

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF <u>New Jersey</u>		PROOF OF CLAIM
Name of Debtor KMART CORPORATION		Case Number 02-02474
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): RHODA TURNER		Judge's Initials: _____ Chapter: _____ Please include an original and 2 copies if you would like an acknowledgment of the filing of your claim.
Name and address where notices should be sent: Richard M. Pescatore, Esq. 1055 East Landis Avenue Vineland, NJ 08360-4041 Telephone number: (856) 507-1000		
Account or other number by which creditor identifies debtor: See above address		Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
2. Date debt was incurred: February 11, 2000		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>500,000.00</u>		
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$500,000.00 Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____) *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		3-20-02 787 U.S. BANKRUPTCY COURT DISTRICT OF NEW JERSEY FILED MAR 20 2002 KENNETH B. GARDNER, CLERK MAILROOM - LL
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 3-11-02	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Rhoda Turner / Rhoda Turner	

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

DEFINITIONS

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien.

In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

RICHARD M. PESCATORE, PC
1055 East Landis Avenue
Vineland, New Jersey 08360
(856)507-1000
Attorney for Plaintiff, Rhoda Turner

Plaintiff(s) : SUPERIOR COURT OF NEW JERSEY
RHODA TURNER, : LAW DIVISION
 : CUMBERLAND COUNTY
vs. : DOCKET NO.:

Defendant(s) : Civil Action
K-MART CORPORATION, : **L 886-01**
DIRECT TO RETAIL FITNESS, :
RETAIL DISTRIBUTORS/DIRECT :

TO RETAIL LIMITED PARTNERSHIP, : **COMPLAINT**
HSN DIRECT INTERNATIONAL Ltd, : **606 Prod. Liability**
JOHN DOE 1-10, Designers, :
Manufactures and/or Distributors. : **AUG 8 2001**

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

Plaintiff, RHODA TURNER, residing in the City of Vineland, County of Cumberland and State of New Jersey, by way of Complaint against the defendants says:

FIRST COUNT

1. At all times hereinafter mentioned, the defendant, K-MART CORPORATION, was a corporation doing business in the State of New Jersey and operating a retail department store in the City of Vineland, County of Cumberland and State of New Jersey and selling/distributing fitness products including the Kathy Smith Air-Tech Glider (hereinafter referred to as the "product") to the general public.

2. At all times hereinafter mentioned, the defendants, DIRECT TO RETAIL FITNESS, RETAIL DISTRIBUTORS/DIRECT TO RETAIL LIMITED PARTNERSHIP, HSN DIRECT INTERNATIONAL Ltd and/or JOHN DOE 1-10, were foreign corporations engaged

in the business of distributing the product described above, in particular the KATHY SMITH AIR-TECH GLIDER, UPC code number 0-19854-85080-8 manufactured in Taiwan, to retail stores, including the defendant – K-MART for sale/distribution to the general public and placement into the stream of commerce.

3. At all times hereinafter mentioned, JOHN DOE 1-20 are manufactures and designers and/or distributors of the Kathy Smith Air-Tech Glider for sale/distribution to members of the public, including the plaintiff, and are fictitious names/designations intended to identify the designers, manufacturers and/or distributors of the Air-Tech Glider which caused and/or contributed to the injuries sustained by the plaintiff.

4. At all times hereinafter mentioned, the plaintiff, RHODA TURNER, was a retail customer of the defendant – K-MART and the purchaser of the Kathy Smith Air-Tech Glider.

5. On or about February 11, 2000, following the plaintiff's purchase of the aforementioned product from the defendant, K-MART, the plaintiff sustained significant injuries while partially assembling the product.

6. The Air-Tech Glider product, designed, manufactured and/or distributed by the defendants, was unreasonably dangerous and defective and failed to contain adequate warnings and/or instructions for foreseeable users of the product.

7. As a direct and proximate result of the defective and dangerous condition of the product and the defendant's violation of the New Jersey Products Liability Act, the plaintiff sustained significant injuries of a permanent nature requiring expenditure of great sums of money for the care and treatment of same.

WHEREFORE, the plaintiff, RHODA TURNER , demands judgment against the defendants, DIRECT TO RETAIL FITNESS, RETAIL DISTRIBUTORS/DIRECT TO RETAIL LIMITED PARTNERSHIP, HSN DIRECT INTERNATIONAL Ltd and/or JOHN DOE 1-10, sufficient to compensate her for her losses together with costs of suit and attorney fees.

SECOND COUNT

1. Plaintiff repeats each and every allegation of the First Count and incorporates the same herein by reference thereto.
2. The defendant – K-MART CORPORATION, was negligent and/or otherwise failed to use due care in the inspection and sale process associated with the Air-Tech Glider product in question which was in an open, obvious and dangerous condition.
3. As a direct and proximate result of the negligence of the defendant – K-MART, the plaintiff sustained significant permanent injuries requiring the expenditure of great sums of money for the care and treatment of same.

THIRD COUNT

1. Plaintiff repeats each and every allegation of the First and Second Counts and incorporates the same herein by reference thereto.
2. The defendant – K-Mart, breached its implied and expressed warranties in connection with the Air-Tech Glider product in that it was not fit for the purpose for which it was designed and intended and not safe and suitable to be used in the manner and method intended.
3. As a direct and proximate result of the breach of warranty by the defendant – K-Mart and the defendants, the plaintiff sustained significant injuries of a permanent and

temporary nature requiring expenditures of great sums of money for the care and treatment of same.

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RICHARD M. PESCATORE, ESQUIRE, hereby certify:

The matter in controversy is not the subject of any other action pending in any other Court or arbitration proceeding and no such action or proceeding is contemplated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

RICHARD M. PESCATORE
A Professional Corporation

/S/ RICHARD M. PESCATORE

Date: August 7, 2001

RICHARD M. PESCATORE
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

The plaintiff demands a Trial by jury on all issues in accord with the Rules of this Court.

**NOTICE PURSUANT TO RULE 4:25-1(4)
AND RULE 4:25-4**

TAKE NOTICE that Richard M. Pescatore, Esquire, attorney for the plaintiffs, is hereby designated trial counsel pursuant to the provisions of the above-stated Rules.

RICHARD M. PESCATORE
A Professional Corporation

/S/ RICHARD M. PESCATORE

Date: August 7, 2001

RICHARD M. PESCATORE
Attorney for Plaintiffs

DEMAND FOR ANSWERS TO UNIFORM INTERROGATORIES

PLEASE TAKE NOTICE that Richard M. Pescatore, Esquire, attorney for the plaintiff, demands of the defendants answers to Uniform Interrogatories, Form C and Form C(2), under oath, within the time prescribed by law.

RICHARD M. PESCATORE
A Professional Corporation

/S/ RICHARD M. PESCATORE

Date: August 7, 2001

RICHARD M. PESCATORE
Attorney for Plaintiffs