

ARCHER & GREINER
A Professional Corporation
Allen A. Etish, Esquire
One Centennial Square
P.O. Box 3000
Haddonfield, NJ 08033-0968
Tel.: (856) 795-2121
Fac.: (856) 795-0574

Hearing Date: February 28, 2012 at 10:00 a.m.
Objection Deadline: February 22, 2012 at 4:00 p.m.

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
JENNIFER CONVERTIBLES, INC., et. al.	Case No. 10-13779 (ALG)
Debtors.	(Jointly Administered)

EXHIBIT "A"
CERTIFICATION IN OBJECTION TO TRUST ADMINISTRATOR'S
THIRD OMNIBUS OBJECTION TO CERTAIN CLAIMS

I, SUZANNA ELLEFSEN in objection to the Trust Administrator's Third Omnibus Objection hereby certify and attest to the following statements:

1. I am the Supervising Attorney for Pennsylvania Manufacturer's Association Insurance Company (PMAIC) and have reviewed the Trust Administrator's Motion seeking to expunge the claim of PMAIC.
2. I am in charge of the administration of claims with various Bankruptcy Courts throughout the United States and have carefully reviewed the facts underlying the policies issued and the funds outstanding on this account.
3. Specifically, the Court should be aware that rather than the claim having been satisfied, assumed and/or paid in full, in fact, the debtor in possession has only paid one of the two components of the proof of claim and as a result of claim loss development over time, the

unpaid component has actually increased the monies due PMAIC which will be demonstrated below. The balance properly due to PMAIC as of the date of this objection is \$298,752.00.

4. PMAIC would be willing to agree to have a portion of its original claim specifically \$77,447.00 marked as "satisfied" while allowing PMAIC an amended proof of claim in the new balance of \$298,752.00.

5. PMAIC has provided Workers Compensation and Employers' Liability Insurance for six years to Jennifer Convertibles from February 2005 through February 2011. When PMAIC's Proof of Claim #255 for \$338,810.00 was filed on or about 10/22/10, it had two main components:

(A) *Ultimate* Losses and Premiums then calculated as \$261,363.00 which was projected to be due PMAIC on future annual adjustments to the five loss sensitive Workers' Compensation Insurance Policies/ Retro Policies but which could not be billed to Jennifer Convertibles due to its 2010 Bankruptcy filing; and

(B) *Actual* unpaid Retrospective Premium Adjustments which were booked as of 10/12/2010 on the five loss sensitive Workers' Compensation Insurance Policies. The net total due PMA in *actual* premium adjustments was \$77,447.00 (\$3,460.00 Cr + \$30,331.00 Cr + \$9.00 Cr - \$111,247.00 Due PMAIC.

6. Only this second component, the *actual* retrospective premium adjustments calculated as of October 2010 to be \$77,447.00 has been "satisfied" and paid in full. The larger balance then projected to be \$261,363.00 for the Ultimate Losses and Premiums was *never* paid by Jennifer Convertibles to PMAIC and remains outstanding.

Indeed, PMA will demonstrate that this outstanding balance has now increased more than \$37,000 to \$298,752.00 based upon just 14 months of actual loss development on open Workers Compensation claims insured under the loss sensitive policies (specifically the 2007 and the 2009 policies). (emphasis added) It is upon these grounds that PMAIC objects to the Trust Administrator's Omnibus Objection and asks that said Objection to Claim #255 be denied.

7. Beginning on February 3, 2005 Jennifer Convertibles requested and Pennsylvania Manufacturers Association Insurance Company (PMAIC) issued an annual Workers Compensation and Employers' Liability Insurance Policy which was Loss Sensitive in nature and contained a Retrospective Rating Plan with a Large Risk Alternative Rating. ("Retro Policy"). A Retro Policy is where the final premium for the Workers Compensation risk is subject to multiple adjustments, using agreed upon Minimum and Maximum Premium limits and based upon the loss experience of that Insured for claims which occurred during that policy year. Simply put, the overall premium cost for a loss sensitive insurance policy is adjusted at the end of the policy year and is based upon the Insured's' incurred losses associated with claims filed by Jennifer Convertible's injured workers for injuries occurring during that policy period. An initial estimated premium is charged during the policy year and six months after the policy ends an actual calculation is made based upon the incurred losses booked as of that time. An annual adjustment occurs thereafter until all the claims for that policy year close/resolve or the Maximum Premium set for that Policy has been reached.

8. For large Commercial Accounts like Jennifer Convertibles, there are several benefits of a having a Retro Policy which include: 1) giving a safety-conscious Insured an opportunity to 'control' their losses and reduce their insurance costs through risk management programs and the like; 2) permitting the Insured to benefit from the time value of money through

deferred premium payments, rather than pay a much larger Fixed Cost premium up front; and 3) overcoming inherent deficiencies of an imposed annual experience rating by permitting the Insured to immediately take advantage of their improving loss experience, among others.

9. This same type of Loss Sensitive Workers Compensation Insurance Policy was issued to Jennifer Convertibles for 4 subsequent years. To wit, the five loss sensitive policies relevant to this discussion are designated as follows:

Policy 41-79-81-8 200500 for Policy Period 2/3/2005-2/3/2006;
Policy 41-79-81-8 200600 for Policy Period 2/3/2006-2/3/2007;
Policy 41-79-81-8 200700 for Policy Period 2/3/2007-2/3/2008;
Policy 41-79-81-8 200800 for Policy Period 2/3/2008-2/3/2009; and
Policy 41-79-81-8 200900 for Policy Period 2/3/2009-2/3/2010

Thereafter, in 2010 at the request of Jennifer Convertibles, PMA issued a Workers Compensation and Employers Liability Insurance Policy as a "Fixed Cost" or "Guaranteed Cost" Policy for Policy Period 2/3/2010- 2/3/2011 so the 2010 Policy does not fit into these discussions.

10. To put this all in perspective, the last Retro Adjustments which PMAIC was able to complete on the Jennifer Convertible insurance policies were adjustments calculated using the actual loss history information for each loss sensitive policy gathered as of August 2010. These amounts are reflected in component two of PMAIC's Proof of Claim—the net \$77,447.00. However, workers compensation claims are still open today (for injuries arising under the 2007 and 2009 policies), those injured workers are still receiving medical treatment and some are still receiving indemnity payments for being out of work.


When PMAIC had to file its Proof of Claim, PMAIC's actuarial department used actual incurred loss information gathered as of 10/1/2010 in order to evaluate and project the Ultimate

Losses and Premiums which would have been due PMAIC if PMAIC had been allowed to continue to calculate and bill for subsequent retrospective adjustments on these loss sensitive policies beyond those adjustments billed and reflected in component two of the Proof of Claim. This actuarial projection was attached to the Proof of Claim as Exhibit A and is also attached here as "Exhibit B".

11. But because Jennifer Convertibles filed for Chapter 11 Bankruptcy Protection in 2010, PMAIC was precluded from further billing Jennifer Convertibles for subsequent Retro Adjustment billings on Policies which had not yet hit Maximum Premium, as provided for under the contracts of insurance. Specifically these unbilled Retros involve claim losses on the 2007 and 2009 policies. Even though PMAIC is obligated to pay medical providers, loss of work wages and other costs and expenses associated with the open workers compensation claims, PMAIC has not been reimbursed for this exposure. This 14 month period of loss development is reflected in a new actuarial projection attached here as "**Exhibit C – 2012**". This new projection shows that the Overall Outstanding Premium has not been satisfied, has not been paid but in fact has increased from \$261,363 in October 2010 to \$298,752 in February 2012, due to claim loss development.

12. Specifically, these 14 months of loss development (since the October 2010 numbers shown in Exhibit B) reflect an increase of \$37,389 in ultimate premiums which will be required to support the open claims until either the Maximum premium of the 2007 policy or the Aggregate attachment point of the 2009 policy is reached. Again, under the loss sensitive contracts of insurance between the parties, Jennifer Convertibles received the upfront benefit of a considerable premium discount because Jennifer Convertibles elected to have five Retro Policies and agreed to pay Retro Adjustments on open claims into the future for as long as those claims

remained open. Jennifer Convertibles' Bankruptcy Petition has effectively cut off its promise to pay future payments on those open claims and PMAIC should, at the very least, be allowed to have its Proof of Claim recalculated to \$298,752. This new Proof of Claim should be fully allowed in order for PMAIC to receive a compromised bankruptcy distribution on same.



SUZANNA ELLEFSEN
Supervising Attorney

Dated: February 21, 2012