

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:
JENNIFER CONVERTIBLES, INC.,

Debtor.

Hearing Date: November 16, 2011
Time: 10:00 a.m.
Chapter 11
Case No.: 10-13779-alg
Jointly Administered

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**NOTICE OF MOTION FOR AN ORDER MODIFYING STAY TO PROCEED WITH A
PERSONAL INJURY ACTION AGAINST THE DEBTOR
AS TO PROCEEDS OF INSURANCE ONLY**

SIR/MADAM:

PLEASE TAKE NOTICE, that upon the annexed application of Gloria Gazzola, (“Movant”), by her attorneys Macco & Stern, LLP., of counsel to Cassisi & Cassisi, P.C., a hearing will come on to be heard before the Honorable Allan L. Gropper, the United States Bankruptcy Judge on the 16th day of November, 2011 at 10:00 a.m. in the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, for an Order modifying the automatic stay for the limited purpose of authorizing Movant to continue a personal injury action against the Debtor limited to the proceeds of any insurance in place at the time of the incident, and any further relief as this court deems just and proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed Order must be in writing and filed with the Clerk of the Court, United States Bankruptcy Court, Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, (a)(i) through the Bankruptcy Court’s electronic filing system (in accordance with General Order M-242), which may be accessed (with a password which is available by contacting the Bankruptcy Court’s technical assistance at (212) 668-2870, Monday through Friday, 8:30 a.m. to 5:00 p.m.) through the Internet at the Bankruptcy Court’s website: www.nysb.uscourts.gov using Netscape Navigator software version 3.0 or higher, and (ii) in

portable document format (PDF) using Adobe Exchange software for conversion; or (b) if a party is unable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number of the document to which the objection refers, and the file name on the outside of the envelope; or (c) if a party is unable to file electronically or use PDF format, such party shall submit the objection on a diskette in either Word, WordPerfect, or DOS text (ASC II) format. An objection filed by a party with no legal representation shall comply with section (b) or (c) as set forth in this paragraph. A hard copy of the objection, whether filed pursuant to section (a), (b), or (c), as set forth in this paragraph, shall be hand-delivered directly to the Chambers of the Honorable Allan L. Gropper, and served so as to be received by Macco & Stern, LLP, 135 Pinelawn Road, Suite 120 South, Melville, New York 11747, Attn: Michael J. Macco, Esq. no later than November 9, 2011.

PLEASE TAKE FURTHER NOTICE that opposition papers if any, must be served and filed at least three (3) business days before the return date of this hearing.

Dated: Melville, New York
October 20, 2011

MACCO & STERN, LLP
of counsel to Cassisi & Cassisi, P.C.
Attorneys for Movant, Gloria Gazzola

By: /s/ Michael J. Macco
MICHAEL J. MACCO
135 Pinelawn Road
Suite 120 South
Melville, NY 11747
(631) 549-7900

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Debtor.

Case No.: 10-13779-alg
Jointly Administered
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**APPLICATION IN SUPPORT OF MOTION TO MODIFY STAY TO PERMIT MOVANT
TO PROCEED WITH PERSONAL INJURY ACTION AGAINST THE DEBTOR UP TO
THE LIMITS OF THE DEBTOR'S INSURANCE POLICY
PROCEEDS ONLY**

TO: HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

The Application of Gloria Gazzola (“Movant”), by her attorney Macco & Stern, LLP., of counsel to Cassisi & Cassisi, P.C., sets forth as follows:

1. On or about July 22, 2009, Movant was caused to suffer personal injury in a Jennifer Convertible, Inc. (“JCI”) store located in Carle Place, New York.
2. Movant retained the services of Cassisi & Cassisi, P.C. to investigate and commence a personal injury action on behalf of Movant against JCI.
3. Cassisi & Cassisi, P.C. by Tod Groman, Esq. filed the action in the Supreme Court of the State of New York, County of Nassau, Index Number 11-4673 entitled Gloria Gazzola vs. Ashley Furniture HomeStore, et al..
4. Unknown to either the Movant or her attorneys, the Debtor, Jennifer Convertibles, Inc., filed a Chapter 11 bankruptcy proceeding on July 18, 2010.
5. On or about March 28, 2011, Tod Groman, Esq. caused to be served on Jennifer Convertibles, Inc. and its subsidiaries (collectively, “JCI”) through its attorneys at Olshan Grundman Frome Rosenzweig & Wolosky LLP, a Summons and Verified

Complaint, which together sought judgment against JCI for an unspecified injury that occurred to Gloria Gazzola in JCI's store located in Carle Place, New York.

6. The Summons and Complaint were filed and entered on account of the prepetition claim dating back to July 22, 2009.

7. At the time of the filing of the bankruptcy, Movant was not listed on any of the schedules of JCI's Voluntary Petition nor has Movant filed any claim in the matter as an unsecured creditor.

8. By virtue of the filing of this Chapter 11 bankruptcy proceeding, a possible personal injury action was stayed against the Debtor JCI.

9. Movant seeks relief from the automatic stay under Section 362 of the Bankruptcy Code for the limited purpose of continuing the investigation; securing the medical documentation; and proceeding with a personal injury action against the Debtor only to the extent of availability of any insurance policies in effect on behalf of the Debtor at the time of the injury which occurred in a JCI store.

10. It is understood that Movant will proceed against the Debtor subject to investigation and that the modification of the stay on behalf of Movant is strictly limited to recovery of proceeds of insurance in effect for Debtor for any personal injury action commenced by Movant.

11. No previous application has been made. A copy of the proposed order is annexed.

WHEREFORE, it is respectfully requested that the stay imposed under §362 of the Bankruptcy Code be modified for the limited purpose of permitting Gloria Gazzola to

continue a personal injury action against the Debtor, Jennifer Convertibles, Inc., up to the limits of any proceeds of any insurance policy in effect at the time of the occurrence of the alleged personal injury claim together with such other and further relief as this Court deems just and proper.

Dated: Melville, New York
October 20, 2011

MACCO & STERN, LLP.
of counsel to Cassisi & Cassisi, P.C.
Attorney for Movant Gloria Gazzola
135 Pinelawn Road, Suite 120 South
Melville, NY 11747
(631) 549-7900

By: /s/ Michael J. Macco
MICHAEL J. MACCO

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Debtor.

Case No.: 10-13779-alg
Jointly Administered

-----X
ORDER MODIFYING STAY TO PROCEED AGAINST INSURANCE PROCEEDS

Gloria Gazzola, by her attorneys, Macco & Stern, LLP, of counsel to Cassisi & Cassisi, P.C., having moved this court pursuant to a Notice of Motion dated October 20, 2011, for an order modifying the automatic stay under Section 362 of the Bankruptcy Code to permit Gloria Gazzola as Movant to proceed with a personal injury action and to pursue recovery against Jennifer Convertibles, Inc. (“JCI”) for the alleged personal injury which occurred in JCI’s store in Carle Place, New York, to the extent of any insurance company coverage in effect as of the alleged personal injury date without limitation, and this matter having come on for a hearing before the Court , and no opposition having been interposed to the motion, and after due deliberation by this Court, it is

ORDERED, that the automatic stay imposed against Gloria Gazzola is modified to the extent that Gloria Gazzola is authorized to proceed with a personal injury action against the debtor, JCI, and is authorized to recover proceeds only to the extent of the limits of any insurance policies in effect as of the date of the personal injury occurrence, and it is further

ORDERED, that any recovery as to the alleged personal injury as specified herein against the Debtor, JCI, is limited to proceeds of insurance policies only.

Dated: New York, New York

Hon. Allan L. Gropper

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Case No.: 10-13779-alg

Debtor.

AFFIDAVIT OF SERVICE

-----X
STATE OF NEW YORK)

ss:)

COUNTY OF SUFFOLK)

Lori Lamorelle, being duly sworn, deposes and says that deponent is not a party to the above-captioned action, is over the age of 18 years and resides in Port Jefferson, New York.

On October 24, 2011, Deponent served the within **Notice of Motion for an order modifying stay to proceed with a personal injury action against the Debtor as to proceeds of insurance only, Application and Proposed Order** upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of the same, enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

Nazar Khodorovsky
Attorney for United States Trustee
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BMC Group, Inc. Claims Agent
Claims and Noticing Agent
444 N Nash Street
El Segundo, CA 90245-2822

Jennifer Convertibles, Inc., Debtor
417 Croosways Park Drive
Woodbury, NY 11797

David Y. Wolnerman, Esq., Attorney for Debtor
Olshan Grundman Frome Rosenzweig & Wolosky, LLP
65 East 55th Street
New York, NY 10022

Jordanna L. Nadritch, Esq., Attorney for Debtor
Olshan Grundman Frome Rosenzweig & Wolosky, LLP
65 East 55th Street
New York, NY 10022

Michael S. Fox, Esq., Attorney for Debtor
Olshan Grundman Frome Rosenzweig
& Wolosky, LLP
Park Avenue Tower
65 E. 55th Street
New York, NY 10022

Jayne M. Bethel, Esq., Attorney for Debtor
Olshan Grundman Frome Rosenzweig
& Wolosky, LLP
Park Avenue Tower
65 E. 55th Street
New York, NY 10022

Jennifer Convertibles, Inc., Debtor
417 Croosways Park Drive
Woodbury, NY 11797

Tod Groman, Esq.
Personal Injury Attorney for Movant, Gloria Gazzola
Cassisi & Cassisi, P.C.
114 Old Country Rd, Suite 440
Mineola, NY 11501

/s/: *Lori Lamorelle*
LORI LAMORELLE

Sworn to me before this
24th day of October, 2011

/s/: *Maureen Miller*
MAUREEN MILLER
Notary Public, State of New York
No. 01MI6152755
Qualified in Suffolk County
Commission Expires September 18, 2014