

MIDWAY GAMES: Liquidating Trustee Begins Filing Avoidance Actions

Troubled Company Reporter , Jan 07, 2011

NetDockets reports that the trustee for the liquidating trust of Midway Games Inc., Buchwald Capital Advisors LLC, has begun filing avoidance actions seeking to recover certain transfers made by Midway to creditors in the months before its February 2009 chapter 11 bankruptcy filing.

According to the report, Midway Games utilized bankruptcy protection to sell substantially all of its assets and ultimately confirmed a plan of liquidation in May 2010. The report relates that pursuant to that plan of liquidating, the liquidating trust was created to pursue remaining rights of Midway's bankruptcy estate and distribute any proceeds to Midway's remaining creditors.

Thus far, netDockets notes, the Buchwald Capital has filed over 40 avoidance actions. Each action seeks to recover pre-bankruptcy transfers made to a specific creditor, the report says.

The complaints generally assert five claims against the subject creditors:

- * Recovery of certain transfers made in the 90 days prior to the bankruptcy filing as preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code
- * Recovery of certain transfers made in the two years prior to the bankruptcy filing as fraudulent transfers pursuant to section 548 and 550 of the Bankruptcy Code
- * Recovery of certain transfers made in the two years prior to the bankruptcy filing as fraudulent transfers pursuant to section 544 and 550 of the Bankruptcy Code and sections 1304, 1307 and 1308 of the Delaware Fraudulent Transfer Act
- * Recovery of certain transfers made in the two years prior to the bankruptcy filing as fraudulent transfers pursuant to section 544 and 550 of the Bankruptcy Code and sections 1305, 1307 and 1308 of the Delaware Fraudulent Transfer Act
- * Disallowance of claims filed, or which may be filed, by creditors pursuant to sections 502(d), 506, 544, 547, 548 and 550 of the Bankruptcy Code and rules 3007, 3012, and 7001 of the Federal Rules of Bankruptcy Procedure

Netdockets says that the complaints also allege that Midway (and/or the appropriate affiliate entity) was insolvent during the period of the transfers. The report relates that in support of that allegation, the complaints allege that Midway generated annual operating losses for every year since 2000 on a consolidated basis and Midway's liabilities exceeded its assets

(again, on a consolidated basis) by approximately \$159 million as of December 31, 2008 (\$337.3 million in liabilities versus \$178.3 million in assets).

About Midway Games

Headquartered in Chicago, Illinois, Midway Games Inc. (OTC Pink Sheets: MWYGQ) -- <http://www.midway.com/> -- was a leading developer and publisher of interactive entertainment software for major videogame systems and personal computers.

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On July 10, 2009, Midway and certain of its U.S. subsidiaries completed the sale of substantially all of their assets to Warner Bros. Entertainment Inc. in a sale approved by the Court. The aggregate gross purchase price was roughly \$49 million, including the assumption of certain liabilities. Midway is disposing of its remaining assets.