October 18, 2006 and May 7, 2006 (“Section 503(b)(9) Claimant”), must submit the following:

- 16 a. the **amount** of such Section 503(b)(9) Claim;
- 17 b. sufficient documentation and information to evidence delivery to and receipt by
18 Brown & Cole of goods **between the dates of October 18, 2006 and**
19 **November 7, 2006**, including all referenced **invoices** and a statement that all
20 such invoices remain unpaid

21 no later than the following **Section 503(b)(9) CLAIM DEADLINE:** _____,
22 _____ **2007.**

23 Claim information should be sent by hard copy to Aimee S. Willig, Bush Strout & Kornfeld,
601 Union St., Suite 5500, Seattle, WA 98101 or in electronic form to Vivian Braxton at
vbraxton@bskd.com. **Any Section 503(b)(9) Claim not asserted within the Section 503(b)(9)**

Claim Deadline shall be deemed invalid without further order of the Court.

1 **2. Section 503(b)(9) Report.** As soon as practicable, but in no event later than twenty-
2 one (21) days after the Section 503(b)(9) Claim Deadline, the Debtor will file a report (“Section
3 503(b)(9) Report”) with the Court listing:

- 3 a. Section 503(b)(9) Claims which the Debtor has determined are valid in whole
4 or in part, with the amounts asserted; and
- 5 b. Section 503(b)(9) Claims of which the Debtor asserts all or a portion are
6 invalid, setting forth the legal and factual reasons for such assertion with
7 specificity (“Debtor Objection”).

8 In addition to the filing with the Court, the Section 503(b)(9) Report shall be sent by first-class
9 mail to all Section 503(b)(9) Claimants whose Section 503(b)(9) Claims are listed in the Section
10 503(b)(9) Report and to counsel for the Secured Lenders.

11 **3. Section 503(b)(9) Claimant Response.** On or before fifteen (15) days after the
12 Section 503(b)(9) Claim Report is filed with the Court, any Section 503(b)(9) Claimant or any other
13 party-in-interest, including the Secured Lenders, who disputes amounts listed in the Section 503(b)(9)
14 Report and/or who is responding to a Debtor Objection shall file and serve on counsel for the Debtor a
15 response (“Response”), including a verified statement identifying which information on the Section
16 503(b)(9) Report is incorrect and stating any legal or factual basis for the Response.

17 **4. Allowed Section 503(b)(9) Claims and Section 503(b)(9) Claims Deemed Invalid.**

- 18 a. Response Filed/Dispute Resolved. With respect to each Section 503(b)(9)
19 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
20 as to which a Response is timely filed, to the extent the parties resolve the
21 dispute by agreement, such Section 503(b)(9) Claim shall be treated as an
22 Allowed Section 503(b)(9) Claim or invalid Section 503(b)(9) Claim, in whole
23 or in part, as agreed to by the parties, without further order of the Court, upon
the filing by the Debtor of a notice setting forth the agreement of the parties.
- b. Response Filed/Dispute Not Resolved. With respect to each Section 503(b)(9)
Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and
as to which a Response is timely filed, and resolution is not reached by the
parties by at least thirty (30) days after the date the Section 503(b)(9) Report is
filed (“Resolution Period”), or such longer period as agreed to by the Section
503(b)(9) Claimant, the Debtor shall file a motion for determination of the
Section 503(b)(9) Claim with ten (10) days from the end of the Resolution
Period.
- c. Response Not Filed.
- (1) With respect to each Section 503(b)(9) Claim listed in the Section
503(b)(9) Report as valid (in whole or in part) and as to which no

1 Response is timely filed, such Section 503(b)(9) Claim shall thereafter,
2 without further order of the Court, be deemed an Allowed Claim
3 (“Allowed Section 503(b)(9) Claim”) in whole or in part as specified in
4 the Section 503(b)(9) Report.

5 (2) With respect to each Section 503(b)(9) Claim listed in the Section
6 503(b)(9) Report as invalid (in whole or in part) and as to which no
7 Response is timely filed, such Section 503(b)(9) Claim shall, without
8 further order of the Court, be forever deemed invalid (in whole or in
9 part as specified in the Section 503(b)(9) Report) and not entitled to the
10 priorities provided under Section 503(b)(9) with respect to any invalid
11 portion.

12 d. Disputed Claims Resolved by Court Decision. With respect to any sum listed
13 in the Section 503(b)(9) Report or Response which is disputed by the Debtor or
14 any other party in interest, including the Secured Lenders and is not resolved,
15 such Section 503(b)(9) Claim shall be an Allowed Section 503(b)(9) Claim to
16 the extent it is determined to be a valid Section 503(b)(9) Claim by the Court in
17 a final order which is not subject to an appeal and the time for appeal has
18 expired.

19 5. Additional Section 503(b)(9) Order Provisions. In addition to the above outlined relief,
20 the Section 503(b)(9) Order provides for the following relief:

21 a. The Section 503(b)(9) Procedures are the sole and exclusive method permitted
22 with respect to the resolution and payment of Section 503(b)(9) Claims. All
23 Section 503(b)(9) Claimants are prohibited from seeking any other remedy than
is permitted by the Section 503(b)(9) Procedures.

b. In complying with the Section 503(b)(9) Procedures, the Debtor does not waive
any rights to assert any defenses, claims, counterclaims or offsets based on facts
or law other than under Section 503(b)(9).

DATED this ____ day of _____, 2007.

BUSH STROUT & KORNFIELD

By _____
Aimee S. Willig, WSBA #22859
Attorneys for Brown & Cole Stores, LLC