OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
Michael S. Fox, Esq.
Jordanna L. Nadritch, Esq.
Jayme M. Bethel, Esq.
212.451.2300

Counsel for the Reorganized Debtors
(Successors to the Debtors and Debtors in Possession)

UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
JENNIFER CONVERTIBLES, INC.,[1]	Case No. 10-13779 (ALG)
Reorganized Debtors.	(Jointly Administered)

THE REORGANIZED DEBTORS', AS SUCCESSORS TO THE DEBTORS, RESPONSE TO THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER DIRECTING ORAL EXAMINATIONS AND PRODUCTION OF DOCUMENTS PURSUANT TO BANKRUPTCY RULE 2004

Jennifer Convertibles, Inc. ("Jennifer Convertibles") and its affiliates, as successors to the debtors and debtors in possession in the above-caption cases (together, the "Debtors", now known as the "Reorganized Debtors"), file this response (the "Response") to the *Motion Of The Official Committee Of Unsecured Creditors For An Order Directing Oral Examinations And*

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

Production Of Documents Pursuant To Bankruptcy Rule 2004 (docket no. 495) (the "2004 Motion"). In support of this Response, the Reorganized Debtors respectfully state as follows:

Preliminary Statement

1. Messrs. Abada and Greenfield are the target of a flawed and baseless motion which is both inappropriate and mooted as of the filing of this Response. The official committee of unsecured creditors (the "Committee") - an entity that was dissolved on the effective date (the "Effective Date") of the Reorganized Debtors' Amended Plan (as defined below) - is seeking to do what the Amended Plan rightfully vests with the Litigation Trust (as defined below) - an entity formed on the Effective Date. The Committee's filing of the 2004 Motion was an unnecessary tactic and distracting to the efforts of the Debtors to timely exit the chapter 11 process at a time when the Litigation Trust would in no way be prejudiced by waiting until after the Effective Date to commence its discovery.

2. There is no statute of limitations with respect to informal discovery requests, nor is there any need for concern as to the statute of limitations with respect to the actions to be taken by the Litigation Trust against the officers and directors of the Debtors. Nevertheless, the Reorganized Debtors have been working to comply with the Committee's discovery requests and have been in constant communication with the Committee. Thus, the Reorganized Debtors are perplexed by the Committee's 2004 Motion. The 2004 Motion creates the illusion that the Reorganized Debtors have not been cooperating and communicating with the Committee with respect to the discovery requests and that there is an urgent need to commence discovery. However, that is far from the truth, and the Committee has been fully informed of the Reorganized Debtors' attempts to provide the documents requested by the Committee (the "Requested Production").

3. Notwithstanding the cooperation of the Reorganized Debtors, it has always been the agreement between the Debtors and the Committee - as memorialized in the Amended Plan confirmed by this Court - that the post-effective date Litigation Trust (as defined below) would be the party to pursue the causes of action related to the Debtors' relationship with Jara (as defined in the 2004 Motion, the "2009 Transactions"). The Reorganized Debtors' Amended Plan is clear that the 2009 Transactions are assigned to the Litigation Trust upon the Effective Date, and it is the Litigation Trustee who has been tasked with pursuing any related recovery. Indeed, counsel for the Committee has indicated on various occasions that they will likely not be counsel to the Litigation Trust, thus the Litigation Trustee (as defined in the Reorganized Debtors' Amended Plan) will need to duplicate any of the Committee's discovery efforts taken with respect to the 2009 Transactions. In addition, and significantly, section 15.12 of the Amended Plan provides that the Committee is no longer in existence post-Effective Date. Thus, any attempt for the Committee to compel discovery post- Effective Date is inappropriate and misplaced.

4. Finally, the 2009 Transactions relate to actions against specific officers of the Debtors, namely, Rami Abada and Harley Greenfield. Inasmuch as the 2004 Motion is requesting compliance by Mr. Abada and Mr. Greenfield, the Reorganized Debtors are not required to produce Mr. Abada and Mr. Greenfield, nor are they able to compel Mr. Abada and Mr. Greenfield to comply, as both Mr. Abada and Mr. Greenfield may be represented by separate counsel with respect to the actions by the Litigation Trust. In fact, as an officer of the Reorganized Debtors, Mr. Abada will be required to comply with the Requested Production, and the go-forward consulting agreement for Mr. Greenfield provides that Mr. Greenfield must

reasonably cooperate with the Litigation Trust with respect to matters the Litigation Trust is authorized to pursue, which includes the 2009 Transactions.

5. The Reorganized Debtors would therefore request that this Court find the Committee's 2004 Motion moot and that the Litigation Trustee be the appropriate party to pursue discovery in connection with the 2009 Transactions, as provided for in the Reorganized Debtors' Amended Plan.

Chapter 11 Background

6. On July 18, 2010 (the "Petition Date"), each of the Reorganized Debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code. The Reorganized Debtors operated their businesses and manage their properties as Reorganized Debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors was appointed in these chapter 11 cases on July 23, 2010.

7. Jennifer Convertibles, Inc. was organized as a Delaware corporation in 1986, and is currently the owner of (i) the largest group of sofabed specialty retail stores and leather specialty retail stores in the United States, and (ii) six big box, full-line furniture stores operated under the Ashley Furniture HomeStore brand under a license from Ashley Furniture Industries, Inc.

8. On September 3, 2010, the Reorganized Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs. On September 15, 2010, the meeting of creditors pursuant to section 341 of the Bankruptcy Code was held.

9. On November 19, 2010, the Reorganized Debtors filed their Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors, and Disclosure Statement with Respect to the Chapter 11 Amended Plan of Reorganization of Jennifer

Convertibles, Inc. and Its Affiliated Debtors. On December 22, 2010, the Reorganized Debtors filed their Amended Disclosure Statement with Respect to the Chapter 11 Amended Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the "Disclosure Statement") and their Amended Joint Chapter 11 Amended Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the "Amended Plan").

10. Pursuant to the terms of the Amended Plan, "As of the Effective Date, the Debtors shall be deemed to have assigned and shall assign to the Litigation Trust[2], the right to object to the allowance of, General Unsecured Claims on all available grounds, together with all defenses of the Debtors and their estates, including, without limitation, the defense of setoff." *See* Amended Plan at ¶ 8.01. In addition, "Upon the Effective Date, the Debtors or the Reorganized Debtors … shall execute the Litigation Trust Agreement and shall take all other steps necessary to establish the Litigation Trust … Pursuant to the Litigation Trust Agreement, the Debtors or the Reorganized Debtors shall transfer to the Litigation Trust all of their right, title and interest in the Litigation Trust Fund, including any Litigation Trust Causes of Action previously assigned to the Creditors' Committee on behalf of the Debtors' Estates prior to the Effective Date." *See* Amended Plan at ¶ 9.01.

11. Also on December 22, 2010, the Bankruptcy Court entered an order approving the Disclosure Statement (docket No. 397). Confirmation is scheduled for January 25, 2011.

12. On February 9, 2011, the Bankruptcy Court entered the Findings of Fact and Conclusions of Law and Order Confirming the Amended Joint Chapter 11 Amended Plan of Reorganization of Jennifer Convertibles, Inc. and its Affiliated Debtors (docket No. 491).

13. On February 14, 2011, the Official Committee of Unsecured Creditors (the "Committee") filed the 2004 Motion.

[2] All capitalized terms not defined herein shall have the meanings ascribed to them in the Amended Plan.

14. On February 22, 2011, the Amended Plan became effective and the Reorganized Debtors filed with the Court the Notice of Effective Date (docket No. 503).

15. Also on February 22, 2011, counsel for Harley Greenfield filed Harley Greenfield's Objection To Motion Of The Official Committee Of Unsecured Creditors For An Order Directing Oral Examination And Production Of Documents Pursuant To Bankruptcy Rule 2004 (docket No. 502).

Response

16. On December 2, 2010, the Committee sent the Debtors and their counsel a demand letter requesting that suit be brought within ten (10) days with respect to the 2009 Transactions. *See* Letter from Kevin J. Smith to Rami Abada and Michael Fox, dated December 2, 2010, attached hereto as Exhibit A. In response, on the following Monday, December 6, 2010, the Debtors forwarded the demand letter to the Debtors' D&O Insurance Carrier (the "Carrier"), thus putting the Carrier on notice of the Committee's demand. *See* Letter from Allen Wolff to Illinois National Insurance Company (the "Carrier"), dated December 6, 2010, attached hereto as Exhibit B. Counsel for the Debtors then informed counsel for the Committee that the demand letter had been forwarded to the Carrier.

17. On December 13, 2010, the Committee served the Debtors with "informal" discovery requests. Thereafter, the Debtors assembled the Requested Production, and forwarded the requests to the Carrier for review. The Debtors sent another follow-up letter to the Carrier on February 9, 2011, and have yet to receive a response from the Carrier. *See* Letter from Allen Wolff to the Carrier, dated February 9, 2011, attached hereto as Exhibit C. The Committee has at all times been kept up to date with respect to these efforts.

18. It is the Reorganized Debtors' belief that turning the Requested Production over to the Committee in response to an informal demand could trigger an exculpation clause in the

Debtors' D&O insurance policy (the "D&O Policy"), which could potentially result in a termination of the Debtors' D&O insurance coverage. *See* Email from Michael Fox to James Carr, dated February 9, 2011, attached hereto as Exhibit D. Should the Debtors' insurance coverage terminate, there would be little to no recovery available to the Debtors' creditors with respect to the D&O Policy. The Reorganized Debtors believe that by providing the Requested Production to the Carrier, the Reorganized Debtors are taking the steps necessary to be in compliance with the discovery requests and the D&O Policy. *See* Email from Michael Fox to James Carr, dated February 10, 2011, attached hereto as Exhibit E. The Reorganized Debtors anticipate that the Carrier will consent to the production of the Requested Production, and the Reorganized Debtors fully intend to provide the production to the Committee upon receipt of such approval by the Carrier. However, the Reorganized Debtors are not willing to potentially violate the terms of the D&O Policy simply to appease the Committee. Yet, the Reorganized Debtors have offered to provide the Requested Production to the Committee if the Committee is willing to assume the risk of foregoing recovery under the terms of the policy. *See id*. The Committee has thus far been unwilling to take such risk.

19. As provided for in section 9.05 of the Amended Plan, the causes of action related to the 2009 Transactions will be assigned to the post-effective date Litigation Trust. Furthermore, the Committee no longer exists post-effective date, except for limited purposes not relevant to the 2004 Motion. *See* Amended Plan at § 15.12 ("As of the Effective Date, the Creditors' Committee will terminate and the members thereof and the professionals retained by the Creditors' Committee in accordance with section 1103 of the Bankruptcy Code shall be released and discharged from their respective fiduciary obligations."). It is improper and illogical for the Committee to seek pre-emptive discovery in connection with causes of action

that can be brought, if at all, only by another entity – the Litigation Trust established by the Amended Plan. Moreover, the duplication of efforts and costs is burdensome to both the Reorganized Debtors and the Litigation Trust. Thus, as previously noted, the relief in the 2004 Motion is moot and inappropriate, and the Committee should not be wasting valuable estate resources when it is clear that the Amended Plan contemplates the Litigation Trust as the vehicle to pursue any potential causes of action with respect to the 2009 Transactions.

20. It is also unclear why the Committee chose to obtain the Requested Production by filing the 2004 Motion prior to commencing an adversary proceeding. The Committee certainly had sufficient knowledge with respect to the 2009 Transactions to send a detailed four page demand letter, and therefore the Litigation Trust could easily file a complaint prior to commencing any discovery. Indeed the proper process would be for the Litigation Trust to commence an adversary proceeding against Mr. Abada and Mr. Greenfield, and then seek more focused discovery in accordance with Bankruptcy Rules 7026 and 7034, which apply Federal Rules of Civil Procedure 26 and 34 respectively. Instead, the Committee chose to file the 2004 Motion, which is both overbroad, and as discussed above, inappropriate at this point in the Reorganized Debtors' chapter 11 cases.

21. Moreover, the 2004 Motion also asserts that the Committee agreed to an amount of $100,000 to fund the Litigation Trust based in part on an agreement that the Committee would be able to advance potential litigation prior to the Effective Date of the Reorganized Debtors' Amended Plan. *See* 2004 Motion at ¶ 6. This simply is not true. *See* Email from Tom Sperry to James Carr, et. al., dated February 10, 2011, attached hereto as Exhibit F. The Committee engaged in extensive negotiations with the Reorganized Debtors and Mengnu with respect to the terms of a Amended Plan and at no point did the parties memorialize that the funding of the

Litigation Trust was contingent upon discovery to be commenced prior to the Effective Date. Likewise, the Committee states that the Reorganized Debtors have refused to schedule the depositions of both Rami Abada and Harley Greenfield. *See* 2004 Motion at ¶ 4. The Reorganized Debtors do not believe that they are required to provide Messrs. Abada and Greenfield for an "informal" examination prior to the Effective Date.

22. Finally, as this Court and the Committee are fully aware, in the two months since receiving the Committee's demand letter, the Debtors had been diligently working towards an emergence from bankruptcy, which required the full dedication and efforts of the Debtors' senior management team. Among the many items accomplished, the Debtors submitted and confirmed the Amended Plan and Disclosure Statement, entered into a new merchant agreement with their credit card processor, negotiated approximately 73 lease modification agreements, and dealt with Ashley HomeStores Ltd. and its objections to the Debtors' motion to assume the trademark usage agreements and the confirmability of the Debtors' Amended Plan. Each of these actions has resulted in significant additional funds being available for distribution to the Reorganized Debtors' creditors. Despite the Committee's assertions, the Reorganized Debtors have never stated that they do not intend to comply with the investigation into the 2009 Transactions, and agree that any potential claims against the Reorganized Debtors' officers and directors could be a source of recovery for the Reorganized Debtors' unsecured creditors. However, the Reorganized Debtors do not understand the Committee's sense of urgency and desire to undermine the terms of the Amended Plan with respect to the causes of action provided to the Litigation Trust.

23. For all of the above reasons, the Reorganized Debtors are perplexed as to why the Committee felt the need to file the 2004 Motion. In that regard, the Reorganized Debtors attempted to contact counsel for the Committee and request that the 2004 Motion be withdrawn,

and the 2009 Transactions be dealt with by the Litigation Trustee in accordance with the terms of the Amended Plan. *See* Email from Jordanna Nadritch to Jason Adams, dated February 23, 2011, attached hereto as Exhibit G. The Committee refused to withdraw the 2004 Motion, and the Reorganized Debtors felt they were thus constrained to file this Response. The Reorganized Debtors believe that the 2004 Motion is both unnecessary and moot as of the date hereof, and would request that this Court find the same.

Notice

24. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) Office of the United States Trustee for the Southern District of New York; (ii) counsel to the Official Committee of Unsecured Creditors; (iii) the SEC; and (iv) any other party who has filed a notice of appearance in these cases. The Reorganized Debtors submit that such notice is sufficient under the circumstances.

WHEREFORE, the Reorganized Debtors respectfully request that the Court find the 2004 Motion moot and grant such further relief as may be equitable under the circumstances of this case.

Dated: New York, New York
February 23, 2011

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: /s/ Michael S. Fox
Michael S. Fox
Jordanna L. Nadritch
Jayme M. Bethel
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300

Counsel for the Reorganized Debtors

EXHIBIT A

KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

101 PARK AVENUE
NEW YORK, NEW YORK 10178

(212) 808-7800

FACSIMILE
(212) 808-7897
www.kelleydrye.com

WASHINGTON, DC
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

DIRECT LINE: (212) 808-5102
EMAIL: ksmith@kelleydrye.com

December 2, 2010

VIA E-MAIL AND FEDERAL EXPRESS

Jennifer Convertibles, Inc.
417 Crossways Park Drive
Woodbury, New York 11797
Attn: Rami Abada

-and-

Olshan Grundman Frome Rosenzweig
& Wolosky LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
Attn: Michael S. Fox, Esq.

Re: In re Jennifer Convertibles, Inc., et al., Case No. 10-13779 (ALG)
Demand for Lawsuit

Dear Messrs. Abada and Fox:

As you are aware, Kelley Drye & Warren LLP is counsel to the Official Committee of Unsecured Creditors ("the Committee") of Jennifer Convertibles, Inc., *et al.* (the "Debtors"). In furtherance of the Committee's statutory obligations, Kelley Drye has commenced an investigation of the Debtors' pre-bankruptcy interactions and relationship with Jara Enterprises, Inc. ("Jara"). As a result of our investigation to date, the Committee believes that sufficient facts exist on which to commence a litigation against the Debtors' officers and directors, including, but not limited to, the Debtors' Chief Executive Officer and Chairman of the Board, Harley Greenfield, for damages, in an amount not less than $5,000,000, resulting from their breaches of duties of loyalty, care and good faith and neglect in connection with their relationship with Jara. Accordingly, the Committee demands that you immediately bring suit against the Debtors' officers and directors.

Summary of Background Facts[1]

The Committee understands that Jara is owned and operated by Harley Greenfield's sister, Jane Love. Prior to 2010, Jara owned and operated approximately 20 "Jennifer" stores that were licensed by the Debtors to Jara. Until 2009, certain of the Debtors and Jara were parties to several agreements, including a Purchasing Agreement under which the Debtors purchased merchandise for Jara and Jara was required to reimburse the Debtors. The Debtors also provided warehousing services to Jara pursuant to a Warehousing Agreement (as amended in 2009) in exchange for a fee of 7.5% of the net sales price of goods sold by Jara. In addition, pursuant to a Management Agreement and License (as amended in 2009), Jara was required to contribute at least $150,000 per month to the Debtors for advertising fees.

Throughout 2009, Jara accumulated, and failed to pay, significant amounts due to the Debtors. As of August 29, 2009, the Committee believes that Jara owed the Debtors not less than $947,000 in net current charges under these agreements. Rather than require repayment, the Debtors provided an allowance for loss of $947,000 as of August 29, 2009. Notwithstanding Jara's failure to pay this amount, the Debtors continued to do business with Jara and had to record an additional allowance for loss of $3,167,000 for the 13-week period ending November 28, 2009.

On December 11, 2009, the Debtors and Jara entered into an interim agreement (effective as of November 27, 2009) that provided, among other things, that future sales at stores owned by Jara would be made on the Debtors' behalf, but that Jara, rather than repaying previous amounts owed to the Debtors, would be entitled to compensation equal to 35% of the sales price of the merchandise for writing such sales. Jara subsequently defaulted on this interim agreement and, on December 31, 2009, Harley Greenfield and Jane Love entered into another agreement, dated December 31, 2009 (the "2009 Agreement").

Notwithstanding the substantial amount still owed by Jara to the Debtors, under the 2009 Agreement, the Debtors paid Jara $635,000 for Jara's inventory and absolved Jara of $301,000 due under the interim agreement. Jara ceased operations on January 1, 2010. Thereafter, the Board of Directors of the Debtors relieved Jara of over $4,000,000 in obligations owed to the Debtors and took on substantial liabilities for, among other things, certain lifetime fabric and leather protection plans for which Jara had been the sole obligor.

---

[1] Substantially all of the background facts contained in this Demand Letter were taken from the Debtors' publicly filed documents. The Committee reserves the right to supplement this Demand Letter with additional facts and allegations as its investigation continues.

Breaches of Duties By The Debtors' Officers And Board of Directors

The Company's officers and Board of Directors owe fiduciary duties, including duties of loyalty, care, and good faith. "The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the stockholders generally." *Cede & Co.v. Technicolor Inc.*, 634 A.2d 345, 361 (Del. 1994). It requires directors to eschew conflict between duty and self-interest. *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1345 (Del. 1987). In addition, the Board's duty of care mandates that directors use that amount of care that ordinarily careful and prudent individuals would use in similar circumstances. *In re The Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005). It requires that directors inform themselves, prior to making a business decision, of all material information reasonably available to them, *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), and to consider reasonable alternatives. *UIS, Inc. v. Walbro Corp.*, 1987 WL 18108, *2 (Del. Ch. Oct. 6, 1987). Failure to fulfill this duty amounts to gross negligence. *In re The Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 64 (Del. 2006). Further, directors are obligated to discharge their obligations "honestly and in good faith in the corporation's best interests." *In re The Walt Disney Co. Derivative Litig.*, 825 A.2d 275, 289 (Del. Ch. 2003). Consequently, directors may be held liable for acting in bad faith where their conduct is "more culpable than simple inattention or failure to be informed of all facts material to the decision." *Walt Disney Co. Derivative Litig.*, 906 A.2d at 66.

In approving and/or acquiescing to the numerous transactions with Jara, including but not limited to the 2009 Agreement, forgiving over $4,000,000 in debt owed to the Debtors and taking on substantial liabilities that were previously the sole obligation of Jara, the Debtors' officers and directors, including their CEO, Chairman and Board of Directors, failed to fulfill their fiduciary duties. Indeed, Harley Greenfield, with the approval of the Board, executed a series of strikingly one-sided deals in November and December 2009 with Jara after it had already defaulted on various other agreements and obligations to the Debtors. Harley Greenfield, again with Board approval, executed the 2009 Agreement, and paid $635,000 for Jara's inventory and absolved Jara of $301,000 due under the interim agreement for shares of the Debtor. Compounding their breaches of duties, in January 2010, Harley Greenfield and the Board forgave over $4,000,000 in debt owed by Jara. The Committee believes that the Debtors' officers and directors were fully aware of the relationship between Harley Greenfield and Jara, yet consented to these numerous transactions at the expense of the Debtors' creditors. These facts lead to the inescapable conclusion that the officers and directors committed breaches of their duties of loyalty, care and good faith, gross negligence and/or negligence in approving the Debtors' dealings with Jara. Harley Greenfield's conduct, in his dealings with Jara, owned by his sister, was also a breach of the Debtors' Code of Conduct, which prohibits, among other things, the appearance of conflicts of interest. Moreover, the Debtors' officers and directors should have, but failed, to demand alternative solutions amounting to willful disregard of their fiduciary duties.

Conclusion

For all these reasons, the Committee believes that substantial and valid grounds exist to commence suit against the Debtors' officers and directors for violating their fiduciary duties, gross negligence and/or negligence.[2] The Debtors should be awarded a sum to be determined at trial, but no less than $5,000,000 in compensatory damages.

If the Debtors do not file a lawsuit, or provide authority to the Committee to file a lawsuit, against their officers and directors within 10 days of receipt of this demand, we will deem you to have refused to comply with the demand made in this letter. At that time, the Committee will seek authority from the Bankruptcy Court to institute a lawsuit to recover damages on behalf of the Debtors' bankruptcy estates.[3]

The Committee reserves and does not waive any and all rights to commence proceedings against the Debtors, Harley Greenfield, the Board of Directors, and any other entity concerning the facts and claims (and potentially additional claims) set forth in this letter.

Very truly yours,

Kevin J. Smith

cc: James S. Carr
Jason R. Adams

---

2 The Committee believes that discovery related to the Debtors' dealings with Jara may reveal facts that demonstrate additional potential claims.

3 "By definition, the fact of insolvency places the creditors in the shoes normally occupied by the shareholders ...." *Production Resources Group, L.L.C. v. NCT Group, Inc.*, 863 A.2d 772, 791 (De. Ch. 2004). As a result, "the creditors of an *insolvent* corporation have standing to maintain derivative claims against directors on behalf of the corporation for breaches of fiduciary duties." *North Am. Catholic Ed. Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007).

EXHIBIT B

O L S H A N

O L S H A N G R U N D M A N F R O M E R O S E N Z W E I G & W O L O S K Y L L P

PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022
TELEPHONE: 212.451.2300
FACSIMILE: 212.451.2222

WWW.OLSHANLAW.COM

DIRECT DIAL: 212.451.2299
EMAIL: AWOLFF@OLSHANLAW.COM

December 6, 2010

VIA UPS

Illinois National Insurance Company
175 Water Street
New York, NY 10038-4969

Re: Insured:	Jennifer Convertibles, Inc.
Policy Type:	D&O
Policy No.:	01-420-58-47
Policy Period:	December 13, 2009 – December 13, 2010
Matter:	Demand from Creditors' Committee

Dear Sir or Madam:

On behalf of Jennifer Convertibles, Inc., its directors and officers and any other insured persons or entities (the "Insureds"), and in accordance with the reporting provisions of the above-referenced Policy (the "Policy"), notice is given pursuant to the Policy or any other applicable Policy, of a Claim against the Insureds.

Enclosed please find a copy of a written demand for monetary or non-monetary relief against an Insured for an alleged Wrongful Act. The enclosed demand sets forth the particulars of the claim.

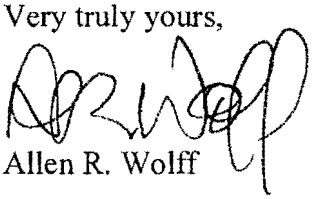
Please respond with prompt acknowledgment of the receipt of this Claim and the enclosed document.

Please direct all correspondence relating to this matter to the undersigned.

NEW JERSEY OFFICE
744 BROAD STREET, 16TH FLOOR
NEWARK, NEW JERSEY 07102
TELEPHONE: 973.331.7900
FACSIMILE: 973.331.7950

If you have questions regarding the foregoing or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,



Allen R. Wolff

Enclosure

cc: Michael S. Fox, Esq.
Rami Abada
Harley Greenfield
Edward Bohn
Mark Berman
Kevin Coyle
Sobel Affiliates

EXHIBIT C

O L S H A N

O L S H A N G R U N D M A N F R O M E R O S E N Z W E I G & W O L O S K Y L L P

PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022
TELEPHONE: 212.451.2300
FACSIMILE: 212.451.2222

WWW.OLSHANLAW.COM
DIRECT DIAL: 212.451.2299
EMAIL: AWOLFF@OLSHANLAW.COM

February 9, 2011

VIA UPS

Illinois National Insurance Company
175 Water Street
New York, NY 10038-4969

Re: Insured:	Jennifer Convertibles, Inc.
Policy Type:	D&O
Policy No.:	01-420-58-47
Policy Period:	December 13, 2009 – December 13, 2010
Matter:	Demand from Creditors' Committee

Dear Sir or Madam:

On behalf of Jennifer Convertibles, Inc., its directors and officers and any other insured persons or entities (the "Insureds"), we write as a follow up to the Notice of Claim we sent on December 6, 2010.

When we sent the Notice of Claim, we enclosed a copy of a written demand for monetary or non-monetary relief against the Insureds for an alleged Wrongful Act (the "Claim"). The party making the Claim upon the Insureds has now demanded that the Insureds produce documents relating to the Claim.

We note that the Policy requires the Insureds to defend and contest any Claim made against them but that the Insurer is to advance such Defense Costs. The Insured is not to incur any Defense Costs without the prior written consent of the Insurer. More than 60 days have elapsed since the Notice of Claim was sent to the Insurer, but the Insurer has yet to provide any written response to the Notice of Claim. Due to the Insurer's delay in responding to the Notice of Claim, the Insureds have been forced to incur Defense Costs in order to comply with the Policy's requirement that the Insureds defend and contest any Claim.

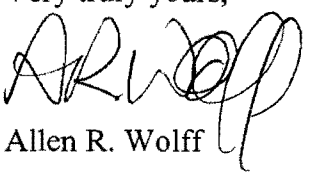
The Insureds will be responding to the demand for documents and the Insureds expect the Insurer to advance all covered defense costs associated with such actions or any other actions that the Insureds must take to defend and contest the Claim.

Please respond with prompt acknowledgment of the receipt of this correspondence.

NEW JERSEY OFFICE
744 BROAD STREET, 16TH FLOOR
NEWARK, NEW JERSEY 07102
TELEPHONE: 973.331.7200
FACSIMILE: 973.331.7222

If you have questions regarding the foregoing or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,



Allen R. Wolff

cc: Michael S. Fox, Esq.
Rami Abada
Harley Greenfield
Edward Bohn
Mark Berman
Kevin Coyle
Sobel Affiliates

EXHIBIT D

From: Fox, Michael S.
Sent: Wednesday, February 09, 2011 3:34 PM
To: Carr, James
Cc: Adams, Jason; Smith, Kevin; 'Tom Sperry'; 'eneiger@neigerllp.com'; Wolff, Allen R.
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Jim,

When we received the Informal Discovery requests we forwarded same to the D&O carrier. We have also sent the Carrier notice that the Company has assembled documents in response and would like to turn them over to the Liquidation Trust. You have a copy of the policy. Simply turning over documents to an informal demand could trigger some exculpation clause in the policy. That is not a desired result. We are waiting (less patiently than you) for the D&O carrier to respond so we can forward the responses to you (they are currently on a CD and hard copy of the content has been printed out). If you are willing to assume this risk, let me know in writing and we will turn over same.

No one is stalling or otherwise delaying. What is being done is the exercise of some prudence to make sure that the D&O Carrier has the chance to participate in the defense. In fact, we believe that they will consent to the production of the documents and expect to engage in direct talks with the Liquidation Trust and their counsel. We thought that the Carrier would have responded to us by now.

Requiring or otherwise tying the production into the Committee's waiver or not of the 14 day period is your call.

The policy has no duty to defend, but rather has a duty to reimburse counsel for the Directors and Officers. I am sure you will hear from counsel they choose about appearing for a deposition.

Michael

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Wednesday, February 09, 2011 10:58 AM
To: Fox, Michael S.; Nadritch, Jordanna L.
Cc: Adams, Jason; Smith, Kevin; 'Tom Sperry'; 'eneiger@neigerllp.com'
Subject: RE: Jennifer Convertibles - D&O Action

Michael and Jordanna,

Now that the confirmation order has been entered, the committee is not prepared to waive the 14-day period to allow the plan to become effective early unless we get the requested discovery with respect to the potential D&O action as well as the information relating to the potential preference actions. We have been asking for this information since December, and we agreed to be patient to allow the plan to be confirmed. This information should now be provided to us and the depositions should now be scheduled.

Jim

EXHIBIT E

From: Fox, Michael S.
Sent: Thursday, February 10, 2011 10:53 AM
To: Carr, James
Cc: 'Edward Neiger'; Adams, Jason; Smith, Kevin; Nadritch, Jordanna L.; 'Tom Sperry'; 'eneiger@neigerllp.com'
Subject: RE: Jennifer Convertibles - D&O Action (2.10.11)

Jim,

We truly appreciate your email. However, it makes quite a number self serving statements that I feel require a response.

The Demand for Lawsuit was received on December 2, 2010 (around 5:00 pm). In response, on December 6 (the following Monday) we sent same to the D&O Carrier putting them on notice of your demand. We have had several calls with them and you about same.

Jennifer is a public company and so by definition, there is a significant level of transparency in what has occurred. The transactions that you claim are actionable were all disclosed in public filings. The financial have been audited. You make it appear that the Debtor took actions without such disclosure. Not true. Furthermore, the statements and schedules disclose the payments made to insiders within the year prior to the filing and list the payments made to the general unsecured within 90 days preceding the filing. History is important. You claim to need the information to solicit a bid for the Liquidation Trust to retain professionals to do work on a contingency basis.

As to the recovery of alleged preferential transfers, this is not accurate as you already secured the services of ASK Financial. I am confident that they based their fees on a metric that reviewed the scope and magnitude of the payments made to the general unsecured creditors with the 90 days. As to the backup they are asking for including permission to access directly the banks used by Jennifer that seems quite extreme.

As to the purported D&O claim, there is sufficient audited financial and other information available in the public domain that should enable the Liquidation Trust to solicit and retain professionals to perform work on these type of cause of action. Where is the emergency? Notice was given to the D&O Carrier, there is no statute of limitations about to expire so while we appreciate the level of interest, there is no emergency. The Debtor intends to cooperate, but there are steps that must be taken along the way. Staying in compliance with D&O policy is one of them.

You make a lot of noise about the past 2 months. So let's review what has transpired during this time period (aside from the holidays). Confirming a plan of reorganization, negotiating new Merchant Agreement(s) with Credit Card Processors, negotiating about 70 lease modifications, dealing with Ashley and its objections, dealing with corporate governance, just to list a few of the actions. All of these will be the platform for your constituency to receive the payments due under the plan. They were all critical actions that took a lot of focus and dedication.

What you seem focused on are the demands for the D&O action and complain that this has not been made priority number 1. That is true. Making this the cause celeb now is way off base. Unbelievably you are using it as a ploy to decide whether to waive the 14 day appeal period and allow the Plan to go Effective, which has the potential to be harmful to all constituents involved. Make sure you point this out in any pleading you file and rest assured that we will if you do not. Perhaps with all the efforts you forgot that this is a reorganization, not a liquidation and jobs are at stake. Keeping the eye on the ball towards emergence is the responsible thing to do

and should not subject to blame or complaints. Timing now is even more critical with Presidents Day sales approaching. As Tom Sperry pointed out, Mengnu has made it a point to include cooperation clauses in employment and consulting agreements. Again where is the fire?

As I told you yesterday, we made another request of the Carrier to authorize the release of the responses prepared to your informal discovery. As to deposition dates for either Mr. Abada or Mr. Greenfield, I am sure that they will get back to the Liquidation Trust.

Michael

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Thursday, February 10, 2011 8:35 AM
To: 'Tom Sperry'
Cc: Fox, Michael S.; 'Edward Neiger'; Adams, Jason; Smith, Kevin
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Tom,

I just left you a vm message. Your message below has several incorrect points. Better to discuss than go back and forth via email. Bottom line, I want the discovery that was promised to us. Please call me back.

From: Tom Sperry [mailto:tsperry@nyc.rr.com]
Sent: Thursday, February 10, 2011 8:24 AM
To: Carr, James; Adams, Jason; Smith, Kevin
Cc: 'Fox, Michael S.'; 'Edward Neiger'
Subject: FW: Jennifer Convertibles - D&O Action (2.9.11)

Jim,

Until yesterday I was sympathetic to the Committee's desire to begin discovery and depositions as well as your frustrations in not being able to do so. I tried to assist you in getting the discovery off the ground within the very real limits of my knowledge of (and, frankly, interest level in) the legalities involved. At your prompting, on several occasions I encouraged the Debtor to cooperate with KDW's requests within the limits of that cooperation not being (i) unduly taxing of their time in a way that would impede completion of the Ch. 11 and (ii) overly expensive, mainly in terms of the KDW billing that would be involved. To be clear, I was encouraging of cooperation being extended and reasonably modest sums being incurred prior to the conclusion of the Ch. 11. In addition, as a direct result of my proactive discussion of the topic with the Debtor last week, again at your prompting, the Debtor prepared a disc with the responses to the first 11 discovery requests. I also offered to require Harley Greenfield to cooperate with the Litigation Trust as a condition of his consulting arranegements post bankruptcy, and I solicited, and incorporated, KDW's comments on his contract language.

Yesterday, however, you, first, decided to hold the Effective Date of the Plan hostage to your desire to get the discovery going. As you well know, speed of completion of the bankruptcy case has been of paramount importance to Mengnu all along. Moreover, you participated in a phone call Monday morning in which I pushed all parties to complete all items necessary to permit the Plan to become effective immediately upon confirmation, if so desired. So, you have decided to take direct aim at my client to get what you want.

Second, you are out of bounds in claiming that I gave you my word that the Committee would be able to pursue these actions prior to the effective date. Please recall the negotiations over the terms sheet. The Committee sought a provision that Mengnu agree that the discovery would begin during the pendency of the case. We pointed out that, as Plan Sponsor, Mengnu could make no such agreement on behalf of the Debtor, who was not a party to the terms sheet. We did agree not to oppose such efforts, which was within Mengnu's control. I have never promised you an outcome with respect to your discovery quest, either in the terms sheet or in any conversation. We promised not to stand in your way, and I indicated a general level of support, along the lines of "let me see what I can do to help", and that's exactly what you've received. Moreover, I do not recall my being a party to your December 13th conversation with Michael or any other such discussion.

In response to the Committee's initial request for funding of the Litigation Trust, Mengnu offered to have Jennifer provide a non-recourse loan to the Litigation Trust, repayable out of first dollars received back from the Trust, plus a risk premium. We understood that the Trust needed to be funded, but we also understood and explained to the Committee that Mengnu would indirectly through Jennifer be providing 90% of the funding while benefitting only 30% (or less, really) from the Trust's activities. But a loan wasn't enough for the Committee, which held out for, and got, an outright grant of $100,000 from Jennifer, meaning, effectively, 90% from Mengnu. Subsequently, you embarked upon the discovery requests. The first few times you contacted me to solicit Mengnu's support for them, you did not mention cost as a factor. You gave other reasons for needing to get the process moving, most of which I had difficulty comprehending, in all candor. After the Debtor sensitized me to the issue of Jennifer absorbing the costs during the case vs. the Trust bearing them after the Effective Date -- I will admit to having been uncharacteristically slow on the uptake on this one -- I did mention to you the need to keep costs under control prior to the Effective Date. Subsequently, your theme has become mainly that the Committee only agreed to the $100,000 limit because of the understanding that discovery would commence prior to the Effective Date; otherwise the Committee wouldn't have agreed to an insufficient amount like $100,000. If the Committee struck its deal with Mengnu on funding of the Trust in reliance on the Debtor's separate representations that it would cooperate with discovery during the pendency of the case, why did it execute a terms sheet with Mengnu on November 4th and yet not complete the other leg of the arrangements until the December 13th conversation you had with Michael? And if it was your need all along to make up for the limitations of the $100,000 expense grant by front loading some of the work and putting the costs onto the debtor and, indirectly, Mengnu, why didn't we just have an open discussion about that at the time the terms sheet was negotiated?

I would also remind the Committee that about two weeks *after* the Committee and Mengnu had executed the terms sheet between them, Mengnu agreed that Jennifer could pay on the order of $50,000, I think it was, in additional money to settle the Coombs class action lawsuit for a much smaller claim amount than previously negotiated by Michael Fox. The direct beneficiaries of that payment and the resulting claim reduction are the general unsecured creditors, while, of course, 90% of that payment is funded indirectly by Mengnu.

Mengnu's position on the discovery and deposition requests is now as follows:

1. The Committee will need to waive the 14 day appeals period if Mengnu so requests because not doing so would be for the unreasonable purpose of extracting money out of the estate because you don't like the deal the Committee cut with Mengnu in November and embodied in the Plan. That would be impermissible under Plan section 14.03. (As recently as Monday's all-hands call, KDW voiced its support for going effective immediately upon confirmation.)

2. If the Debtor objects to a 2004 hearing, Mengnu will also file an objection.

3. Mengnu hereby requests that any work performed by any professional on behalf of the Committee in connection with the causes of action to be pursued by the Litigation Trustee be specifically identified as such in any Ch. 11 fee applications.

As you know, Mengnu expects to name James Jiang to serve on the Supervisory Committee overseeing the work of the Kelly, Drye entity serving as Litigation Trustee. From what you've told me, he is likely to be the only member of the Supervisory Committee. We trust that the Trustee will be working cooperatively and transparently with him. Could you please also let us know now what the Trustee's proposed monthly fee is as it is still blank in the latest draft we have seen of Exhibit A to the Litigation Trust Agreement?

Finally, we would note also that Mengnu and the Committee have open between them substantive points on the Intercreditor Agreement. We trust that you will be seeking to engage us to finalize that document. Hopefully, those discussions can be conducted in the cooperative spirit that had been prevailing between the two parties until yesterday.

Regards,

Tom

Tom Sperry
Sperry Restructuring Advisors
New York
tsperry@nyc.rr.com
Tel. +1-646-872-7110

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Wednesday, February 09, 2011 6:16 PM
To: 'Fox, Michael S.'
Cc: Adams, Jason; Smith, Kevin; Tom Sperry; eneiger@neigerllp.com; Wolff, Allen R.
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Michael,

As you know, on December 2, 2010, over 2 months ago, we sent a demand letter to you and the debtors regarding this potential action. The letter demanded that the debtors bring suit within 10 days. The debtors decided not to do so. On December 13, 2010, I spoke with you regarding obtaining initial discovery under Bankruptcy Rule 2004, and asked if you would be amenable to proceeding on an informal basis with document requests and scheduling initial depositions of Rami and Harley. You agreed to proceed on this basis. To that end, on December 13, 2010, I sent informal discovery requests to you and requested we schedule the depositions. I informed you we were prepared to move forward to get an order authorizing the committee the right to bring this action prior to confirmation and that that we would move under Bankruptcy Rule 2004 for the initial discovery requests, but to conserve the estates' assets and to keep management focused on getting to confirmation, I agreed, based on your word, to wait. Two months have now passed and we have received no information from you and depositions have not been scheduled.

There is no question that under Rule 2004, we are entitled to this discovery, and no exculpation clause in the policy could be triggered by the production of documents in accordance with Rule 2004. If you think otherwise, please tell me why. Who, if anyone, has Harley and Rami engaged as counsel?

If you are not now prepared to cooperate, I will have no choice but to go to court with our Rule 2004 request and seek that all fees and expenses be paid by the debtors as a result of the delay. Part of the deal struck with the debtors and Mengnu, and the reason the Committee agreed to the $100,000 funding of the litigation trust, was the agreement that the committee would be entitled to obtain initial Rule 2004 discovery regarding the D&O action and that the debtors would cooperate. We have been more than patient and agreed to numerous delays because the debtors were busy working on the plan and preparing for confirmation. We have repeatedly been assured that once we got through this period, the debtors would cooperate. This is part of the deal that we struck and we expect the debtors to honor it. We agreed to forego formal discovery and consented to numerous delays based upon your word and Tom's word that we would be permitted to do conduct this discovery before the effective date.

Jim

From: Fox, Michael S. [mailto:MFox@olshanlaw.com]
Sent: Wednesday, February 09, 2011 3:34 PM
To: Carr, James
Cc: Adams, Jason; Smith, Kevin; Tom Sperry; eneiger@neigerllp.com; Wolff, Allen R.
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Jim,

When we received the Informal Discovery requests we forwarded same to the D&O carrier. We have also sent the Carrier notice that the Company has assembled documents in response and would like to turn them over to the Liquidation Trust. You have a copy of the policy. Simply turning over documents to an informal demand could trigger some exculpation clause in the policy. That is not a desired result. We are waiting (less patiently than you) for the D&O carrier to respond so we can forward the responses to you (they are currently on a CD and hard copy of the content has been printed out). If you are willing to assume this risk, let me know in writing and we will turn over same.

No one is stalling or otherwise delaying. What is being done is the exercise of some prudence to make sure that the D&O Carrier has the chance to participate in the defense. In fact, we believe that they will consent to the production of the documents and expect to engage in direct talks with the Liquidation Trust and their counsel. We thought that the Carrier would have responded to us by now.

Requiring or otherwise tying the production into the Committee's waiver or not of the 14 day period is your call.

The policy has no duty to defend, but rather has a duty to reimburse counsel for the Directors and Officers. I am sure you will hear from counsel they choose about appearing for a deposition.

Michael

Michael S. Fox

O L S H A N
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Park Avenue Tower
65 East 55th Street
New York, NY 10022
Direct: 212.451.2277
Facsimile: 212.451.2222
MFox@olshanlaw.com
www.olshanlaw.com

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Wednesday, February 09, 2011 10:58 AM
To: Fox, Michael S.; Nadritch, Jordanna L.
Cc: Adams, Jason; Smith, Kevin; 'Tom Sperry'; 'eneiger@neigerllp.com'
Subject: RE: Jennifer Convertibles - D&O Action

Michael and Jordanna,

Now that the confirmation order has been entered, the committee is not prepared to waive the 14-day period to allow the plan to become effective early unless we get the requested discovery with respect to the potential D&O action as well as the information relating to the potential preference actions. We have been asking for this information since December, and we agreed to be patient to allow the plan to be confirmed. This information should now be provided to us and the depositions should now be scheduled.

Jim

EXHIBIT F

From: Tom Sperry [tsperry@nyc.rr.com]
Sent: Thursday, February 10, 2011 8:24 AM
To: James S. Carr; Jason Adams; ksmith@kelleydrye.com
Cc: Fox, Michael S.; 'Edward Neiger'
Subject: FW: Jennifer Convertibles - D&O Action (2.9.11)

Jim,

Until yesterday I was sympathetic to the Committee's desire to begin discovery and depositions as well as your frustrations in not being able to do so. I tried to assist you in getting the discovery off the ground within the very real limits of my knowledge of (and, frankly, interest level in) the iegalities involved. At your prompting, on several occasions I encouraged the Debtor to cooperate with KDW's requests within the limits of that cooperation not being (i) unduly taxing of their time in a way that would impede completion of the Ch. 11 and (ii) overly expensive, mainly in terms of the KDW billing that would be involved. To be clear, I was encouraging of cooperation being extended and reasonably modest sums being incurred prior to the conclusion of the Ch. 11. In addition, as a direct result of my proactive discussion of the topic with the Debtor last week, again at your prompting, the Debtor prepared a disc with the responses to the first 11 discovery requests. I also offered to require Harley Greenfield to cooperate with the Litigation Trust as a condition of his consulting arranegements post bankruptcy, and I solicited, and incorporated, KDW's comments on his contract language.

Yesterday, however, you, first, decided to hold the Effective Date of the Plan hostage to your desire to get the discovery going. As you well know, speed of completion of the bankruptcy case has been of paramount importance to Mengnu all along. Moreover, you participated in a phone call Monday morning in which I pushed all parties to complete all items necessary to permit the Plan to become effective immediately upon confirmation, if so desired. So, you have decided to take direct aim at my client to get what you want.

Second, you are out of bounds in claiming that I gave you my word that the Committee would be able to pursue these actions prior to the effective date. Please recall the negotiations over the terms sheet. The Committee sought a provision that Mengnu agree that the discovery would begin during the pendency of the case. We pointed out that, as Plan Sponsor, Mengnu could make no such agreement on behalf of the Debtor, who was not a party to the terms sheet. We did agree not to oppose such efforts, which was within Mengnu's control. I have never promised you an outcome with respect to your discovery quest, either in the terms sheet or in any conversation. We promised not to stand in your way, and I indicated a general level of support, along the lines of "let me see what I can do to help", and that's exactly what you've received. Moreover, I do not recall my being a party to your December 13th conversation with Michael or any other such discussion.

In response to the Committee's initial request for funding of the Litigation Trust, Mengnu offered to have Jennifer provide a non-recourse loan to the Litigation Trust, repayable out of first dollars received back from the Trust, plus a risk premium. We understood that the Trust needed to be funded, but we also understood and explained to the Committee that Mengnu would indirectly through Jennifer be providing 90% of the funding while benefitting only 30% (or less, really) from the Trust's activities. But a loan wasn't enough for the Committee, which held out for, and got, an outright grant of $100,000 from Jennifer, meaning, effectively, 90% from Mengnu. Subsequently, you embarked upon the discovery requests. The first few times you contacted me to solicit Mengnu's support for them, you did not mention cost as a factor. You gave other reasons for needing to get the process moving, most of which I had difficulty comprehending, in all candor. After the Debtor sensitized me to the issue of Jennifer absorbing the costs during the case vs. the Trust bearing them after the Effective Date -- I will admit to having been uncharacteristically slow on the uptake on this one -- I did mention to you the need to keep costs under control prior to the Effective Date. Subsequently, your theme has become mainly that the Committee only agreed to the $100,000 limit because of the understanding that discovery would commence prior to the Effective Date; otherwise the Committee wouldn't have agreed to an insufficient amount like $100,000. If the Committee struck its deal with Mengnu on funding of the Trust in reliance on the Debtor's separate representations that it would cooperate with discovery during the pendency of the case, why did it execute a terms sheet with Mengnu on November 4th and yet not complete the other leg of the arrangements until the December 13th conversation you had with Michael? And if it was your need all along to make up for the limitations of the $100,000 expense grant by front loading some of the work and putting the costs onto the debtor and, indirectly, Mengnu, why didn't we just have an open discussion about that at the time the terms sheet was negotiated?

I would also remind the Committee that about two weeks *after* the Committee and Mengnu had executed the terms sheet between them, Mengnu agreed that Jennifer could pay on the order of $50,000, I think it was, in additional money to settle

the Coombs class action lawsuit for a much smaller claim amount than previously negotiated by Michael Fox. The direct beneficiaries of that payment and the resulting claim reduction are the general unsecured creditors, while, of course, 90% of that payment is funded indirectly by Mengnu.

Mengnu's position on the discovery and deposition requests is now as follows:

1. The Committee will need to waive the 14 day appeals period if Mengnu so requests because not doing so would be for the unreasonable purpose of extracting money out of the estate because you don't like the deal the Committee cut with Mengnu in November and embodied in the Plan. That would be impermissible under Plan section 14.03. (As recently as Monday's all-hands call, KDW voiced its support for going effective immediately upon confirmation.)

2. If the Debtor objects to a 2004 hearing, Mengnu will also file an objection.

3. Mengnu hereby requests that any work performed by any professional on behalf of the Committee in connection with the causes of action to be pursued by the Litigation Trustee be specifically identified as such in any Ch. 11 fee applications.

As you know, Mengnu expects to name James Jiang to serve on the Supervisory Committee overseeing the work of the Kelly, Drye entity serving as Litigation Trustee. From what you've told me, he is likely to be the only member of the Supervisory Committee. We trust that the Trustee will be working cooperatively and transparently with him. Could you please also let us know now what the Trustee's proposed monthly fee is as it is still blank in the latest draft we have seen of Exhibit A to the Litigation Trust Agreement?

Finally, we would note also that Mengnu and the Committee have open between them substantive points on the Intercreditor Agreement. We trust that you will be seeking to engage us to finalize that document. Hopefully, those discussions can be conducted in the cooperative spirit that had been prevailing between the two parties until yesterday.

Regards,

Tom

Tom Sperry
Sperry Restructuring Advisors
New York
tsperry@nyc.rr.com
Tel. +1-646-872-7110
Fax +1-212-724-6539

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Wednesday, February 09, 2011 6:16 PM
To: 'Fox, Michael S.'
Cc: Adams, Jason; Smith, Kevin; Tom Sperry; eneiger@neigerllp.com; Wolff, Allen R.
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Michael,

As you know, on December 2, 2010, over 2 months ago, we sent a demand letter to you and the debtors regarding this potential action. The letter demanded that the debtors bring suit within 10 days. The debtors decided not to do so. On December 13, 2010, I spoke with you regarding obtaining initial discovery under Bankruptcy Rule 2004, and asked if you would be amenable to proceeding on an informal basis with document requests and scheduling initial depositions of Rami and Harley. You agreed to proceed on this basis. To that end, on December 13, 2010, I sent informal discovery requests to you and requested we schedule the depositions. I informed you we were prepared to move forward to get an order authorizing the committee the right to bring this action prior to confirmation and that that we would move under Bankruptcy Rule 2004 for the initial discovery requests, but to conserve the estates' assets and to keep

management focused on getting to confirmation, I agreed, based on your word, to wait. Two months have now passed and we have received no information from you and depositions have not been scheduled.

There is no question that under Rule 2004, we are entitled to this discovery, and no exculpation clause in the policy could be triggered by the production of documents in accordance with Rule 2004. If you think otherwise, please tell me why. Who, if anyone, has Harley and Rami engaged as counsel?

If you are not now prepared to cooperate, I will have no choice but to go to court with our Rule 2004 request and seek that all fees and expenses be paid by the debtors as a result of the delay. Part of the deal struck with the debtors and Mengnu, and the reason the Committee agreed to the $100,000 funding of the litigation trust, was the agreement that the committee would be entitled to obtain initial Rule 2004 discovery regarding the D&O action and that the debtors would cooperate. We have been more than patient and agreed to numerous delays because the debtors were busy working on the plan and preparing for confirmation. We have repeatedly been assured that once we got through this period, the debtors would cooperate. This is part of the deal that we struck and we expect the debtors to honor it. We agreed to forego formal discovery and consented to numerous delays based upon your word and Tom's word that we would be permitted to do conduct this discovery before the effective date.

Jim

From: Fox, Michael S. [mailto:MFox@olshanlaw.com]
Sent: Wednesday, February 09, 2011 3:34 PM
To: Carr, James
Cc: Adams, Jason; Smith, Kevin; Tom Sperry; eneiger@neigerllp.com; Wolff, Allen R.
Subject: RE: Jennifer Convertibles - D&O Action (2.9.11)

Jim,

When we received the Informal Discovery requests we forwarded same to the D&O carrier. We have also sent the Carrier notice that the Company has assembled documents in response and would like to turn them over to the Liquidation Trust. You have a copy of the policy. Simply turning over documents to an informal demand could trigger some exculpation clause in the policy. That is not a desired result. We are waiting (less patiently than you) for the D&O carrier to respond so we can forward the responses to you (they are currently on a CD and hard copy of the content has been printed out). If you are willing to assume this risk, let me know in writing and we will turn over same.

No one is stalling or otherwise delaying. What is being done is the exercise of some prudence to make sure that the D&O Carrier has the chance to participate in the defense. In fact, we believe that they will consent to the production of the documents and expect to engage in direct talks with the Liquidation Trust and their counsel. We thought that the Carrier would have responded to us by now.

Requiring or otherwise tying the production into the Committee's waiver or not of the 14 day period is your call.

The policy has no duty to defend, but rather has a duty to reimburse counsel for the Directors and Officers. I am sure you will hear from counsel they choose about appearing for a deposition.

Michael

Michael S. Fox

O L S H A N
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Park Avenue Tower
65 East 55th Street
New York, NY 10022
Direct: 212.451.2277
Facsimile: 212.451.2222
MFox@olshanlaw.com
www.olshanlaw.com

From: Carr, James [mailto:JCarr@KelleyDrye.com]
Sent: Wednesday, February 09, 2011 10:58 AM
To: Fox, Michael S.; Nadritch, Jordanna L.
Cc: Adams, Jason; Smith, Kevin; 'Tom Sperry'; 'eneiger@neigerllp.com'
Subject: RE: Jennifer Convertibles - D&O Action

Michael and Jordanna,

Now that the confirmation order has been entered, the committee is not prepared to waive the 14-day period to allow the plan to become effective early unless we get the requested discovery with respect to the potential D&O action as well as the information relating to the potential preference actions. We have been asking for this information since December, and we agreed to be patient to allow the plan to be confirmed. This information should now be provided to us and the depositions should now be scheduled.

Jim

EXHIBIT G

From: Adams, Jason [mailto:JAdams@KelleyDrye.com]
Sent: Wednesday, February 23, 2011 10:14 AM
To: Nadritch, Jordanna L.; Fox, Michael S.
Cc: Carr, James <JCarr@KelleyDrye.com>; Smith, Kevin <KSmith@KelleyDrye.com>
Subject: RE: 2004 Motion

We are not willing to proceed as you request below and will be going forward with the motion on March 1.

From: Nadritch, Jordanna L. [mailto:JNadritch@olshanlaw.com]
Sent: Wednesday, February 23, 2011 9:58 AM
To: Adams, Jason
Cc: Fox, Michael S.
Subject: 2004 Motion

Jason – as you know, pursuant to section 15.12 of the Plan, on the Effective Date the Creditors' Committee is deemed terminated and dissolved. Thus, as of yesterday, the Committee lacks the capacity (post Effective Date) to pursue the 2004 motion, rendering the motion moot and improper. In that regard, we suggest that withdrawing the 2004 motion and instead properly proceeding with the Litigation Trustee as the entity pursuing discovery in connection with the D&O action. Please let us know if you are willing to proceed this way.
Thank you,
Jordanna

Jordanna Nadritch

O L S H A N
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Park Avenue Tower
65 East 55th Street
New York, NY 10022
Direct: 212.451.2209
Facsimile: 212.451.2222
JNadritch@olshanlaw.com
www.olshanlaw.com
