

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:	)	Case No. 6:07-bk-00761-KSJ
	)	Chapter 7
LOUIS J. PEARLMAN, <i>et al.</i>,	)	Jointly Administered with
	)	6:07-bk-00762-KSJ
Debtors.	)	6:07-bk-00832-KSJ
	)	6:07-bk-01504-KSJ
	)	6:07-bk-01505-KSJ
	)	6:07-bk-01779-KSJ
	)	6:07-bk-01856-KSJ
	)	6:07-bk-02431-KSJ
	)	6:07-bk-02432-KSJ
	)	6:07-bk-04160-KSJ
_____	)	6:07-bk-04161-KSJ

In re:)	
)	
F. F. STATION, LLC,	)	Case No. 6:07-bk-00575-KSJ
	)	Chapter 11
)	
Debtor.)	
)	
_____)	

ORDER ESTABLISHING MEDIATION PROCEDURES

This case came on for hearing March 17, 2011, to consider the Motion to Establish Approved Mediation Management Procedures for Avoidance Actions (Doc No. 3410), filed by the Chapter 11 Trustee, Soneet R. Kapila, and related objections (Doc. Nos. 3424, 3428, 3431, 3433, and 3434). After reviewing the pleadings and considering the position of interested parties, it is:

ORDERED:

1. **Motion Granted.** The Motion to Establish Approved Mediation Management Procedures for Avoidance Actions is partially granted.
2. **Avoidance Actions Defined.** "Avoidance Actions" include every pending adversary proceeding filed by the Chapter 11 Trustee, Soneet R. Kapila, against every defendant in these Chapter 11 cases.

3. **Mediation Ordered in All Avoidance Actions.** Between **April 29 and September 9, 2011**, every defendant in every pending Avoidance Action (except for the Bank Defendants¹) is directed to participate in a mediation session with the Chapter 11 Trustee. Bank Defendants are *encouraged* but are not directed to participate in this mediation process. A typical mediation session will last approximately 3 hours.

4. **Mediators.** The Court appoints **Karen Specie** and **Jeff Davis** as the sole, co-mediators (the “Assigned Mediators”). The Assigned Mediators will decide who should handle any particular mediation session. If any party would prefer either Ms. Specie *or* Mr. Davis, they must file a Notice of Mediator Preference with the Court **no later than April 29, 2011**.

5. **Stay.** All pending matters in the Avoidance Actions, including discovery requests, outstanding motions, etc., shall be stayed **until September 9, 2011**, unless otherwise ordered by the Court.

¹ Bank Defendants include all defendants in these adversary proceedings: 6-09-AP-67, 6:09-AP-54, 6:09-AP-534, 6:09-AP-750, 6:09-AP-106, 6:09-AP-52, 6:09-AP-715, 6:09-AP-71, 6:09-AP-68, 6:09-AP-864, 6:09-AP-50, 6:09-AP-474, 6:09-AP-716, and 6:09-AP-51.

6. **Scheduling Mediations.** The trustee shall oversee the scheduling of all mediations. By **April 15, 2011**, the trustee will post a link to an online scheduling calendar on his website—www.pearlmantranscon.com—at which each defendant in an Avoidance Action may schedule a mediation session (the “Online Mediation Calendar”). **No later than May 27, 2011**, every defendant required to attend a mediation session shall select a mediation date and time, starting with the available June dates, using the trustee’s Online Mediation Calendar. In the event a defendant is unable to schedule a mediation session using the Online Mediation Calendar, **no later than May 31, 2011**, such party must contact the trustee either by telephone at 954-712-3199, or by email at pearlman@kapilaco.com to schedule a mediation session. **Parties are strongly encouraged to choose a convenient mediation session date and location as soon as possible using the Online Mediation Calendar.** No later than **June 3, 2011**, the trustee shall file with the Court a schedule listing the date and time a mediation session is scheduled in every Avoidance Action (other than those involving the Bank Defendants), and submit an order assigning dates as selected by the trustee for any then unscheduled but required mediation session.
7. **Location of Mediation Sessions.** All mediation sessions will occur in Orlando, Florida at the offices of Akerman Senterfitt LLP, 420 S. Orange Ave., Suite 1200, Orlando, FL 32801, unless the Assigned Mediator agrees otherwise. The Online Mediation Calendar *may* provide for alternative mediation sites, with any associated extra costs to be borne equally by the parties.
8. **Attendance in Person.** Every party, including the trustee, must send a representative with full settlement authority to each mediation session, together with their attorney, if represented, unless the Assigned Mediator agrees to a telephonic appearance or other special accommodation, due to age, infirmity, lack of necessity, or any other valid reason as solely determined by the Assigned Mediator.

9. **Good Faith.** All parties shall mediate in good faith and strive toward reaching a consensual resolution.

10. **Mediation Statements.** Parties shall deliver a Mediation Statement by email to the Assigned Mediator **at least 14 days prior to the scheduled mediation.** Parties may agree to share Mediation Statements, if they choose. Each Mediation Statement shall contain a short, concise, and clear statement of each party's position together with any *critical* documents. Extensive exhibits, numerous documents, or lengthy statements are *strongly* discouraged. **Do not file any Mediation Statement with the Court.**

11. **Contacting Mediators.** Parties may file Mediation Statements and make special requests of the Assigned Mediators by email or phone as follows: (1) Karen Specie: karen@specielaw.com, 352-468-3683, or toll-free 877-887-9642, and (2) Jeff Davis: davis@law.ufl.edu, 352-273-0956.

12. **Confidentiality – Assigned Mediators.** The Assigned Mediators are permitted to discuss the case and the Avoidance Actions assigned to each of them between each other, and no such discussions shall constitute a breach of the confidentiality requirements for the mediation. All confidential communications between the Assigned Mediators regarding the Avoidance Actions shall be deemed to be exchanged in furtherance of pursuit and/or settlement of litigation, and in furtherance of the Court's and the parties' goals of administering the Avoidance Actions in the most expeditious and fair manner possible. All communications between the Assigned Mediators shall therefore be entitled to the benefit of the Mediation Privilege and confidentiality, pursuant to Florida Statutes §§ 44.401 – 44.407, Local Rule 9019-2(g), and any other applicable Florida or Federal Rules for Mediation Procedure. The Assigned Mediators shall have all of the protections provided under Florida law pursuant to Florida Statutes § 44.107.

13. **Confidentiality – Participants**. All documents and statements made by the parties, attorneys, or other participants in connection with the mediation shall, in all respects, be privileged and not reported, recorded, or placed into evidence, made known to the court, or construed for any purpose as an admission. A party does not waive any type of privilege, including any attorney-client or work product privilege, by participating in the mediation process. No party shall be bound by any statement made or action taken at the mediation conference unless a settlement is reached, in which event, the parties shall reduce the agreement to writing.

14. **Settlements**. If a settlement is reached at any of the mediation sessions and reduced to writing, the trustee is directed to file one Omnibus Settlement Motion, pursuant to Rule 9019(b) of the Federal Rules of Bankruptcy Procedure, **no earlier than September 9, 2011, and no later than September 30, 2011**, setting forth the terms of the proposed settlement in each of the Avoidance Actions. The delay is to allow all mediation sessions to conclude before the settlement agreements are noticed to all interested parties. The Omnibus Settlement Motion shall be served with notice giving parties 21 days to object. Any objections shall be heard by the Court at a hearing set for **2 p.m. on October 27, 2011**. If the objection is sustained, the parties may continue settlement discussions, but shall not be required to attend a second mediation session, without the parties' consent.

15. **Fees and Expenses.** The fees and reasonable expenses of the Assigned Mediator will be divided equally between the trustee and the defendant/s. Such fees and reasonable expenses shall be calculated using the Assigned Mediator's fee schedule, which the trustee shall post on his website. The trustee, however, initially will pay the fees and reasonable expenses of the Assigned Mediators *in full*, and then invoice the other parties to pay their share. Parties shall pay their portion of the mediation cost **within 14 days** of receiving the trustee's invoice. Such mediation costs are not allowable taxable costs as defined by 28 U.S.C. §1920. The Court will resolve any fee dispute upon motion, notice, and hearing.

16. **Penalties.** The Court may assess sanctions and penalties against any party who fails to fully participate in a mediation session in good faith, fails to attend or reschedule a scheduled session, fails to promptly pay their portion of the mediation cost, or fails to comply with the provisions of this order. **Penalties may include the entry of a default judgment against the non-complying party.**

17. **Pretrial Conference.** The Court will conduct a further pretrial conference in every Avoidance Action on **October 27, 2011**. The Court will notice the exact time for each pretrial conference in a subsequent notice. The trustee shall also post a link to the full text of this Order on his website, www.pearlmantranscon.com.

DONE AND ORDERED in Orlando, Florida, on April 7, 2011.



KAREN S. JENNEMANN
United States Bankruptcy Judge

Copied furnished to:
All Interested Parties in Bankruptcy Cases 07-bk-761; 07-bk-575 and all pending adversaries