IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
FEB 06 2004
KENNETH S. GARDNER, CLERK
PS REP. - MJ

	)	Chapter 11
In re:	)	
	)	Case No. 02 B 49675
Conseco, Inc., et al.,	)	
	)	(Jointly Administered)
Debtors.	)	Honorable Carol A. Doyle
	)	
		Hearing Date: February 18, 2004

RESPONSE OF VANCE MINNESOTA STREET ASSOCIATES, L.P. TO THE CFC ESTATE'S SIXTEENTH OMNIBUS OBJECTION TO CLAIMS ASSERTED AGAINST THE FINANCE COMPANY DEBTORS (RECLASSIFY, REDUCE AND ALLOW)

Vance Minnesota Street Associates, L.P. ("Landlord"), by and through its undersigned attorneys, respectfully submits this response to the CFC Estate's Sixteenth Omnibus Objection To Claims Asserted Against The Finance Company Debtors (Reclassify, Reduce and Allow) (the "Omnibus Objection"), and in support thereof represents as follows:

BACKGROUND

1. Minnesota Street Associates Limited Partnership ("MSA") and Conseco Finance Servicing Corporation ("CFS"), a debtor in the above referenced bankruptcy cases, are parties to a certain lease agreement dated December 22, 1999 (the "Lease") relative to property known as the First National Bank Building located in St. Paul, Minnesota (the "First National Bank Building"). CFS's obligations under the Lease are guaranteed by Conseco Finance Corporation ("CF Guarantor"), another debtor in these bankruptcy cases, pursuant to a certain Guaranty dated March 20, 2000 (the "Guaranty").

2. CFS and CF Guarantor, together with certain affiliates (collectively, the "Debtors") filed their voluntary petitions under Chapter 11 of the United States Bankruptcy Code on December 17, 2002. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

Pre-Petition Claim and Rejection Claim

3. On April 14, 2003, the Court set May 22, 2003 as the bar date by which non-governmental entities wishing to assert pre-petition claims against the Finance Company Debtors must file proofs of claim.

4. On May 20, 2003, the Landlord, as successor to MSA, timely filed its Proof of Claim No. 49676-001528 in the amount of $18,700.03 on account of certain pre-petition obligations of CFS arising under the Lease. Upon the rejection of the Lease by CFS, the Landlord timely filed, on July 28, 2003, Proof of Claim No. 49676-002176 on account of rejection claim damages against CFS in the amount of $3,524,051.50 (the "Rejection Proof of Claim"). Such claims against CFS are collectively referred to herein as the "Tenant Claims".

5. On May 20, 2003, the Landlord also timely filed its Proof of Claim No. 49675-002567 in the amount of $18,700.03 on account of certain pre-petition obligations of CFS under the Lease which were guaranteed by CF Guarantor pursuant to the Guaranty, and upon the rejection of the Lease by CFS, the Landlord timely filed, on July 28, 2003, Proof of Claim No. 49675-003629 on account of rejection claim damages chargeable against CF Guarantor under the Guaranty in the amount of $3,524,051.50 (said claims against CF Guarantor collectively, the "Guarantor Claims").

6. On or about September 9, 2003, the Court entered an order confirming the Finance Company Debtors' Sixth Amended Joint Liquidating Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Confirmation Order").

7. On September 26, 2003, the Finance Company Debtors filed their Twelfth Omnibus Objection to Allowance of Proofs of Claim seeking to expunge the Guarantor Claims (*i.e.*, Proofs of Claim Nos. 49675-002567 and 49675-003629, respectively) against the CF Guarantor on the grounds that they were duplicative of the Tenant Claims filed by the Landlord against CFS (*i.e.*, Proofs of Claim Nos. 49676-001528 and 49676-002176, respectively).

8. On October 17, 2003, the Landlord filed its Response of Vance Minnesota Street Associates, L.P. to the Finance Company Debtors' Twelfth Omnibus Objection to Allowance of Proofs of Claim, wherein the Landlord objected to the Finance Company Debtors' request to expunge the Guarantor Claims and asked that the Guarantor Claims remain active until such time as Landlord's recovery on account of each of its pre-petition claim and rejection claim was assured.

9. By Stipulation entered by the Court on October 29, 2003, (the "Guarantor Claims Stipulation") the Landlord and the Finance Company Debtors agreed to the withdrawal of the Guarantor Claims, subject to the rights of the Landlord to raise any argument in support of the Tenant Claims that it would have been allowed to raise in support of the Guarantor Claims.

Administrative Expense Claim

10. The Court set November 8, 2003, as the administrative expense bar date by which holders of administrative expense claims against the Finance Company Debtors

must file claims, and, in accordance therewith, on November 7, 2003, the Landlord timely filed its Administrative Expense Claim No. 49676-002412 in the amount of $153,606.03 on account of certain obligations of CFS arising under the Lease for the month of June 2003, which period was prior to CFS's rejection of the Lease, which rejection was effective as of July 1, 2003, (such administrative expense claims against CFS collectively, the "Administrative Tenant Claims").

11. On November 7, 2003, the Landlord also timely filed its Administrative Expense Claim No. 49675-004000 in the amount of $153,606.03 on account of CF Guarantor's guaranty of the Tenant Claims pursuant to the Guaranty (said administrative expense claims against CF Guarantor collectively, the "Administrative Guarantor Claims").

12. On or about December 16, 2003, the Finance Company Debtors filed their Fifteenth Omnibus Objection to Claims Asserted Against the Finance Company Debtors (Non-Substantive), wherein the Finance Company Debtors sought to expunge the Landlord's Administrative Guarantor Claims on the grounds that such claims are duplicative of the Landlord's Administrative Tenant Claims.

13. On January 5, 2004, the Landlord filed its Response of Vance Minnesota Street Associates, L.P. to the CFC Estate's Fifteenth Omnibus Objection to Claims Asserted Against the Finance Company Debtors (Non-Substantive), wherein the Landlord objected to the Finance Company Debtors' request to expunge the Administrative Guarantor Claims and asked that the Guarantor Claims remain active until such time as Landlord's recovery on account of its administrative expense claims is assured. In this regard, discussions between the Landlord and the Finance Company

Debtors, through counsel, contemplate that the parties will resolve the duplicative administrative expense claims of Landlord by means of a stipulation similar in form and substance to the Guarantor Claims Stipulation.

The Omnibus Objection

14. On or about January 16, 2004, the Finance Company Debtors filed their Sixteenth Omnibus Objection to Claims Asserted Against the Finance Company Debtors (Reclassify, Reduce and Allow) (the "Omnibus Objection"), wherein the Finance Company Debtors, in reference to the Landlord's Rejection Proof of Claim (*i.e.*, Proof of Claim No. 49676-002176), seek to reclassify $133,632.91 of said claim (the "Administrative Expense Portion") as an administrative expense claim, and further seek to reclassify $18,700.03 of said claim (the "Pre-petition Claim Portion") as a general unsecured claim.

15. The Administrative Expense Portion and the Pre-petition Claim Portion constitute two of the four components of the aggregate amount claimed in the Landlord's Rejection Proof of Claim. The Rejection Proof of Claim also seeks $19,973.12 on account of special rent charges for the month of June 2003 (the "June Special Charges Portion") and $3,351,745.44 as rejection damages owing to the Landlord as statutorily determined under 11 U.S.C. §§ 365 (g), 502 (b)(6) and 502 (g) (the "Rejection Claim Portion"). The Omnibus Objection does not affirmatively address either the June Special Charges Portion or the Rejection Claim Portion.

RESPONSE

16. As noted above, in addition to the Rejection Proof of Claim, the Landlord previously filed in these cases its Proof of Claim No. 49676-001528 on account of the

$18,700.03 pre-petition obligations of CFS under the Lease, which claim was preserved pursuant to the Guarantor Claims Stipulation. Accordingly, to the extent the Finance Company Debtors seek, pursuant to the Omnibus Objection, to clarify that the Pre-petition Claim Portion of the Rejection Proof of Claim is properly a pre-petition claim on account of rent due pre-petition under the Lease, consistent with Landlord's Proof of Claim No. 49676-001528, and to allow same, the Landlord has no objection to the Omnibus Objection.

17. Similarly, to the extent that the Finance Company Debtors seek, pursuant to the Omnibus Objection, to clarify that the Administrative Expense Portion of the Rejection Proof of Claim is properly an administrative expense claim, consistent with Landlord's Administrative Tenant Claims (*i.e.*, Administrative Expense Claim No. 49676-002412), the Landlord also has no objection to the Omnibus Objection.

18. To the extent that the Omnibus Objection is silent as to the June Special Charges Portion and the Rejection Claim Portion, however, and thereby seeks to, in effect, deny or expunge such claims, the Landlord strenuously objects.

19. With respect to the June Special Charges Portion, these charges constitute additional rent owing to the Landlord under the Lease for the month of June 2003 on account of CFS's share of electricity, cleaning services, parking and real estate taxes. Said $19,973.12, together with the Administrative Expense Portion, has been included in the Administrative Tenant Claims reflected in Administrative Expense Claim No. 49676-002412 and in the Administrative Guarantor Claim No. 49675-004000, and should be properly addressed by the Finance Company Debtors in connection with the resolution thereof, not by some silent implication or effect of the Omnibus Objection. Accordingly,

the Special June Charges Portion of the Rejection Proof of Claim should not be reduced, expunged or otherwise purposefully or impliedly affected by the Omnibus Objection, and said claim must remain outstanding until affirmatively addressed by the Finance Company Debtors in connection with the resolution of the Administrative Tenant Claims, the Administrative Expense Claims, the Rejection Proof of Claim or otherwise.

20. With respect to the Rejection Claim Portion, the $3,351,745.44 amount claimed cannot be "reduced and allowed" to $18,700.03 (which is, as noted above, the pre-petition rent amount) because it "exceeds the amounts reflected on the CFC Estate's books and records". The Landlord's rejection damages claim constitutes a formulaic determination of the damages owing to the Landlord on account of the Finance Company Debtors' rejection of the Lease, as determined by application of the methodology dictated by 11 U.S.C. §§ 502 (b)(6) and 502 (g) to the rental amounts actually owing under the Lease at the time of the rejection thereof. In this regard, there is no question, and the Finance Company Debtors have not challenged, that (i) the Lease was rejected pursuant to the Finance Company Debtors' Notice of Intent to Reject Leases and/or Executory Contracts effective July 1, 2003, (ii) the rent payable under the Lease as of the date of the Finance Company Debtors' rejection thereof was $279,312.12 per month, and (iii) one year's rent owning under the Lease at the time of rejection was, therefore, $3,351,745.44 (being the measure of Landlord's rejection damages, as, in accordance with 11 U.S.C. § 502 (b)(6), such amount is greater than 15 percent, not to exceed 3 years, of the remaining rent due under the Lease). Moreover, the Finance Company Debtors' books and records are not relevant to, or determinative of, the Landlord's rejection claim damages. Accordingly, to the extent the Omnibus Objection seeks to deny, expunge or

reduce the Rejection Claim Portion to zero, the Finance Company Debtors Omnibus Objection should be denied.

21. WHEREFORE, the Landlord respectfully requests that this Court (i) deny the relief requested in the Omnibus Objection with respect to the Landlord's claims as set forth in the Rejection Proof of Claim to the extent inconsistent with the treatment of such claims as set forth by Landlord herein and (ii) grant such other and further relief as this Court deems just and proper.

Dated: February 6, 2004

VANCE MINNESOTA STREET ASSOCIATES, L.P.

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One of its Attorneys

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