



# MCDONALD·CARANO·WILSON<sup>LLP</sup>

## Memorandum

To: All Shareholders of Specialty Trust, Inc.

From: McDonald Carano Wilson LLP in its capacity as counsel for the Official Committee of Equity Security Holders (the "Committee")

Date: September 27, 2010

Re: Claims against Specialty Trust, Inc. and related parties

Several shareholders have asked us to clarify the Committee's role in pursuing claims that shareholders may have for damages against Specialty Trust, Inc., and related parties. This communication is intended as a general informative memo in response to that request and not as legal advice to any shareholder or group of shareholders. Shareholders who have questions after reading this memo should contact their own counsel for advice.

Shareholder claims against companies that issue stock fall into two categories. The first category relates to conduct that damaged the company generally and, consequentially, affected all of the company's creditors and shareholders. Typically, such a claim is for the damages a company suffered as a result of actions by third parties who have breached their fiduciary duties as an officer or director. As a hypothetical example, if a company's officer removed an asset of the company without paying fair value for it and if the company was unable to pay its creditors or shareholders as a result of this conduct, the company would have a claim against that officer for breach of fiduciary duty owed to the company. Put another way, shareholders may have indirectly suffered damages arising out of this conduct but the damages would not be unique to the shareholders – the company itself was damaged. These types of claims, if they exist, are called "Estate Claims". The Committee is investigating whether there are Estate Claims and, if so, will take appropriate action on behalf of the shareholders.

The second type of claim belongs to any shareholder who has suffered damages that are specifically related to their ownership of stock in a company. For example, if persons representing a company intentionally misrepresented certain facts in order to induce a person to buy stock in that company, and if the person who acquired the stock received less than they would otherwise have received in exchange for the purchase of the company's stock, the buyer of the securities may have a claim for damages. This type of claim would be unique to that person and would depend on the circumstances relating to what that person knew at the time of the purchase of the stock, the relevant information that was generally available to the person, and the damages caused by the circumstances. If such claims exist, they belong to each individual shareholder. These types of claims are "Individual Claims". The Committee does not have a duty or the resources to investigate or pursue Individual Claims. The Committee cannot undertake





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actions that would benefit only certain shareholders and not the entire shareholder body.

A shareholder who believes he or she may have an Individual Claim should seek advice from his or her own counsel. If there are shareholders who, as a "class" (for example, shareholders who acquired shares directly from the company pursuant to a Private Placement Offering) believe they may have claims arising from such commonly shared circumstances, they should seek counsel who does this type of class-representation work. As counsel to the Equity Committee, McDonald Carano Wilson LLP is precluded from taking on this type of work in the instant matter.

Several shareholders have inquired about filing a proof of claim against the Specialty Trust bankruptcy estate for Individual Claims. A proof of claim may be filed for such Individual Claims. However, Bankruptcy Code Section 510(b) provides:

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

Simply put, this section means that any Individual Claim arising from the purchase or sale of the stock of Specialty Trust, Inc., will be treated as if the claim were common stock. The claim will not have the greater priority allowed to claims belonging to creditors of the debtor company. In bankruptcy, creditors get paid in full before shareholders. Shareholders need to consult with their own attorneys to make a determination as to whether they may expect any benefit from filing such a claim.

We have also been asked whether it is necessary for individual shareholders to file a claim against Specialty Trust, Inc., in order to preserve causes of action against other persons who might be liable on such claim even if the claim will not be paid as a creditor's claim in the bankruptcy action. For example, assume that a buyer of shares in a company sponsored private placement reasonably relied upon the expertise of the professionals (e.g., the investment bankers, lawyers, or certified public accountants) who assisted the issuer in connection with the sale of the securities. Assuming the claim is partly or entirely based on the professional's conduct or negligence in the course of assisting the issuer and facilitating the sale of the security, is it necessary to file a proof of claim against Specialty Trust, Inc., in order to preserve claims against such professionals? We encourage shareholders who believe they have such claims to seek the advice of their own legal counsel regarding this question.



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In a related vein, some shareholders have also expressed concern that the failure to file such a claim by the "Claims Bar Date" in Specialty Trust's bankruptcy (August 26, 2010) has negatively impacted these Individual Claims. Bankruptcy Code Section 726 controls the distribution of property of the estate. It does not state that claims filed after the "bar date" are not entitled to be treated as claims. Section 726(a)(3) states that tardily filed claims are paid after "allowed unsecured claims". This is the same treatment that is afforded such claims in Bankruptcy Code Section 510(b), above. Simply stated, the failure to file a claim by the Claims Bar Date should not prohibit the filing of a proof of claim to the extent such filing is necessary as a technicality to pursue a lawsuit for Individual Claims damages against persons other than Specialty Trust. However, you should be aware that State and/or federal law may impose time limits on when lawsuits for Individual Claims can be filed. We urge you to discuss these claims with your attorney as soon as possible, as a delay may cause you to lose your right to pursue such claims.

This memorandum is not intended to infer that any Individual Claims or Estate Claims exist or that any will be pursued. This memo is for informational purposes only and is not offered as legal advice to any person who receives this memorandum. The existence of any known Estate Claims will be disclosed to and discussed with shareholders and creditors as part of a "Disclosure Statement" that must be provided and approved by the Bankruptcy Court before any Plan of Reorganization can be distributed for your consideration.

We hope you find this memo helpful and informative.