

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

In re  Jennifer Convertibles, Inc., et al. <sup>1</sup> ,  Debtors.	Bk. No. 10-13779-ALG  Chapter 11  Honorable Allan L. Gropper
KDW Restructuring & Liquidation Services, LLC, Litigation Trustee for the Jennifer Convertibles Litigation Trust,  Plaintiff,	Adv. No. <u>Refer to Exhibit "A"</u>
vs.  Defendants Listed on <u>Exhibit "A,"</u>  Defendant.	

**ORDER ESTABLISHING STREAMLINED PROCEDURES GOVERNING  
ADVERSARY PROCEEDINGS BROUGHT BY KDW RESTRUCTURING &  
LIQUIDATION SERVICES, LLC, LITIGATION TRUSTEE FOR THE JENNIFER  
COVERTIBLES LITIGATION TRUST PURSUANT TO SECTIONS 502, 547, 548 AND  
550 OF THE BANKRUPTCY CODE**

Upon the procedures motion (the "Procedures Motion")<sup>2</sup> dated April 10, 2012, of KDW Restructuring & Liquidation Services, LLC, the duly appointed litigation trustee for the Jennifer Convertibles Litigation Trust (the "Plaintiff" or "Litigation Trustee"), by and through its counsel, ASK Financial LLP ("ASK"), for entry of a procedures order (the "Procedures Order") pursuant to sections 102(1) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 7016, 7026 and 9006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each 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).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Procedures Motion.

Rules”), and General Order M-390 of the United States Bankruptcy Court for the Southern District of New York, establishing streamlined procedures governing all adversary proceedings brought by Plaintiff under sections 502, 547, 548 and 550 of the Bankruptcy Code, which are identified in Exhibit “A” annexed to the Procedures Motion (collectively, the “Avoidance Actions”); and this Court having jurisdiction to consider and determine the Procedures Motion as a core proceeding in accordance with 28 U.S.C. §§ 157, 1331 and 1334; and any objections raised heard at a hearing at which all parties were permitted to present their arguments and contentions; and it appearing that the relief requested by the Procedures Motion is necessary and in the best interests of the parties; and due notice of the Procedures Motion having been provided; and it appearing that no other or further notice of the Procedures Motion need be provided; and sufficient cause appearing therefor, it is hereby:

**ORDERED**, that the Procedures Motion be, and hereby is, granted in all respects; and it is further

**ORDERED**, the procedures governing all parties to the Avoidance Actions are as follows:

**A. Effectiveness of the Procedures Order**

1. This Procedures Order approving the Procedures Motion shall apply to all defendants in the Avoidance Actions.<sup>3</sup>

**B. Extensions to Answer or File Other Responsive Pleading to the Complaint**

2. The time to file an answer or other responsive pleading to a complaint filed in an Avoidance Claim shall be extended by 60 days such that an answer or other responsive pleading is due within 90 days after the issuance of the summons rather than 30 days after the issuance of the summons.

**C. Waiver of Requirement to Conduct Scheduling Conference**

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<sup>3</sup> This Procedures Order pertains only to the Avoidance Actions identified in Exhibit “A” annexed to the Procedures Motion.

3. Federal Rule of Civil Procedure 26(f), made applicable herein pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), is hereby waived and is not applicable to the Avoidance Actions. Thus, the parties to the Avoidance Actions shall not be required to submit a written report as may otherwise be required under Federal Rule of Civil Procedure 26(f).

**D. Discovery and Mediation Schedule**

4. In accordance with Bankruptcy Rule 7026(a)(1), the disclosures required under such Rule (the “Initial Disclosures”) shall be made by the later of 30 days after: (1) the date an answer to a complaint is filed in an Avoidance Claim or (2) the Procedures Order is entered on the docket of this Court.
5. The parties to the Avoidance Actions shall have through and including December 1, 2012 to complete non-expert fact discovery, including depositions of fact witnesses.
6. All written interrogatories, document requests and requests for admission, if any, may be served upon the adverse party any time after the Procedures Order is entered on the docket of this Court. All written interrogatories, document requests and requests for admission, if any, must be served upon the adverse party no later than October 1, 2012.
7. The standard provisions of Federal Rule of Civil Procedure 33, made applicable herein pursuant to Bankruptcy Rule 7033, shall apply to the Avoidance Actions. Responses to interrogatories are due 60 days after service.
8. The standard provisions of Federal Rule of Civil Procedure 34, made applicable herein pursuant to Bankruptcy Rule 7034, shall apply to the Avoidance Actions. Document production and responses to document requests are due 60 days after service.
9. The standard provisions of Federal Rule of Civil Procedure 36, made applicable herein pursuant to Bankruptcy Rule 7036, shall apply to the Avoidance Actions. Responses to requests for admission are due 60 days after service.
10. Any open Avoidance Actions that have not been resolved and/or settled by October 1, 2012 (the “Remaining Avoidance Actions”), shall be referred to voluntary mediation. Upon mutual agreement of the parties to any Avoidance Claim, mediation may be conducted prior to October 1, 2012.
11. Between October 1, 2012 and October 14, 2012, defendants in the Remaining Avoidance Actions shall may choose a mediator from the list of proposed mediators (each a “Mediator,” collectively, the “Mediators”) qualified to handle these types of Avoidance Actions (the “Mediator List”), which list shall be ~~distribution~~ distributed by the Trustee to the defendants on or before September 15, 2012. Concurrently, defendants in the Remaining Avoidance Actions shall

notify Plaintiff's counsel of the defendant's choice of Mediator by contacting Plaintiff's counsel's paralegal, Laurie N. Porten, in writing, via email at lporten@askfinancial.com or via letter correspondence addressed to ASK Financial LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, with copy to Plaintiff's counsel, Kara E. Casteel, Esq. at kcasteel@askfinancial.com. If a defendant in a Remaining Avoidance Claim does not timely choose a Mediator from the Mediator List and notify Plaintiff's counsel of the same, Plaintiff ~~will~~ may propose to assign such Remaining Avoidance Claim to one of the Mediators from the Mediator List and will notify said defendant of such assignment.

12. On October 15, 2012, Plaintiff, working with the Mediators, will commence scheduling mediations. Each Mediator will provide to Plaintiff the dates on which the Mediator is available for mediation and the parties shall cooperate with the Mediators and each other regarding the scheduling of mediations.
13. Plaintiff will give at least 21 days written notice of the first date, time and place of the mediation in each Remaining Avoidance Claim (the "Mediation Notice"), which notice shall be filed on the docket of such proceeding. Defendants may decline to participate in a mediation.
14. Within 5 days after the conclusion of the mediation, the Mediator shall file a report (the "Mediator's Report") in the Remaining Avoidance Claim, which shall be limited to stating only whether the Remaining Avoidance Claim settled or did not settle.
15. All mediations of the Remaining Avoidance Actions must be concluded by May 1, 2013.
16. Should mediation fail to resolve a Remaining Avoidance Claim, Federal Rule of Civil Procedure 26(a)(2), made applicable herein pursuant to Bankruptcy Rule 7026, disclosures and reports of the parties' case-in-chief experts, if any, shall be made to the adverse party within 30 days after the Mediator's Report is filed.
17. Federal Rule of Civil Procedure 26(a)(2), made applicable herein pursuant to Bankruptcy Rule 7026, disclosures and reports of the parties' rebuttal experts, if any, shall be made to the adverse party within 60 days after the Mediator's Report is filed.
18. All expert discovery, including expert witness depositions, shall be concluded within 90 days after the Mediator's Report is filed.
19. All remaining fact and expert discovery must be completed, and discovery will close, the earlier of 120 days after the Mediator's Report is filed or on September 1, 2013.
20. The standard provisions of Federal Rule of Civil Procedure 26(e), made applicable herein pursuant to Bankruptcy Rule 7026, shall apply to the Avoidance Actions with respect to supplementation of discovery responses.

**E. Mediation Procedures and Requirements**

21. Because the Remaining Avoidance Actions are proceedings before this Court, New York is ~~the~~ a proper forum for mediation but the mediation may take place in any other convenient venue. The Court's mediation order, M-390, including the confidentiality provisions, shall govern the mediations, except as otherwise set forth herein.
22. The parties in each Remaining Avoidance Claim will participate in the mediation, as scheduled and presided over by the chosen Mediator, in good faith and with a view toward reaching a consensual resolution. At least one counsel for each party and a representative of each party having full settlement authority shall attend the mediation in person except that, a Mediator, in his or her discretion, may allow a party representative to appear telephonically.
23. The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations, and the rules of evidence will not apply. Each Mediator may implement additional procedures which are reasonable and practical under the circumstances.
24. The Mediator, in the Mediation Notice (by language provided to Plaintiff by the Mediator) or in a separate notice that need not be filed, may require the parties to provide to the Mediator any relevant papers and exhibits. ~~a statement of position, and a settlement proposal~~. In the Mediator's discretion, upon notice (which need not be filed), the Mediator may adjourn a mediation or move a mediation to a different location. The Mediator may also continue a mediation that has been commenced if the Mediator determines that a continuation is in the best interest of the parties.
- ~~25. Upon notice and a hearing, a party's failure to appear at the mediation or otherwise comply with the Procedures Order with respect to mediation, may result in a default judgment being obtained against the defendant or dismissal of the action. The Mediator shall promptly file with the Court a notice when any party fails to comply with the mediation provisions set forth in the Procedures Order.~~
26. The fees and reasonable expenses of the Mediator shall be shared equally by the parties on a per case basis, except where the Plaintiff agrees otherwise. The Mediator's fees shall be fixed as follows:
  - (a) cases with a claim amount (as reflected in the complaint) of less than \$250,000: \$1,500 per party, per case;
  - (b) cases with a claim amount (as reflected in the complaint) equal to or greater than \$250,000 and less than \$1,000,000: \$2,000 per party, per case; and

- (c) cases with a claim amount (as reflected in the complaint) equal to or greater than \$1,000,000: \$3,000 per party, per case.
27. If the parties mutually request that a Mediator located in New York travel from New York City to some other location for mediation and the Mediator agrees to the location, the Mediator's fee shall increase by \$500 per party, per case.
28. The full fees and expenses of the Mediator shall be paid by any party that cancels or fails to appear at mediation unless the party notifies the Mediator of the cancellation by facsimile or email no less than 5 business days prior to the scheduled mediation date (not counting the day scheduled for mediation) or unless a party demonstrates good cause for failure to timely cancel or attend mediation. For example, if mediation is to be held on a Friday, a party must notify the Mediator by the Friday before the scheduled mediation of the cancellation.
29. Each party shall pay its portion of the Mediator's fee at least 5 business days before the commencement of mediation. The parties shall each pay half (50%) of the Mediator's reasonable expenses, per case, within 14 days after billing by the Mediator; provided, however, if a defendant fails to timely pay a bill for a Mediator's fees or expenses, Plaintiff shall pay the bill and may recover such sum as part of a default judgment. The parties and the Mediator may enter into an agreement for the Mediator to continue his or her efforts after the conclusion of the formal mediation session, on such terms as may be agreed upon among the Mediator and all parties.
- ~~30. Without the prior consent of both parties, no Mediator shall mediate a case in which he/she or his/her law firm represents a party. — If a the Mediator's law firm represents any defendant in the Avoidance Actions, then: (a) the Mediator shall not personally participate in the representation of that defendant; (b) the law firm shall notate the file to indicate that the Mediator shall have no access to it; and (c) any discussions concerning the particular Avoidance Claim by employees of the law firm shall exclude the Mediator. — The Mediator's participation in mediation pursuant to the Procedures Order shall not create a conflict of interest with respect to the representation of such defendants by the Mediator's law firm.~~
31. The Mediator shall not be called as a witness by any party except as set forth in this paragraph. No party shall attempt to compel the testimony of, or compel the production of documents from, the Mediators or the agents, partners or employees of their respective law firms. Neither the Mediators nor their respective agents, partners, law firms or employees (a) are necessary parties in any proceeding relating to the mediation or the subject matter of the mediation, nor (b) shall be liable to any party for any act or omission in connection with any mediation conducted under the Procedures Order. Any documents provided to the Mediator by the parties shall be destroyed 30 days after the filing of the Mediator's Report, unless the Mediator is otherwise ordered by the Court. ~~However, a Mediator may be called as witness by any party and may be compelled to testify and/or answer discovery on a limited basis in proceedings~~

~~where it is alleged that a party failed to comply with mediation as is required in the foregoing paragraphs of this Procedures Order.~~

32. All proceedings and writing incident to the mediation shall be privileged and confidential, and shall not be reported or placed in evidence.

**F. Avoidance Actions Omnibus Hearings**

33. After the initial pretrial held on May 23, 2012, all matters concerning any Avoidance Actions shall be heard only at an omnibus hearing before the Honorable Allan L. Gropper (collectively, the "Avoidance Actions Omnibus Hearings"), at which there may be status conferences, final pre-trial conferences and hearings on motions, if any. The first Avoidance Actions Omnibus Hearing shall be held on November 13, 2012 at 10:00 a.m. Thereafter, Avoidance Actions Omnibus Hearings shall be scheduled at the convenience of the Court.
34. Defendants are not required to appear at any Avoidance Actions Omnibus Hearings unless: (a) a motion pertaining to the defendant's Avoidance Claim is calendared to be considered at the Avoidance Actions Omnibus Hearing; or (b) the Court has directed the defendant to appear and Plaintiff has provided 5 days prior written notice by email, facsimile transmission or overnight courier to the defendant or its counsel of its need to appear at an Avoidance Actions Omnibus Hearing. ~~To the extent a defendant in any Avoidance Claim wishes to appear at an Avoidance Actions Omnibus Hearing, the defendant or its counsel must notify Plaintiff's counsel of the same, in writing, 5 days prior to said hearing so that Plaintiff may properly prepare to address any issues or concerns at the Avoidance Actions Omnibus Hearing or in advance thereof.~~
35. All motions, pleadings, requests for relief or other materials that purport to set a hearing on a date or time other than an Avoidance Actions Omnibus Hearing ~~shall automatically, and without Court order~~ may, on notice, be scheduled to be heard at the next Avoidance Actions Omnibus Hearing that is at least 30 calendar days after such motion, pleading, request for relief or other materials are filed and served.
36. Plaintiff shall file a report one week prior to each Avoidance Actions Omnibus Hearing setting out the status of each of the Avoidance Actions and shall contemporaneously deliver a copy of the report to the Court's chambers.
37. If, after all discovery has been completed in an Avoidance Claim, mediation has concluded but was not successful, the parties to the applicable Avoidance Claim shall so inform the Court at the next scheduled Avoidance Actions Omnibus Hearing. At such time, the Court will address additional issues arising subsequent to the Procedures Order, set additional deadlines, if necessary, establish a due date by which the parties must file a joint pretrial order, and schedule a trial on the Avoidance Claim that is convenient to the Court's calendar.

**G. Miscellaneous**

38. The Procedures Order shall control with respect to the Avoidance Actions to the extent of any conflict with other applicable rules and orders. In all other circumstances, the Bankruptcy Rules and/or General Administrative Order M-390 of the Court dated December 1, 2009 shall govern the Avoidance Actions (as applicable).
39. The deadlines contained in the Procedures Order may be extended by the Court upon written motion and for good cause shown or consent of the parties pursuant to stipulation, which stipulation need not be filed with the Court; and it is further

**ORDERED**, that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: May 29, 2012

**s/Allan L. Gropper**  
HONORABLE ALLAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE