

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

In re:

**BGI, INC., f/k/a Borders Group, Inc.,

Debtor.**

Chapter 11

Case No. 11-10614 (MG)

Substantively Consolidated

**ORDER GRANTING MOTION OF BGI CREDITORS' LIQUIDATING TRUST AND
THE LIQUIDATING TRUSTEE TO ESTABLISH PROCEDURES
GOVERNING ADVERSARY PROCEEDINGS BROUGHT PURSUANT
TO SECTIONS 547 AND 550 OF THE BANKRUPTCY CODE**

Upon the *Motion of the BGI Creditors' Liquidating Trust and Liquidating Trustee for Entry of an Order Establishing Procedures Governing Adversary Proceedings Commenced Pursuant to Sections 547 and 550 of the Bankruptcy Code* dated September 27, 2012 (the "Motion")¹; and the Court having jurisdiction to consider the Motion and grant the relief requested in the Motion; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having held a hearing on October 18, 2012 to consider the requested relief in the Motion (the "Hearing")²; and upon the record of the Hearing and all of the proceedings before the Court, the Court finds and determines that the relief requested in the Motion is in the best interests of the Trust, creditors, and all parties-in-interest, that the Trust and Trustee have provided due and adequate notice of the Motion and Hearing, that no other notice is necessary,

¹ Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

² The record of the Hearing is incorporated as if fully set forth herein and, to the extent the terms of this Order are deemed inconsistent with the representations regarding such terms made by counsel to the Trust and the Trustee at the Hearing, the terms presented at the Hearing shall control.

and that the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein, it is hereby:

ORDERED, that the Motion is granted; and it is further

ORDERED, that the procedures governing all parties to the Avoidance Actions, attached hereto as Exhibit “1” (the “Avoidance Action Procedures”) and incorporated herein by reference, are hereby approved and shall govern the Avoidance Actions, effective as of the date of this Order.

ORDERED, that the Trustee shall file a written status update every ninety (90) days after entry of the Proposed Order (and every 90 days thereafter). Each written report shall list the status of each Avoidance Action and include the following information about each Avoidance Action, as applicable: (i) the case name and adversary proceeding number; (ii) the date the summons was served; (iii) the date a responsive pleading was filed or is due; (iv) the date a Notice of Mediator Selection (defined herein) was filed and the name of the selected Mediator (defined herein); (v) the date the Mediator’s Report (defined herein) was filed; (vi) whether the Avoidance Action has been consensually resolved; and (vii) the date on which any pretrial scheduling conference is scheduled or was held.

ORDERED, that the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall apply to the Adversary Proceedings, except to the extent that they conflict with the Avoidance Action Procedures.

ORDERED, that the time periods set forth in this Order and the Avoidance Action Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

ORDERED, that this Order shall be effective immediately upon its entry.

DATED: October 23, 2012
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Exhibit 1
AVOIDANCE ACTION PROCEDURES

Stipulation to Extend Time for Defendants to Respond to the Complaint, Mediation before Response

- Without further order of the Court, the Trustee and any Defendant may stipulate to up to three (3) separate extensions of time for a Defendant to respond to the Complaint (the “Response Due Date”), with each extension to be no more than thirty (30) days each. The stipulation must be in writing to be binding on the Trustee.
- If the parties jointly agree in writing (which writing shall be filed in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be extended for an additional thirty (30) days following the completion of mediation and the filing of the mediator’s report (the “Mediator’s Report”).
- Except as set forth above, further extensions of the Response Due Date shall not be granted except upon a motion or by stipulation of the Trustee and Defendant, approved by Order of the Court.

Stay of Requirement to Conduct Rule 26(f) Conference

- The conference required by Federal Rule of Civil Procedure 26(f), made applicable pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), shall be stayed until the completion of mediation and, if the Avoidance Action is not resolved at the mediation, then after the Defendant’s response is filed. Following the filing of the Mediator’s Report and assuming the Avoidance Action was not resolved during the mediation, the parties shall conduct a Rule 26(f) conference and submit a proposed discovery scheduling order (the “Scheduling Order”) to the Court prior to or at the Pretrial Scheduling Conference (as defined herein).

Stay of Requirement to Conduct Pretrial Conference

- The conference required by Federal Rule of Civil Procedure 16, made applicable herein pursuant to Bankruptcy Rule 7016, shall be stayed until the completion of mediation. Accordingly, the summons filed and served by the Trustee will not include a date for a pretrial conference. Upon the filing of the Mediator’s Report, with respect to each Avoidance Action that is not resolved through mediation or otherwise, the Trustee shall file with the Court and serve on the Defendant a notice of pretrial scheduling conference (the “Pretrial Scheduling Conference”) to take place in the adversary proceeding at the next scheduled Omnibus Hearing; provided,

however, that a minimum of fourteen (14) days notice of the Pretrial Scheduling Conference is required.

Stay of Discovery

- All formal discovery, including Rule 26 disclosures, shall be stayed until after a Scheduling Order is entered and after the Pretrial Scheduling Conference has occurred in accordance with these Proposed Procedures; provided, however, this stay of discovery shall in no way preclude the parties from informally exchanging documents and other information in an attempt to resolve an Avoidance Action in advance of, or during, the mediation process.

Settlement of Avoidance Actions

- The Trustee is authorized to compromise or settle the Avoidance Actions without court approval, as provided in Article VII, section E of the Plan and article III, Section 3.1 of the Trust Agreement. In the event of a settlement, the Trustee shall file a notice of settlement with the Court within twenty (20) days of the later of (i) the parties' execution of the settlement agreement, or (ii) the date of payment of any amount due under the settlement agreement.

Stay of Filing Dispositive Motions Until After Mediation

- Defendants are prohibited from filing any dispositive motions, including but not limited to, any motions under Federal Rule of Civil Procedure 12(b)(1) to (7) (made applicable by Bankruptcy Rule 7012) and under Federal Rule of Civil Procedure 56 (made applicable by Bankruptcy Rule 7056) until after the mediator files a Mediator's Report signifying that the mediation is concluded and a settlement has not been reached.

Mediation Procedures and Requirements

- To the extent an Avoidance Action has not been resolved and/or settled within thirty (30) days after an answer is filed, then said Avoidance Action (the "Remaining Avoidance Actions") shall be referred to mandatory mediation. Within two weeks thereafter (the "Mediation Deadline"), the Defendant and the Trustee shall jointly select a mediator (the "Mediator") from the list of mediators (the "Mediator List"), that was filed on October 4, 2012 [Docket No. 2884] in accordance with the Motion (a copy of which Mediator List is attached to this order as Exhibit 2), and the Trustee shall file on the respective adversary proceeding docket a notice of mediator selection (the "Notice of Mediator Selection") on or before the Mediation Deadline. If the parties are unable to agree on a mediator within two (2) weeks, the Trustee shall request that the Court appoint a mediator from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York. Each individual listed on the Mediator

List is from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York.³

- The Mediator's fees and reasonable and actual expenses shall be split equally by the parties, and payment arrangements reasonably satisfactory to the Mediator must be completed on or prior to the commencement of the mediation.
- Promptly after the filing of the Notice of Mediator Selection, the Trustee and Defendant's counsel (or the Defendant, if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation. The mediation will be scheduled within sixty (60) days of the filing of the Notice of Mediator Selection.
- The mediation shall take place in New York, New York and shall be held at the law offices of Trustee's counsel, the Mediator's office, or at another location agreed upon by the Mediator, the Trustee and the Defendant.
- Except as set forth herein, the mediation shall be conducted in accordance with General Order M-390 which is available on the Court's website (<http://www.nysb.uscourts.gov/>).
- The parties shall exchange, and provide the Mediator with a copy of their position statements ("Position Statements"), which may not exceed ten (10) pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least ten (10) days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits as well as a settlement proposal. The Mediator may also require the parties to exchange documents.
- The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations and with the full authority to implement any additional procedures which are reasonable and practical under the circumstances.
- The length of time necessary to effectively complete the mediation will be within the Mediator's discretion. The Mediator may also adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.

³ The Trust and the Trustee reserve the right to add or remove mediators from the Mediator List any time after the original Mediator List is filed with the Court, including after any order is entered approving the Motion, provided that the additional mediators will be selected from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York.

- The parties shall participate in the mediation in good faith and with a view toward reaching a consensual resolution. The mediation(s) shall be attended in person by a representative of the Defendant with full settlement authority (and if a Defendant is represented by counsel, their counsel) as well as counsel for the Trustee (who must have settlement authority from the Trustee).
- No Mediator shall mediate an Avoidance Action in which the Mediator or the Mediator's law firm currently represents a party with respect to any Avoidance Action or is otherwise currently adverse to the Trust or the Debtors' estates.
- All proceedings and writings incident to the mediation will be considered privileged and confidential and subject to all the protections of Federal Rule of Evidence 408, and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during mediation shall operate as an admission of liability, wrongdoing or responsibility.
- The mediation shall be conducted so as to be completed within one hundred and twenty (120) days after the date the Notice of Mediator Selection is filed, which deadline may be extended by the mutual consent of the Trustee, the Defendant and the Mediator.
- If a party (a) fails to submit the required Position Statement or other submissions as provided in these Proposed Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation, then the non-defaulting party may file a motion with the Court seeking sanctions as may be appropriate under the circumstances.
- Within ten (10) days after the conclusion of each mediation, the Mediator shall file a Mediator's Report in the Remaining Avoidance Action, which shall be limited to stating only (i) whether the Remaining Avoidance Action settled or did not settle; (ii) the date or dates the mediation took place; and (iii) the names of the parties and/or counsel who attended.

Avoidance Actions Omnibus Hearings

- The Court will schedule regular Omnibus Hearing dates in the Bankruptcy Case, on which dates any post-mediation Pretrial Scheduling Conference will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the Omnibus Hearing dates unless otherwise ordered by the Court.

Motions Affecting all Avoidance Actions

- Any motions filed by the Trustee that affect all of the Avoidance Actions shall be filed in the Bankruptcy Case and not in each separately docketed Avoidance Action; provided, however, that each Defendant shall receive notice of the filing of the same.

Exhibit 2
MEDIATOR LIST

1. Leslie A. Berkoff
2. John H. Drucker
3. Jonathan L. Flaxer
4. Eric Haber
5. Ira L. Herman
6. Paul A. Rubin
7. Edward L. Schnitzer