**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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

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| In re: | Chapter 11 |
| CONSECO FINANCE CORP., | Case No. 02-B49675 |
| Debtors. | Honorable Carol A. Doyle (Jointly Administered) |

**VICTORY PARKING INC.'S RESPONSE TO CFC ESTATE'S TWENTY-FOURTH OMNIBUS OBJECTION TO CLAIMS ASSERTED AGAINST THE FINANCE COMPANY DEBTORS'ESTATES PURSUANT TO SECTION 502(d) OF THE BANKRUPTCY CODE**

Victory Parking, Inc. ("Claimant"), hereby responds to CFC Estate's Twenty-Fourth Omnibus Objection to Claims Asserted Against the Finance Company Debtors' Estates Pursuant to Section 502(d) of the Bankruptcy Code ("Objection"). The Plan Administrator objects to the Claimant's claim no. 49675-002424 in the amount of $16,076.50 ("Claim") filed against Conseco Finance Corp.

## FACTS

Claimant operates several parking garages in the Twin Cities area of Minnesota. Claimant is owed at least $16,076.50 for unpaid rent relating to the use of one or more of the Claimant's parking garages. No preference action has been commenced against the Claimant. The Plan Administrator objects to the Claim based on the Claimant's alleged receipt of avoidable preferential transfers. The Objection includes no other facts or law to support it.

## ANALYSIS

A properly filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim. FED. R. BANKR. P. 3001(f). Once a proof of claim is properly filed, the burden of going forward shifts to the party objecting to the claim to produce evidence sufficient

to negate the *prima facie* validity. *In re B-E Holdings, Inc.*, 228 B.R. 414, 417 (Bankr. E.D. Wis. 1999). If the objecting party falls to introduce substantial evidence regarding the invalidity of the claim or the excessiveness of its amount, the claimant is not required to offer further proof of the merits of the claim. *See In re Hemmingway Trans., Inc.*, 993 F.2d. 915 (1st Cir. 1999) (objection to claim does not deprive claim of its presumptive validity unless objection is supported by substantial evidence); *In re Fullmer*, 962 F.2d 1463 (10th Cir. 1992) (prepetition claims are presumed to be *prima facie* valid; presumption may be overcome by objecting party only if it offers evidence of equally probative value in rebuttal).

Here, the Objection provides no evidence to rebut the evidence submitted by the Claimant in support of its Claim. The entire substance of the Objection to the Claim is the conclusory statement that the Claimant received a preferential transfer. The Plan Administrator asks this Court to disallow the Claim, but has failed to provide any admissible, probative evidence whatsoever its request. In short, the Plan Administrator has failed to meet its burden of going forward with evidence to rebut the Claim.

Moreover, merely alleging a preferential transfer is not a basis for disallowing a claim when there has been no determination that the claimant has received and failed to turn over any property that is recoverable under Section 550. *See In re Southern Air Trans., Inc.*, 294 B.R. 293, 296 (Bank. S.D. Ohio 2003) ("The mere allegation of a preference action alone cannot act to defeat a claim against a debtor. A determination is needed on the preference matter."). *See also In re Odom Antennas, Inc.*, 340 F.3d 705, 708 (8th Cir. 2003) (502(d) should be used to disallow a claim *after* the entity is first adjudged liable) (emphasis added); *In re Metiom, Inc.*, 301 B.R. 634, 641-642 (Bankr. S.D.N.Y. 2003) (trustee cannot prevail on objection based on 502(d) without first obtaining a determination that the defendant received an avoidable transfer). Here, no determination has been made regarding the avoidability of any transfers made to the Claimant. Therefore, the Objection should be denied.

**WHEREFORE**, Victory Parking, Inc., respectfully requests that the Court deny the Objection and allow the Claim as filed.

Dated: April 6, 2004

**VICTORY PARKING, INC.**

By: _____
One of Its Attorneys

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