UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

	:	**CHAPTER 11**	
In re	:		
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PEGASUS SATELLITE TELEVISION, INC., et al.,	:	**Case Nos.:**	**BK. No. 04-20878**
	:		
	:		
Debtors.	:		**28 Cases Jointly Administered Through Bk. 04-20878**
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REGEN CAPITAL I'S RESPONSE TO
OBJECTION TO MOTION FOR RELIEF FROM JUDGMENT

NOW COMES ReGen Capital I ("ReGen"), by and through below signed counsel and responds to the PSC Liquidating Trust's (the "PSC Trust"), acting on behalf of the reorganized debtors (the "Debtors"), Motion for Relief from Judgment (the "Motion") from this Court's February 24, 2005 Order resolving ReGen's claim no. 494**.** In support thereof, ReGen states as follows:

Introduction

The PSC Trust is now seeking, by claiming, "either a clerical error, or the product of mistake or inadvertence or excusable neglect" (Motion at ¶ 14) to renege on an agreement that the Debtors' highly sophisticated counsel made with ReGen shortly before confirmation of collective Debtors' joint plan of reorganization (the "Joint Plan")**,** pursuant to which ReGen agreed to reduce the amount of its claim to the amount in which the Debtors had scheduled it.

The Debtors had scheduled ReGen's claim as an unsecured claim in the case of Pegasus Satellite Television, Inc. ("PST"). The Debtors objected to the amount of the claim asserted by ReGen in its proof of claim, and after negotiations between ReGen and counsel for the Debtors at the Sidley Austin firm, both sides agreed that the claim would be allowed in a reduced amount

in the case of PST. This settlement was embodied in this Court's Order dated February 24, 2005 granting the Debtors' second omnibus objection to and motion to reclassify, reduce or disallow certain claims. That order specifically provided that ReGen's claim no. 494 would be allowed in the case of PST. Notably, pursuant to that same omnibus claims objection, the Debtors had sought to reclassify certain claims from cases of one Debtor to another, and the fact the Debtors never sought to reclassify ReGen's claim speaks volumes.

The PSC Trust now contends that this claim should be reclassified to the case of Pegasus Satellite Communications**,** Inc. ("PSC"). Ignoring the involvement of the Debtors and their counsel in scheduling, objecting to, and ultimately settling ReGen's claim, the PSC Trust disingenuously attempts to blame the claims agent in this case for supposedly permitting ReGen's claim to be allowed in the wrong case.

The Motion is frivolous. It is not supported by any affidavit from any person having personal knowledge of the underlying facts attesting to the alleged error. The PSC Trust brings the Motion long after ReGen has lost any opportunity to object to the Joint Plan (an option ReGen would have considered had it not been satisfied with the treatment its claim would received under the Joint Plan), as part of a blatant effort to obtain leverage against ReGen in connection with the Trust's objections to other claims held by ReGen, which just happened to be filed at the same time as this Motion.

This Court's February 24, 2005 Order is entitled to respect under the doctrine res judicata--it is a final order from which no appeal was ever taken, that binds the parties and their privies. The PSC Trust stands in the shoes of the Debtors and is not entitled to re-open matters that were resolved by the parties pursuant to a prior order of this Court. Justice would not be served if a liquidating trustee were permitted to relitigate matters that a creditor has already settled with Debtors' counsel, especially where, as here, Debtors' counsel was sophisticated and

the creditor gave up valuable rights as part of its agreement to resolve its claim. Under the prevailing law in the First Circuit, "relief under Rule 60(b) 'is extraordinary in nature' [and] 'motions invoking that rule should be granted sparingly.'" *Cintron-Lorenzo v. Departamento De Asuntos Del Consumidor*, 312 F.3d 522, 527 (1st Cir. 2002) (quoting *Karak v. Bursaw Oil Corp*., 288 F.3d 15, 19 (1st Cir. 2002)) The PSC Trust has not come close to satisfying its heavy burden on this Motion. Accordingly, the Motion should be denied.

Responses to Numbered Paragraphs of the Motion

1. On June 2, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered.

RESPONSE: ReGen admits the allegations in paragraph 1.

2. On June 10, 2004, the United States Trustee for the District of Maine appointed the Official Committee of Unsecured Creditors (the "Committee") pursuant to section 1102(a) of the Bankruptcy Code. No request was made for the appointment of a trustee or examiner in these cases.

RESPONSE: ReGen admits the allegations in paragraph 2.

3. Prior to confirmation of the Debtors' First Amended Joint Chapter 11 Plan of Reorganization (the "Plan"), the Debtors continued in possession of their properties and operated and maintained their businesses as Debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

RESPONSE: Paragraph 3 states conclusions of law which ReGen neither admits nor denies but puts PSC Trust to its proof.

4. On April 15, 2005 (the "Confirmation Date"), the Bankruptcy Court approved the Plan and the Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' First Amended Joint Chapter 11 Plan was entered (the "Confirmation Order"). The PSC Trust was established under the Plan and, pursuant to the terms of the Plan, has the authority and responsibility to object to, settle, compromise, and prosecute disputed claims. The Plan became effective on May 5, 2005 (the "Effective Date").

RESPONSE: ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4. ReGen specifically questions whether the PSC Trust's mandate includes re-opening litigation of matters that were settled by the Debtors and their counsel.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the inherent power of the Court to review its own orders. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (B) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RESPONSE: ReGen admits the allegations in paragraph 5.

6. On or about October 6, 2004, Regen, on behalf of AT&T, timely filed Proof of Claim no. 494 with the Claims Agent, asserting a claim of $119,354.80 against "Pegasus Satellite Television, Inc. et". A copy of the Claim is attached as Exhibit A to the Motion For Relief From Judgment.

RESPONSE: ReGen admits the allegations in paragraph 6.

7. Prior to confirmation, the jointly administered Debtors objected to the Claim by including it in the Debtors' Second Omnibus Objection to Claims, filed on January 25, 2005, docket no. 923.

RESPONSE: ReGen admits the allegations in paragraph 7.

8. Negotiations with Regen resulted in agreement that the proper number for allowance of the Claim should be $105,089.38

RESPONSE: ReGen admits the allegations in paragraph 8, and further states that the agreement between ReGen and the Debtors provided that the subject claim would be allowed in the Chapter 11 case of PST.

9. On February 24, 2005, the Claim, among others, was allowed in the amount of $105,089.38, by an order issuing on the Second Omnibus Objection. See Docket nos. 1041 (the order itself) and 1042, the attachments to the order, True copies of Docket nos. 1041 and 1042 are attached together as Exhibit B, forming together the "order".

RESPONSE: ReGen admits the allegations in paragraph 9.

10. Unnoticed was that the Claims Agent had classified claim no. 494 under "Pegasus Satellite Television" on Exhibit E to the Order.

RESPONSE: ReGen denies the allegations in paragraph 10. Answering further, ReGen asserts that by admission the Debtors, who were represented by very sophisticated counsel, have scheduled AT&T's pre-petition claim, which AT&T filed as Claim No. 494, under Pegasus Satellite Television ("PST") and as such it was not clerical error inadvertence on behalf of the claims agent but rather a conscientious filing in this court by the Debtors. Moreover, upon information and belief, the Debtor's scheduling of Claim 494 reflects the fact that PSC, which was merely a holding company, was not the real beneficiary of the contract giving rise to Claim 494.

11. The actual contracting party for the contracts upon which the Claim was based was Pegasus Satellite Communications, Inc. See. e.g., Claims 1070 and 1071, submitted by Regen as assignee of AT&T later in the case.

RESPONSE: ReGen neither admits nor denies the allegations in paragraph 11 because they do not sufficiently identify the contracts upon which the PSC Trust thinks the subject claim was based. Answering further, although, Pegasus Satellite Communications, Inc. ("PSC") did have two contracts with AT&T, it is clear that PSC, a holding company, was not the beneficiary of the services pursuant to the contracts. ReGen denies that the Equipment Contract (as defined in the companion Objection To And Motion To Reclassify, Reduce Or Disallow Certain Claims Pursuant To 11 U.S.C. § 502(b), Bankruptcy Rules 3001, 3002, And 3007 And District Of Maine Local Bankruptcy Rule 3007-1 (the "Objection") (Docket No. 1653)) was between AT&T and only PSC. Rather, the very first paragraph of this contract clarifies that the "Customer" entering into this agreement with AT&T is defined to include not only PSC but also its affiliates and subsidiaries (see second page to Exhibit A to Objection). Indeed, it is the "Customer" under this agreement that is to receive and pay invoices of AT&T. See id. at ¶ 5.

ReGen similarly denies that PSC was the only party liable under the Voice and Data Contract with AT&T, and states, on information and belief, that PSC contractually agreed with AT&T that PSC would pay AT&T if PSC's affiliates failed to do so. Specifically, Section 9.0 of the General Terms and Conditions annexed to the Voice and Data Contract and initialed "SAB" by the signatory to the contract (Scott A. Blank) provides in pertinent part: "For purposes of all exclusive remedies and limitations of liability set forth in this Agreement . . . 'You' shall be defined as You, Your Affiliates, and Your and their employees, directors, officers, agents and representatives . . . ." The General Terms and Conditions are included as part of Exhibit B to the Objection.

Finally, PST's actions in paying the sums due under the contract effectively bound, via ratification, PST to the obligations due thereunder. *In re City Metals Co*., 181 B.R. 398, 401 (Bankr. D. Mo. 1995) (Debtor subsidiary liable under doctrine of ratification to creditor who

contracted with debtor's parent company); *see also Glasser v. Heartland Health Care Ctr*., 333 F. Supp. 2d 607, 615 (D. Mich. 2003) (parties are bound to unsigned agreement when "the parties were acting as though they were operating under a binding contractual agreement").

12. Pegasus Satellite Television, Inc. ("PST") was used as a conduit by Pegasus Satellite Communications, Inc. ("PSC") to make payments to AT&T, and that fact appears to have led to the mistaken listing by the Claims Agent on Exhibit E to the Order.

RESPONSE: ReGen denies that PST served as a conduit for PSC, and further denies any statement contained in paragraph 12 regarding a mistake by the claims agent. As stated previously herein, ReGen asserts that no such mistake was made by the claims agent; rather, the Debtors scheduled Claim 494 as a debt owed by Pegasus Satellite Television, Inc. and such scheduling was confirmed on behalf of Debtors by sophisticated counsel.

13. In reality, the Claim should be allocated to the estate of the contracting Debtor party, PSC.

RESPONSE: ReGen denies the allegations in paragraph 13.

14. The listing of the Claim by the Claims Agent on the Exhibit to the Order was either a clerical error, or the product of mistake or inadvertence or excusable neglect.

RESPONSE: ReGen denies the allegations in paragraph 14. Answering further, it appears that the Debtors are attempting a scatter shot objection listing all possible arenas under which it could possibly seek relief; however, it has provided no basis for any of them. What the Trustee is unwilling to say is that the listing reflected a fair and proper categorization of the claim.

15. This proceeding involved a multiplicity of Debtors, many with similar sounding names, commonly managed by a management company owned and operated by a nonDebtor parent, involving the flow of literally billions of dollars. The management of the various

Pegasus entities, for whatever internal convenience was seen, decided that certain payments for some Pegasus entities, including PSC should flow through PST. For very good reasons, the Debtors' individual cases were jointly administered, and claims were made against the jointly administered estates, in many cases without distinctions being made by the claimants, as was the case with Claim no 494.

RESPONSE: ReGen admits that these proceedings involved a multiplicity of Debtors, that it or AT&T received payment from PST and that claims were filed in these jointly-administered cases. Regarding other allegations contained in paragraph 15, ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Claim no. 494 was made with an attachment that simply listed various account numbers, not the contracts on which the claim was based. Since PST was the vehicle for payment of the listed accounts, the Claims Agent misallocated the claim to PST.

RESPONSE: ReGen admits that it filed Claim No. 494 on behalf of AT&T with an attachment listing various account numbers, and that PST made payments pursuant to the underlying contract to ReGen or AT&T. ReGen denies that the claims agent was responsible for scheduling the claim, and asserts that this was the responsibility of the Debtor and its counsel.

17. The Debtors relied on the Claims Agent to classify claims against the various individual estates, and in the case of Claim no. 494, the Claims Agent simply made an understandable mistake. In reality, the Claims Agent n these proceedings was functioning in a role normally filled by the Clerk of the Court, thus one view of the error is that the misclassification was by a judicial officer, and thus a correctible clerical error. In re Schwinn Bicycle Co., 248 B.R. 328 (Bankr. N.D. Ill. 2000) (Rule 9024 applies to mistakes by judicial officers as well as parties). If the Claims Agent's task is seen as simply clerical, then the

misallocation of Claim 494 was a clerical error. If more than that, then the Claims Agent's mistake was inadvertent, or excusable given the mountain of data it was sorting through in one of largest, if not the largest, bankruptcy proceeding ever seen in this state. In re Payless Cashways, Inc., 230 B.R. 120, 138 (BAP 8th Cir. 1999)(Rule 9024 applies to errors in allowance or disallowance of claims for faultless or careless mistakes). See also In re Federated Department Stores, Inc., 144 B.R. 989 (Bankr. S.D. Ohio 1992) (Chapter 11 Debtor's erroneous scheduling of claims reconsidered post-confirmation of Plan).

RESPONSE: ReGen is without knowledge or information regarding upon whom the Debtors relied to classify claims; however, it asserts that this was solely and exclusively the responsibility of the Debtors and their counsel, who never claimed any "mistake" was made in scheduling or allowing ReGen's claim in the case of PST. The Debtors and their counsel surely had ample opportunity to review claims to ensure that they were allocated to whichever Debtor they desired the claim to be assigned. As previously stated, counsel for the Debtors was highly sophisticated and as such was able to review the allocation of claims prior to filing any motions particularly orders for the Court**'s** execution and entry in this matter.

18. Fed. R. Civ. P. 60(a) allows for the correction of clerical mistakes, and Fed. R. Civ. P. 60(b) allows for the correction of judgments in the case of mistake, inadvertence, or excusable neglect. Both are made applicable through Bankruptcy Rule 9024. Rule 9024 is clearly designed to be liberally construed, because the rule adds an additional provision to the basic Federal Rule 60: "a motion… for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation" in Rule 60. See also In re Johnson, 232 B.R. 319 (Bankr. D.N.J. 1999) (Rule 9024 construed liberally to do substantial justice).

RESPONSE: ReGen admits the statements made in paragraph 18 to the extent they recite legal propositions, but ReGen denies that any clerical mistake was committed here. Answering further, however, ReGen denies that the Order was entered without contest. Overall, because the Order allocating Claim 494 to PST was entered upon motion of the Debtors and following negotiations between the parties, there is no basis for a case of mistake, inadvertence or an excusable neglect. As such, the rule cited in paragraph 18 by the PSC Trust are inapplicable.

19. Accordingly, because Claim no. 494 was under the Order misallocated to the estate of PST, the Order should be withdrawn as to Claim no. 494 and reentered in the same agreed upon amount, but allocated to the estate of PSC. Nothing concerning allowance of claims could be more fundamental than that a claim should be allocated to the Debtor entity that would be liable on the claim under the applicable state law. In re Sanford, 979 F.2d 1511 (11th Cir. 1992) (claim not allowed against Debtor under §502(b)(1) if not enforceable against Debtor outside of bankruptcy).

RESPONSE: ReGen denies the allegations in paragraph 19.

20. Regen has been advised that the PSC Trust desires to reallocate Claim no. 494, and has vigorously denied that any such reallocation should occur. Regen sent a letter to the PSC Trust, with a copy to the Liquidating Trustee, advising it that "Demand is hereby made for payment in full of this allowed claim immediately." *{Letter dated July 27, 2005 from Elliot Herskowitz of ReGen Capital I., Inc. to The PSC Liquidating Trust}* Therefore, it can be assumed that Regen does not consent to this Motion.

RESPONSE: ReGen admits the allegations in paragraph 20. Answering further, ReGen asserts that there is no basis for the reallocation of the claim or the motion for relief from

judgment, and that the motion is based in an effort to exert leverage upon ReGen regarding the PSC Trust's companion motion to disallow Claims 1070 and 1071.

WHEREFORE, ReGen requests that this Court deny the relief requested by PSC Trust in its motion for relief from judgment and for such other and further relief as this Court deems just and proper.

Dated: September 8, 2005

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that on September 8, 2005, I caused a true and correct copy of the foregoing Response to Motion for Relief from Judgment to be served through the Court's ECF system on all those registered to receive ECF service.

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