

MARCUS CORP
Form DEF 14A
September 03, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934
(Amendment No. ____)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to § 240.14a-12

THE MARCUS CORPORATION
(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
- 1) Title of each class of securities to which transaction applies:
 - 2) Aggregate number of securities to which transaction applies:
 - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - 4) Proposed maximum aggregate value of transaction:
 - 5) Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- 1) Amount Previously Paid:
 - 2) Form, Schedule or Registration Statement No.:
 - 3) Filing Party:
 - 4) Date Filed:

THE MARCUS CORPORATION

[LOGO]
100 East Wisconsin Avenue, Suite 1900
Milwaukee, Wisconsin 53202-4125

**NOTICE OF 2008 ANNUAL MEETING OF SHAREHOLDERS
To Be Held Tuesday, October 7, 2008**

To the Shareholders of

THE MARCUS CORPORATION

NOTICE IS HEREBY GIVEN THAT the 2008 Annual Meeting of Shareholders of THE MARCUS CORPORATION will be held on Tuesday, October 7, 2008, at 10:00 A.M., local time, at the InterContinental Milwaukee, 139 E. Kilbourn Avenue, Milwaukee, Wisconsin, for the following purposes:

1. to elect as directors the ten nominees named in the attached proxy statement; and
2. to consider and act upon any other business that may be properly brought before the meeting or any adjournment thereof.

Only holders of record of our Common Stock and Class B Common Stock as of the close of business on August 6, 2008, will be entitled to notice of, and to vote at, the meeting and any adjournment thereof. Shareholders may vote in person or by proxy. The holders of our Common Stock will be entitled to one vote per share and the holders of our Class B Common Stock will be entitled to ten votes per share on each matter submitted for shareholder consideration.

Shareholders are cordially invited to attend the meeting in person. A map is provided on the following page to assist you in locating the InterContinental Milwaukee. Even if you expect to attend the meeting in person, to help ensure your vote is represented at the meeting, please complete, sign, date and return in the enclosed postage paid envelope the accompanying proxy, which is being solicited by our board of directors. You may revoke your proxy at any time before it is actually voted by giving notice thereof in writing to the undersigned or by voting in person at the meeting.

Interested parties are invited to listen to a live audio Webcast of the meeting by logging onto the Investor Relations section of our website: www.marcuscorp.com. Listeners should go to the website at least 15 minutes prior to the start of the presentation to download and install any necessary audio software.

Accompanying this Notice of 2008 Annual Meeting of Shareholders is a proxy statement and form of proxy.

On Behalf of the Board of Directors

/s/ Thomas F. Kissinger

Thomas F. Kissinger
Vice President, General Counsel and Secretary

Milwaukee, Wisconsin
September 3, 2008

**Important Information for Shareholders Attending
The Marcus Corporation 2008 Annual Meeting**

10:00 a.m.
Tuesday, October 7, 2008
InterContinental Milwaukee Hotel
139 E. Kilbourn Avenue
Milwaukee, Wisconsin 53202
www.intercontinentalmilwaukee.com

Directions:

From the South

Take I-94/I-43 North toward Milwaukee. Take Exit 73A McKinley Avenue and follow McKinley over the river. Turn right onto Water Street. Take Water Street five blocks south and the hotel will be on the right-hand side, at the corner of Kilbourn and Water.

From the West

Take I-94 East toward Milwaukee to the Van Buren exit (far left lane). Go north on Van Buren to Kilbourn Avenue. Turn left (west) on Kilbourn Avenue. Continue five blocks to the hotel.

From the North

Take I-43 south to Exit 73A McKinley Avenue (merge to the right side of freeway). Take a left at the lights onto McKinley. Take McKinley over the river and turn right onto Water Street. Take Water Street five blocks south and the hotel will be on the right-hand side, at the corner of Water and Kilbourn.

Parking:

The InterContinental Milwaukee is located on the southwest corner of Kilbourn Avenue and Water Street. Entrances to the InterContinental Milwaukee parking ramp are located on Kilbourn Avenue and on Water Street. Parking in the InterContinental Milwaukee parking ramp is on a space available basis.

Experience the InterContinental Milwaukee

Shareholders staying for lunch at the InterContinental Milwaukee following the annual meeting on Tuesday, October 7 will receive a 20% discount on their check. Visit *Kil@Wat*, where you will experience creative cuisine and vibrant décor overlooking the city. Enjoy familiar menu favorites, including products from local markets prepared with an interesting and unique twist. For a glance at our menu, please visit <http://www.kilawatcuisine.com>. Tell your server that you are a Marcus Corporation shareholder.

THE MARCUS CORPORATION
[LOGO]

PROXY STATEMENT

For
2008 Annual Meeting of Shareholders
To Be Held Tuesday, October 7, 2008

This proxy statement and accompanying form of proxy are being furnished to our shareholders beginning on or about September 3, 2008, in connection with the solicitation of proxies by our board of directors for use at our 2008 Annual Meeting of Shareholders to be held on Tuesday, October 7, 2008, at 10:00 A.M., local time, at the InterContinental Milwaukee, 139 E. Kilbourn Avenue, Milwaukee, Wisconsin and at any postponement or adjournment thereof (collectively, Meeting), for the purposes set forth in the attached Notice of 2008 Annual Meeting of Shareholders and as described herein.

Execution of a proxy will not affect your right to attend the Meeting and to vote in person, nor will your presence revoke a previously submitted proxy. You may revoke a previously submitted proxy at any time before it is exercised by giving written notice of your intention to revoke the proxy to our Secretary, by notifying the appropriate personnel at the Meeting in writing or by voting in person at the Meeting. Unless

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revoked, the shares represented by proxies received by our board of directors will be voted at the Meeting in accordance with the instructions thereon. If no instructions are specified on a proxy, the votes represented thereby will be voted: (1) for the board's ten director nominees set forth below and (2) on such other matters that may properly come before the Meeting in accordance with the best judgment of the persons named as proxies.

Only holders of record of shares of our Common Stock (Common Shares) and our Class B Common Stock (Class B Shares) as of the close of business on August 6, 2008 (Record Date) are entitled to vote at the Meeting. As of the Record Date, we had 20,819,975 Common Shares and 8,885,126 Class B Shares outstanding and entitled to vote. The record holder of each outstanding Common Share on the Record Date is entitled to one vote per share and the record holder of each outstanding Class B Share on the Record Date is entitled to ten votes per share on each matter submitted for shareholder consideration at the Meeting. The holders of our Common Shares and the holders of our Class B Shares will vote together as a single class on all matters subject to shareholder consideration at the Meeting. The total number of votes represented by outstanding Common Shares and Class B Shares as of the Record Date was 109,671,235, consisting of 20,819,975 represented by outstanding Common Shares and 88,851,260 votes represented by outstanding Class B Shares.

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ELECTION OF DIRECTORS

At the Meeting, our shareholders will elect all ten members of our board of directors. The directors elected at the Meeting will hold office until our 2009 Annual Meeting of Shareholders and until their successors are duly qualified and elected. If, prior to the Meeting, one or more of the board's nominees becomes unable to serve as a director for any reason, the votes represented by proxies granting authority to vote for all of the board's nominees, or containing no voting instructions, will be voted for a replacement nominee selected by the board of directors. Under Wisconsin law, if a quorum of shareholders is present, directors are elected by a plurality of the votes cast by the shareholders entitled to vote in the election. This means that the individuals receiving the largest number of votes will be elected as directors, up to the maximum number of directors to be chosen at the election. Therefore, any shares that are not voted on this matter at the Meeting, whether by abstention, broker nonvote or otherwise, will have no effect on the election of directors at the Meeting.

All of our director nominees have been elected by our shareholders and have served continuously as directors since the date indicated below. The names of the director nominees, together with certain information about each of them as of the Record Date, are set forth below. Unless otherwise indicated, all of our director nominees have held the same principal occupation indicated below for at least the last five years.

	<u>Name</u>	<u>Current Principal Occupation</u>	<u>Age</u>	<u>Director Since</u>
[Photo]	Stephen H. Marcus	Our Chairman of the Board and Chief Executive Officer ⁽¹⁾⁽²⁾⁽³⁾	73	1969
[Photo]	Gregory S. Marcus	Our President since January 2008. Prior thereto, he was our Senior Vice President - Corporate Development ⁽¹⁾⁽²⁾	43	2005
[Photo]	Diane Marcus Gershowitz	Real estate management and investments ⁽¹⁾⁽³⁾	69	1985
[Photo]	Daniel F. McKeithan, Jr.	President of Tamarack Petroleum Company, Inc. (operator of oil and gas wells) and President of Active Investor Management, Inc. (manager of oil and gas wells)	72	1985
[Photo]	Allan H. Selig	Commissioner of Major League Baseball and President and Chief Executive Officer of Selig Executive Leasing Co., Inc. (automobile leasing agency) ⁽⁴⁾	73	1995
[Photo]	Timothy E. Hoeksema	Chairman of the Board, President and Chief	61	1995

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	<u>Name</u>	<u>Current Principal Occupation</u>	<u>Age</u>	<u>Director Since</u>
		Executive Officer of Midwest Air Group, Inc. (commercial airline carrier)		
[Photo]	Bruce J. Olson	Our Senior Vice President ⁽²⁾	58	1996
[Photo]	Philip L. Milstein	Principal of Ogden CAP Properties, LLC (real estate and investments) and former Co-Chairman of Emigrant Savings Bank (savings bank)	59	1996
[Photo]	Bronson J. Haase	Retired President of Pabst Farms Equity Ventures LLC, a real estate development organization; retired President and Chief Executive Officer of Wisconsin Gas Company (gas utility) and Vice President of WICOR, Inc. (utility holding company); and former President and Chief Executive Officer of Ameritech Wisconsin	64	1998
[Photo]	James D. Ericson	Retired President, Chief Executive Officer and Chairman of the Board of Trustees of The Northwestern Mutual Life Insurance Company (life insurance company) ⁽⁵⁾	72	2001

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- (1) Stephen H. Marcus and Diane Marcus Gershowitz are brother and sister. Gregory S. Marcus is the son of Stephen H. Marcus.
 - (2) Stephen H. Marcus, Bruce J. Olson and Gregory S. Marcus are also officers of certain of our subsidiaries.
 - (3) As a result of their beneficial ownership of Common Shares and Class B Shares, Stephen H. Marcus and/or Diane Marcus Gershowitz may be deemed to control, or share in the control of, the Company. See Stock Ownership of Management and Others.
 - (4) Allan H. Selig is a director of Oil-Dri Corporation of America.
 - (5) James D. Ericson is a director of Green Bay Packaging, Inc.

THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR EACH OF THE BOARD'S NOMINEES. COMMON SHARES OR CLASS B SHARES REPRESENTED AT THE ANNUAL MEETING BY EXECUTED BUT UNMARKED PROXIES WILL BE VOTED FOR EACH OF THE BOARD'S NOMINEES.

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BOARD OF DIRECTORS AND CORPORATE GOVERNANCE

Independence of Directors

Based on a review by our board of directors of the direct and indirect relationships that each of the ten directors currently serving on the board has with the Company, including the relationships between the Company and Selig Executive Leasing Co., Inc., the Milwaukee Brewers and Midwest Air Group, Inc., the board of directors has determined that each of Messrs. McKeithan, Selig, Hoeksema, Milstein, Haase and Ericson are independent directors as defined by the rules of the New York Stock Exchange (NYSE) and the Securities and Exchange Commission (SEC).

Code of Conduct

The board of directors has adopted The Marcus Corporation Code of Conduct that applies to all of our directors, officers and employees. It is available under the Human Resources section of our corporate web site, www.marcuscorp.com. If you would like us to mail you a copy of our Code of Conduct, free of charge, please contact Thomas F. Kissinger, Vice President, General Counsel and Secretary, The Marcus Corporation, 100 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202-4125.

Committees of the Board of Directors

Our board of directors has an Audit Committee, Compensation Committee, Corporate Governance and Nominating Committee and Finance Committee. Each committee operates under a written charter and the charters of our Audit, Compensation and Corporate Governance and Nominating Committees are available under the Governance section of our web site at www.marcuscorp.com. Our board and each committee also operate under our Corporate Governance Policy Guidelines, which are available under the Corporate Governance and Nominating Committee tab of the Governance section of our web site. If you would like us to mail you a copy of our Corporate Governance Policy Guidelines or a committee charter, free of charge, please contact Mr. Kissinger at the above address.

Audit Committee. Our board of directors has an Audit Committee whose principal functions are to: (1) appoint and establish the compensation for and oversee our independent auditors; (2) review annual audit plans with management and our independent auditors; (3) preapprove all audit and non-audit services provided by our independent auditors; (4) oversee management's evaluation of the adequacy of our internal and business controls, disclosure controls and procedures, and risk assessment and management; (5) review areas of financial risk that could have a material adverse effect on our results of operations and financial condition with management and our independent auditors; (6) evaluate the independence of our independent auditors; (7) review, in consultation with management and our independent auditors, financial reporting and accounting practices of comparable companies that differ from our own; and (8) receive, retain and address complaints (including employees' confidential, anonymous submission of concerns) regarding financial disclosure and accounting and auditing matters. During our fiscal 2008, our Audit Committee consisted of Daniel F. McKeithan, Jr. (Chairman), James D. Ericson and Philip L. Milstein. Each member of our Audit Committee is an independent, non-employee director as defined by the rules of the NYSE and the SEC. In addition, the board has determined that each of the members of the Audit Committee is an audit committee financial expert, as that term is defined by the rules and regulations of the SEC. The Audit Committee met four times during our fiscal 2008. See Audit Committee Report.

Compensation Committee. Our board of directors also has a Compensation Committee whose principal functions are to: (1) evaluate and establish the compensation, bonuses and benefits of our officers and other key employees and of the officers and other key employees of our subsidiaries and (2) administer our executive compensation plans, programs and arrangements. See Compensation Discussion and Analysis. During our fiscal 2008, our Compensation Committee consisted of Timothy E. Hoeksema (Chairman), Bronson J. Haase, Daniel F. McKeithan, Jr. and Philip L. Milstein. Each member of our Compensation Committee is an independent, non-employee director as defined by the rules of the NYSE and the SEC. The Compensation Committee met two times in our fiscal 2008. See Compensation Discussion and Analysis.

Corporate Governance and Nominating Committee. Our board of directors also has a Corporate Governance and Nominating Committee whose principal functions are to: (1) develop and maintain our Corporate Governance Policy Guidelines; (2) develop and maintain our Code of Conduct; (3) oversee the interpretation and enforcement of our Code of Conduct; (4) receive and review matters brought to the committee's attention pursuant to our Code of Conduct; (5) evaluate the performance of our board of directors, its committees and committee chairmen and our directors; and (6) recommend individuals to be elected to our board of directors. During our fiscal 2008, our Corporate Governance and Nominating Committee consisted of Bronson J. Haase (Chairman), Timothy E. Hoeksema and Allan H. Selig. Each member of our Corporate Governance and Nominating Committee is an independent, non-employee director as defined by the rules of the NYSE and the SEC. The Corporate Governance and Nominating Committee met two times in fiscal 2008.

The Corporate Governance and Nominating Committee performs evaluations of the board of directors as a whole, the Executive Committee of the board of directors, and the individual directors. In addition, the Corporate Governance and Nominating Committee regularly assesses the

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appropriate size of our board of directors and whether any vacancies on the board of directors are expected due to retirement or otherwise. In the event that vacancies are anticipated or otherwise arise, the Corporate Governance and Nominating Committee will identify prospective nominees, including those nominated by management, members of our board of directors and shareholders, and will evaluate such prospective nominees against the standards and qualifications set out in the Corporate Governance and Nominating Committee Charter, including the individual's range of experience, wisdom, integrity, ability to make independent analytical inquiries, business experience and acumen, understanding of our business and ability and willingness to devote adequate time to board and committee duties. The Corporate Governance and Nominating Committee does not evaluate shareholder nominees differently from any other nominee. Pursuant to procedures set forth in our By-laws, the Corporate Governance and Nominating Committee will consider shareholder nominations for directors if we receive timely written notice, in proper form, of the intent to make a nomination at a meeting of shareholders. We did not receive any shareholder nominations for directors to be considered at the Meeting. To be timely for the 2009 Annual Meeting of Shareholders, the notice must be received by the date identified under the heading "Other Matters." To be in proper form, the notice must, among other things, include each nominee's written consent to serve as a director if elected, a description of all arrangements or understandings between the nominating shareholder and each nominee and information about the nominating shareholder and each nominee. These requirements are detailed in our By-laws, which are attached as an exhibit to our Current Report on Form 8-K, dated July 18, 2006. A copy of our By-laws will be provided upon written request to Mr. Kissinger at the above address.

Finance Committee. Our board of directors also has a Finance Committee whose principal functions are to, upon the request of Company management, provide preliminary review, advice, direction, guidance and/or consultation with respect to potential transactions. During our fiscal 2008, our Finance Committee consisted of Stephen H. Marcus, James D. Ericson, Diane Marcus Gershowitz, Philip L. Milstein and Allan H. Selig. The Finance Committee did not meet in fiscal 2008.

Compensation Committee Interlocks and Insider Participation

No member of the Compensation Committee has served as one of our officers or employees at any time. None of our executive officers serves as a member of the board of directors or compensation committee of any other company that has one or more executive officers serving as a member of our board of directors or Compensation Committee.

Board Meetings, Director Attendance, Executive Sessions and Presiding Director

Our board of directors met five times in our fiscal 2008. Each of our directors attended at least 75% of the aggregate of the number of board meetings and number of meetings of the committees on which he or she served during fiscal 2008. Our non-management directors meet periodically in executive sessions without management present. The non-management directors who serve as chairmen of our Audit, Compensation and Corporate Governance and Nominating Committees serve as the chairman of these meetings of non-management directors on a rotating basis.

Directors are expected to attend our annual meeting of shareholders each year. At the 2007 annual meeting of shareholders, all of our directors were in attendance in person.

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Contacting the Board

Interested parties may contact our board of directors or a specific director by sending a letter, regular or express mail, addressed to our board or the specific director in care of Mr. Kissinger at the above address. Mr. Kissinger will promptly forward appropriate communications from interested parties to the board or the applicable director.

STOCK OWNERSHIP OF MANAGEMENT AND OTHERS

The following table sets forth information as of the Record Date as to our Common Shares and Class B Shares beneficially owned by: (1) each of our directors; (2) each of our executive officers named in the Summary Compensation Table set forth below under "Compensation Discussion and Analysis"; (3) all such directors and executive officers as a group; and (4) all other persons or entities known by us to be the beneficial owner of more than 5% of either class of our outstanding capital stock. A row for Class B Share ownership is not included for individuals or entities who do not beneficially own any Class B Shares.

<u>Name of Individual or Group/Class of Stock</u>	<u>Sole Voting and Investment Power⁽¹⁾</u>	<u>Shared Voting and Investment Power⁽¹⁾</u>	<u>Total Share Ownership and Percentage of Class⁽¹⁾</u>	<u>Percentage of Aggregate Voting Power⁽¹⁾</u>
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<u>Name of Individual or Group/Class of Stock</u>	<u>Sole Voting and Investment Power⁽¹⁾</u>	<u>Shared Voting and Investment Power⁽¹⁾</u>	<u>Total Share Ownership and Percentage of Class⁽¹⁾</u>	<u>Percentage of Aggregate Voting Power⁽¹⁾</u>
<i>Directors and Named Executive Officers</i>				
Stephen H. Marcus⁽²⁾				
Common Shares	21,895	6,703	28,598 *	36.7%
Class B Shares	3,982,977	52,070	4,035,047 (45.4%)	