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 PSC LIQUIDATING TRUST'S 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

NOW COMES ReGen Capital I ("ReGen"), by and through below signed counsel and responds to the PSC Liquidating Trust (the "PSC Trust"), acting on behalf of the above-captioned Debtors (the "Debtors") Objection To And Motion To Reclassify, Reduce Or Disallow Certain Claims Pursuant To 11 U.S.C. § 502(b) Bankruptcy Rule 3001, 3002 and 3007 and the District of Maine Local Bankruptcy Rule 3007-a (the "Objection"). In support of this Response, the ReGen respectfully states as follows:

Introduction

The PSC Trust's Objection constitutes an effort to use a complex corporate structure and procedural technicalities to disallow or diminish an honest claim. While in a separate motion for relief from judgment, the Trust argues that the Debtors' cases were so complicated that the Trust should not be bound by deals negotiated by sophisticated parties in good faith, in this Objection, the Trust argues that ReGen's timely filing of a claim with the Court (instead of a claims agent) should be ignored, that ReGen's re-filing of a claim with the claims agent one day later should be

disregarded, that active negotiations between the Debtors' counsel and ReGen both before and after the objection claim bar date(s) should have no significance. This approach by the Trust is contrary to the law in this Circuit.

As shown below, ReGen's claims are validly asserted under terms of the relevant contracts against Pegasus Satellite Television, Inc. ("PST"), not just Pegasus Satellite Communications, Inc. ("PSC"). In addition, PSC was merely a holding company, which clearly was not expected to actually use telecommunications services or purchase equipment from AT&T. The documentary evidence shows that payments for same were made by PST, and the PSC Trusts' suggestion that PST acted merely as a conduit to pay AT&T is wholly conclusory and unsubstantiated. Similarly, the PSC Trusts' suggestion that all post-petition obligations to pay amounts due to AT&T were satisfied, so that ReGen's claims should not be allowed as administrative expense claims, is not documented by the Objection. Finally, ReGen respectfully requests that it be afforded the opportunity to take appropriate discovery in this regard.

Responses to Numbers Paragraphs of the Objection

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 for 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 Debtor's 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 admits the allegations contained in the first sentence and ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 4.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C § 157 (b) (2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3001, 3002, and 3007, and D. Me. LBR 3007-1.

RESPONSE: ReGen admits the allegations in paragraph 5.

6. On June 4, 2004, this Court entered an order appointing The Trumbull Group, L.L.C. ("Trumbull") as claims and noticing agent in these Chapter 11 cases. Trumbull was authorized to maintain (i) all proofs of claim filed against the Debtors and (ii) an official claims registered (the "Claims Register") by docketing all proofs of claim in a claims database

containing, inter alia, information regarding the name and address of each claimant, the date the proof of claim was received by Trumbull, the claim number assigned to the proof of claim, and the asserted amount and classification of the claim.

RESPONSE: ReGen admits the allegations in paragraph 6.

7. On September 1, 2004, the Court entered an order (the "Pre-Petition Bar Date Order") (i) establishing October 12, 2004, (the "General Bar Date") as the final date and time for all persons and entities, other than governmental entities, holding or asserting a claim (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors to file proofs of claim in these Chapter 11 cases and (ii) approving the form and manner of notice of the Bar Date.

RESPONSE: ReGen admits the allegations in paragraph 7.

8. Pursuant to the Pre-Petition Bar Date Order, on or about September 3, 2004, Trumbull sent actual notice of the Pre-Petition Bar Date (the "Pre-Petition Bar Date Notice") to a wide variety of potential claimants. In addition, the Debtors published a shortened version of the Pre-Petition Bar Date Notice (the "Publication Notice") in the national edition of The Wall Street Journal and the national editions of the New York Times and USA Today on or about September 9, 2004.

RESPONSE: ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. In response to the above notices, Regen, as agent for AT&T, timely filed Proof of Claim no. 494 with Trumbull. A true copy of Claim 494 is attached as Exhibit C.

RESPONSE: ReGen admits the allegations in paragraph 9.

10. Claim 494 was adjudicated on February 24, 2005, and set at $105,089.38. See Order on Second Omnibus Objection to Claims, docket no. 1041, Exhibit E thereto.

RESPONSE: ReGen admits the allegations in paragraph 10.

11. Among the AT&T accounts included in Claim 494 were the accounts claimed in Claims 1070 and 1071.

RESPONSE: ReGen admits the allegations in paragraph 11.

12. To the extent the claims made in Claims 1070 and 1071 involve the accounts claimed in Claim 494, and amounts now claimed under Claims 1070 and 1071 could have been claimed at the time of the filing of Claim 494, then Claims 1070 and 1071, to amount of the claims that could have been asserted in Claim 494, are collaterally estopped up to the amounts allowed under Claim 494.

RESPONSE: Paragraph 12 states a conclusion of law which ReGen denies. ReGen further states that Claim Nos. 1070 and 1071 assert separate claims under different contracts. Claim No. 494, which exclusively covers pre-petition amounts due and owing, was filed on August 11, 2004, subject to an October 12, 2004 claims deadline. The claims asserted in Claim Nos. 1070 and 1071 were not capable of being asserted as of the date Claim No. 494 was filed because Claim Nos. 1070 and 1071 address claims stemming from the rejection of the underlying contracts, or, in the alternative, administrative claims. Moreover, the PSC Trust has not identified any particular issue that was resolved by allowance of Claim No. 494.

13. In addition, Claims 1070 and 1071 appear to be claims for prepetition debt. They are designated neither as rejection claims nor as administrative claims.

RESPONSE: ReGen denies the allegations in paragraph 13. Answering further, counsel for the Debtors, specifically Paul Caruso of counsel for the Debtors Sidley Austin Brown & Wood LLP, had actual knowledge of the pending rejection claims to be made on behalf of ReGen, pursuant to contracts of the Debtor with AT&T, ReGen's predecessor in interest to the contracts underlying Claims 1070 and 1071. For example, Saul Lieberman of ReGen references two rejected contracts with a request for an extension of the deadline to file claims for damages pursuant to said rejections and Paul Caruso, counsel to the Debtors agrees to the same in an e-

mail exchange. See e-mail chain between Mr. Caruso and Mr. Lieberman covering the period from November 1, 2004 through and including January 20, 2005, a true copy of which is attached hereto as Exhibit A.

14. Claims 1070 and 1071 were filed with Trumbull on February 1, 2005.

RESPONSE: ReGen admits that Claims 1070 and 1071 were filed *with Trumbull* on February 1, 2005. Answering further, however, ReGen asserts that the Debtors received actual notice of the claims prior January 31, 2005. On January 31, 2005, ReGen's electronic filed Claim Nos. 1070 and 1071 with the Bankruptcy Court, as confirmed by the notation on the first page of Exhibit D to the Objection, which lists January 31, 2005 as the date of these two claims, and that the clerk advised ReGen that these claims should be filed with the claims agent. As such, it is undisputed that ReGen substantially complied with the deadline extension provided by Debtors' counsel via email (See Exhibit A, and paragrpah 31, *infra*, discussing same) by electronically filing in the manner in which claims are generally filed, and that, given the emails between ReGen and Debtors' counsel, the latter was well informed of ReGen's intent to file two rejection claims. As such, ReGen maintains that Claim Nos. 1070 and 1071 were timely filed, but, in the alternative, asserts that the one-day delay, given the prior ECF filing, falls well within the scope of excusable neglect. *See* Response to paragraph 33, *infra*.

15. To the extent they are claims for prepetition debt which could have been filed prior to the Claims Bar Date of October 12, 2004, Claims 1070 and 1071 were untimely filed and should therefore be disallowed pursuant to section 502(b)(9) of the Bankruptcy Code.

RESPONSE: ReGen denies the allegations in paragraph 15.

16. Section 502(b)(9) of the Bankruptcy Code provides that a claim shall not be allowed if "proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) or section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure…" Courts interpreting section 502(b)(9) have held that a creditor who

fails to file a timely claim may not file a late claim and participate in distribution from the estate. Institut Pasteur v. Cambridge Biotech Corp. (In re Cambridge Biotech Corp.), 186 B.R.9, 15 (Bnkr. D. Mass. 1995) (citations omitted); In re Lee Way Holding Co., 178 B.R. 976, 985 (Bankr. S.D. Ohio 1995).

RESPONSE: ReGen admits the allegations contained in paragraph 16 to the extent they state general propositions of law; however, ReGen denies that these allegations provide any basis that Claim Nos. 1070 and 1071 should be denied as late claims. Answering further, ReGen asserts that the Debtors' counsel agreed to extend until January 31, 2005 its time to file Proof of Claims-as noted on page 2 of Exhibit A attached hereto. As the First Circuit has noted "a [proof of claim] need only provide adequate notice of existence, nature and amount of the claim as well as the creditor's intent to hold the estate liable." *Gens v. Resolution Trust Corp.*, 112 F.3rd 569, 575 (1st Circuit 1997). Not only had the Debtors received constructive notice pursuant to the e-mails contained in Exhibit A but in addition pursuant to the filing with the Bankruptcy Court the Debtors had additional "notice of the existence, nature and amount of the claim, as well as the creditor's intent to hold the estate liable." *Id.* Under the applicable standard of excusable neglect discussed *infra*, ReGen's claims should be allowed and PSC Trust's Motion should be denied.

17. Although Regen, as assignee of AT&T for Claims 1070 and 1071, has not made any apparent effort to distinguish between prepetition accruals and any rejection claims which may have arisen post petition, Regen may claim that all or a portion of the amounts claimed in Claims 1070 and 1071 arise from rejection claims.

RESPONSE: ReGen denies the allegations contained in paragraph 17 to the extent they assert that no effort was made by ReGen to distinguish between pre-petition and rejection claims. Answering further, ReGen asserts that the Debtors were aware of the nature of ReGen's claims because of the underlying contracts and pursuant to the chain of e-mails between ReGen and counsel to the Debtors. See Exhibit A. ReGen asserts, alternatively, that Claim No. 1070 may

be asserted as an administrative expense claim based on the amounts PSC and its subsidiaries missed their minimum purchase target under the February 5, 2002 contract and the Debtors may have even benefited from that contract during the post-petition period by enjoying discounts to which they were not otherwise entitled.

18. On November 9, 2004, the Court entered an order establishing procedures and bar dates for the filing of rejection claims. See Docket no 719 (the "Rejection Claims Order").

RESPONSE: ReGen admits the allegations in paragraph 18.

19. Regen received service of the Motion for entry of the Rejection Claims Order. See Certificate of Service filed by Trumbull, Docket No. 679, in which AT&T is expressly served c/o Regen, consistent with Regen's assertion of its agency for AT&T as appears on the face of Claim no 494. In addition, the Court's own certificate of service of the Rejection Claims Order itself, docket no 727, indicates on the second to last page service on Neil Herskowitz, the signatory to Claims 1070 and 1071.

RESPONSE: ReGen admits the allegations in paragraph 19, except ReGen denies that it appears as an agent for AT&T on Claim No. 494.

20. Under the Rejection Claims Order, two different rejection claims bar dates were provided for.

RESPONSE: ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Contracts listed on Exhibit A to the Rejection Claims Order were automatically rejected immediately, and the non-debtor parties were given 30 days after entry of the Rejection Claims Order, or December 9, 2004, to file rejection claims.

RESPONSE: ReGen admits, upon information and belief, the allegations contained in paragraph 21. Answering further, as explained elsewhere hererin, ReGen received extensions through January 31, 2005, of the time in which to file rejection damage claims.

22. Regen's Proof of Claim 1071 involves claims on a "Voice and Data" services contract between Pegasus Satellite Communications, Inc., and AT&T which was listed on Exhibit A to the Rejection Claims Order.

RESPONSE: ReGen admits the allegations in paragraph 22, but denies that Pegasus Satellite Communications ("PSC") was the only party liable under the Voice and Data Contract with AT&T. Specifically, Section 9.0 of the General Terms and Conditions annexed to the 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.

23. To the extent it is or is construed to be a rejection claim, Claim 1071 was, untimely filed (filed February 1, 2005) under the terms of the Rejection Claims Order, and again, should therefore be disallowed in its entirety.

RESPONSE: ReGen denies the allegations in paragraph 23. Answering further ReGen asserts that it received a written extension to file its rejection claim until January 14, 2005. See page 3 of Exhibit A, and then received from Debtors' counsel a subsequent extension to January 31, 2005 while the parties continued their discussions. *See* page 2 of Exhibit A. On January 31, 2005, it filed its proof of claims with the CMECF electronic filing system. As such its February 1, 2005 filings constituted amendments thereto. ReGen asserts, alternatively, that Claim No. 1071 may be asserted as an administrative expense claim based on the amounts by which PSC and its subsidiaries missed their minimum annual revenue commitment under the Voice and Date Contract and the Debtors may have even benefited from that contract during the post-petition period by enjoying discounts to which they were not otherwise entitled.

24. Under the Rejection Claims Order, a second group of contracts were listed on Exhibit B. For these contracts, the Debtors, in consultation with the Creditors' Committee, were to provide a notice of rejection (the form of which is attached to the Rejection Claims Order) to the individual non-debtor party, which would then cause rejection to be effective 15 days after receipt, and the non-debtor party then had 30 days thereafter t file any rejection claim.

RESPONSE: ReGen admits, upon information and belief, the allegations contained in paragraph 24.

25. Claim 1070 involves an equipment purchase contract (the "Equipment Contract") between Pegasus Satellite Communications, Inc., and AT&T which was listed on Exhibit B to the Rejection Claims Order.

RESPONSE: ReGen admits the allegations in paragraph 25, except denies that the Equipment Contract (as defined in the Objection) 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.

26. On information and belief, neither AT&T nor Regen ever received the notice of rejection for the Equipment Contract listed on Exhibit B to the Rejection Claims Order. The contract was therefore rever rejected pursuant to the terms of the Rejection Claims Order.

RESPONSE: ReGen denies the allegations contained in paragraph 26. Based upon the emails exchanged between Debtors' counsel and ReGen, ReGen had reason to believe that both contracts had been rejected, and the time for filing claims pursuant to both contracts was extended to January 31, 2005. *See* Paul Caruso's response to number 3 on page 2 of Exhibit A. Further, ReGen has no information or knowledge as to whether AT&T received notice of rejection as to Claim 1070, and as such has operated under the assertions contained in subsequent

email correspondence from the Debtors' counsel indicating that both contracts were rejected, and it had until January 31, 2005 to file claims pursuant thereto. *See* Exhibit A.

27. As appears on the attachment to Claim no 1070, the Equipment Contract expired of its own terms on February 5, 2005. See Equipment Contract § 2.

RESPONSE: ReGen denies the allegations in paragraph 27. See response to paragraph 26, *supra.*

28. The equipment purchase contract with AT&T, by its terms, sets a minimum purchase "target", see Equipment Contract Schedule A § 1.9, and provides for loss of a discount if the target is not met.

RESPONSE: ReGen admits the allegations in paragraph 28, but respectfully refers the Court to the Equipment Contract for a full recitation of the text thereof.

29. While the contract provides for damages for early termination, see Equipment Contract § 2, it does not provide for any remedy if the target is not met and the contract expires of its own terms.

RESPONSE: ReGen denies the allegations in paragraph 29.

30. Accordingly, the Equipment Contract was never rejected: it expired of its own terms, which event does not give rise to any claim against any of the Debtors, and therefore Claim no. 1070 should be disallowed in its entirety. See, e.g. In re American Real Estate, 146 B.R. 546 (Bankr. N.D. Tex. 1992) (no claim where agreement expired of own terms postpetition).

RESPONSE: ReGen denies the allegations contained in paragraph 30. See response to paragrpaph 26. As such, it remains PSC Trust's burden to prove that ReGen is entitled to anything less than the full value of the contract, as claimed. 11 U.S.C. §502. *In re Narragansett Clothing Co.*, 143 B.R. 582, 583 (Bankr. D.R.I. 1992). ReGen has a no knowledge or

information as to whether AT&T received notice of rejection of the underlying contract, but pursuant to the emails encompassing Exhibit A, believed both contracts were rejected.

31. In discussions with Regen concerning Claims no. 1070 and 1071, Regen has asserted that it received oral and email extensions of the Rejection Claims Bar Date from prior counsel to the Debtors, before confirmation of the Chapter 11 Plan and the appointment of the Liquidating Trustee.

RESPONSE: ReGen admits the allegations in paragraph 31. Answering further, by email dated December 28, 2004 at 7:30 p.m., counsel to the Debtors, Paul Caruso of Sidley Austin Brown & Wood LLP, extended the deadline for filing claims for rejection of the Debtors' contracts with AT&T to January 14, 2005. By email dated January 20, 2005, Mr. Caruso agreed to a further extension of the claims filing deadline to January 31, 2005. A copy of these emails are attached hereto as Exhibit A and by reference made a part hereof.

32. No motions for enlargement of any deadline were filed by Regen or the Debtors, and Regen must be put to its proof concerning any such enlargement for the filing of either or both of Claims 1070 and 1071 as rejection claims.

RESPONSE: ReGen admits the allegations in paragraph 32. Answering further, see response to paragraph 31, *supra*.

33. At most, however, Regen has claimed it had enlargements to January 31, 2005, to file its rejection claims. As the Court can see from Exhibits A and B attached hereto, Claims 1070 and 1071 were filed with Trumbull on February 1, 2005. Accordingly, even granting the alleged enlargement, Claims 1070 and 1071 were untimely filed.

RESPONSE: ReGen denies any allegation that claims 1070 and 1071 were untimely filed. Answering further and as noted herein, ReGen timely filed proofs of claim with the Bankruptcy Court on January 31, 2005 and subsequently filed the same with the Claims Agent the very next day, on February 1, 2005. ReGen's January 31, 2005 filing with the Court was

sufficient as it placed the Debtors on notice as to ReGen's claim, as confirmed by the notation on the first page of Exhibit D to the Objection, which lists January 31, 2005 as the date of these two claims, and that the Debtors advised ReGen that these claims should be filed with the claims agent.. *See, e.g. Gens v. Resolution Trust Co.*, 112 F.3d 569, 575 (~~11~~**1**st Cir. 1997) ("[I]n order to fairly alert the Debtor estate, a POC need only provide adequate notice of the existence, nature, and amount of the claim as well as the creditor's intent to hold the estate liable") (internal citations omitted). As such, the filings made with Trumbull on February 1, 2005 should be deemed amendments to the timely January 31, 2005 filings. "Leave to amend a POC should be "freely given when justice so requires." *Id.* (citing Fed. R. Bankr. P. 7015). A claim amendment should be "freely allowed where its purpose is to cure a defect, provide a more particular description of the claim, or plead a new theory of recovery." *Clamp-All Corp. v. Foresta (In re Clamp-All Corp.)*, 235 B.R. 137, 140 (BAP 1st Cir. 1999). Here, the February 1, 2005 filings with Trumbull were clearly efforts to cure a technical matter regarding the January 31 filings, and such should be allowed as amendments thereto.

As such, if this Court finds that ReGen missed the claims deadline at all, it was missed at most by one-day after an attempt to file the claims in the usual manner (with the Court, not with a claims agent), and such a filing should be allowed as excusable neglect under *Pioneer Inv. Servs. Co., v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 123 L. Ed. 2nd 74 (1993). *Pioneer* established a five-factor test concluding overall that the determination must "at bottom [be] an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id*. at 395. The five factors identified by *Pioneer* are: "the danger of prejudice to the Debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

In this instance, there was no prejudice to the Debtors, who were aware of the contracts, that ReGen was planning to file the claims, and the scope of claims stemming therefrom. Neither was there any prejudice to creditors of PST because all of its unsecured creditors are being paid in cash in full under the confirmed plan. The length of the delay, one day (if at all), was *de minimus*, and therefore had no impact on judicial proceedings other than the PSC Trust's efforts, several months later, to disallow ReGen's claims on the alleged basis of missing the deadline by one day. Finally, ReGen, as the successor in interest to AT&T, acted in good faith by mistakenly filing with the Court rather than the Court-assigned claims agent. As such, claims 1070 and 1071 were, if not timely filed, filings that should be allowed as falling within the excusable neglect standard.

34. Regen has responded that it did file timely, by making an ECF filing of its claims on January 31, 2005. Attached as Exhibit D is a print out of the summary information in the ECF claims register concerning Regen's attempted ECF filings. When one attempts to go to the "main document" for each filing, it is blank. Regen in reality filed only attachments. No proof of claim form was filed. Accordingly, even if these attempted filings could have been effective, despite the appointment of Trumbull as claims agent (a fact of which Regen was or should have been aware, given its filing of Claim 494 and its filings of 1070 and 1071 with Trumbull), the ECF filings were not effective, because the Court received no equivalent to the requirements of Bankruptcy Rule 3001(a), in that the filing was not made in conformity with the Official Form (which, among other important details, requires a signature and submission of a claim under penalty of perjury). Neither the Court nor the Claims Agent received, timely, an claim "executed" by Regen as required by Rule 3001(b). In consequence, Regen never timely presented prima facie proof of its claims, pursuant to Bankruptcy Rule 3001(f). the clerk's comments shown on Exhibit D note the deficiencies, and the clerk's notations indicate having spoken directly with Regen about the missing proof of claim forms. Regen did not correct these

deficiencies that day despite having the opportunity to do so. Instead, it chose to rely on its "proper," though late, filing with Trumbull, with whom it had always known its filings should have been made in the first place.

RESPONSE: ReGen denies allegations contained in paragraph 34 to the extent they purport to provide a basis for PSC Trust's assertions that the Claims 1070 and 1071 were untimely filed or that it failed to provide prima facie proof of its claims. Answering further, because the January 31, 2005 filings served to put the Debtor on notice as to the nature and amount of its claims they were sufficient. *Gens v. Resolution Trust Co.*, 112 F.3d at 575. See response to allegations of paragraph 33.

35. Accordingly, even granting an enlargement to January 31, 2005, both Claims 1070 and 1071 were untimely filed, to the extent they are considered rejection claims subject to the Rejection Claims Order.

RESPONSE: ReGen denies the allegations in paragraph 35.

36. In the event either of Claims 1070 and 1071 are considered timely filed, then the Reorganized Debtors and the Liquidating Trustee further object to the claims as wildly overstated in the amounts claimed.

RESPONSE: ReGen denies the allegations contained in paragraph 36. The contracts at issue impose spending requirements that were not satisfied. The PSC Trust does not assert that these requirements were fully satisfied but does assert that certain of them were waived by AT&T. ReGen intends to take appropriate discovery to determine whether and to what extent these requirements were actually satisfied.

37. Regen's Claim no 1070, on the AT&T Equipment Contract, is for the full amount of the minimum purchase target, $1,080,000, despite the fact that the contract was then in the last months of its contractual term. In effect, Regen, under penalty of perjury, claimed that nothing had been bought or paid under that contract for over two and a half years. In reality, Regen

simply put in the entire contract price because it had no idea what the right amount should be. Such a failure to make any effort to discover the right amount, and to make a claim which Regen knew had to be in error, amounts to a bad faith filing which in itself should result in the claim being stricken. See, generally, In re Six, 220 B.R. 479 (Bankr. M.D. Fla. 1994) (foreclosing creditor did not credit price property sold for – equity should step in to discipline grossly overreaching creditor).

RESPONSE: ReGen admits that the Claim 1070 asserts the full amount due pursuant to the underlying contract. ReGen denies any allegations contained in paragraph 37 to the extent they purport to provide a basis for the assertion that ReGen failed to try to ascertain amounts of any alleged payments made by the Debtors to AT&T pursuant to the underlying contracts or that the filings were made in anything other than good faith. Answering further, ReGen as the Assignee of AT&T's claims has been unable to ascertain amounts that may have been paid pursuant to the underlying contract and has requested appropriate accountings. See pages 4 & 5 of Exhibit A. Debtors' counsel never provided a complete accounting to ReGen. Because to date ReGen has not received this information from the Debtors or the PSC Trust, it requests that this Court set the motion for trial in order to allow sufficient time for appropriate discovery.

38. In any event, the Liquidating Trustee's investigations reveal thus far that over $660,000 was paid by Pegasus Satellite Communications, Inc. ("PSC"), through the conduit of Pegasus Satellite Television, Inc., on the Equipment contract, and preliminary investigations with AT&T personnel have indicated AT&T received $775,000 on this contract. To the extent Claim 1070 is allowed at all, AND nonpayment of the balance of the minimum target amount constitutes a breach of the contract by PSC, Claim 1070 must be reduced by the amount already paid AT&T on the contract and allowed only in an amount which reflects the proper damages calculation for any unpaid amounts under the terms of the contract.

RESPONSE: ReGen is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 and puts PSC Trust to its proof. ReGen respectfully submits that it should be permitted the opportunity to take discovery regarding the conclusory and unsubstantiated allegations contained in paragraph 38 of the Objection.

39. Regen's Claim no. 1071 arises from the provision of voice and data services to PSC. Regen again has overstated the amount. The Liquidating Trustee's examination of the books and records of the debtors indicates payments of $302,992.50. The cumulative shortfall through the last year of this contract was therefore $177,007.50, since AT&T had previously waived the minimum "target" for the first year of the three year contract. The liquidated damages provision of the contract sets the actual damages at 50% of the cumulative shortfall, or $88,503.75. Thus, to the extent Claim no. 1071 is considered timely and to be allowed in any amount, it should be allowed only in the amount of $88,500.

RESPONSE: ReGen admits the allegations to the extent they state the underlying basis for the contract. ReGen denies any allegations contained in paragraph 39 that it intentionally overstated any amounts due to it in any claim filed in this matter. As to amounts waived by AT&T, or amounts that may or may not have been received by AT&T or its affiliates pursuant thereto, ReGen is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore puts PSC Trust to its proof. ReGen respectfully requests the opportunity to take discovery regarding the alleged waiver and th amount of payments made during the life of the contract from the Debtors to AT&T.

40. To the extent either or both of 1070 or 1071 are allowed, they should properly be allowed as claims against the estate of Pegasus Satellite Communications, Inc., As the attachments to the claims make clear, PSC is sthe entity with whom AT&T contracted. Regen may argue that the claims should be allocated to Pegasus Satellite Television, Inc. (PST), because that was the vehicle through which payments were made to AT&T. Clearly, however,

outside of bankruptcy, of AT&T were to sue on either of these contracts, it would sue PSC, with whom it had privity, not PST. It makes no difference how the mechanics of payment were handled, it matters with whom the contractual relationship was, and that contractual relationship was with PSC, not PST. Accordingly, these claims should be allocated to PSC if they are allowed at all. It is worth noting that Regen filed claims 1070 and 1071 against PST "et al.", not just PST.

RESPONSE: ReGen denies the allegations in paragraph 40. As explained above, the relevant contracts render PST liable to pay AT&T. Moreover, PSC was merely a holding company, and it is obvious that PST would not use services or purchase equipment pursuant to these contracts. Moreover, in their June 2, 2004 motion for an order restraining utilities from discontinuing service, they listed AT&T twice as a utility service provider, and in both instances the Debtors specifically identified Pegasus Satellite Television as the billing entity. See Docket No. 7, attached hereto as Exhibit B, and by reference made a part hereof.

WHEREFORE, ReGen respectfully requests that this Court overrule the Objection in its entirety; that it allow Claims 1070 an 1071 in full, and grant such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Richard P. Olson_____
Richard P. Olson, Bar No. 7275
Kevan Lee Rinehart, Bar. No. 9303
Attorneys for ReGen Capital I
Perkins Olson, P.A.

Thirty Milk Street
P.O. Box 449
Portland, Maine 04112
(207) 871-7159/0521 (fax)
rolson@perkinsolson.com

/s/ Holly G. Rogers. Esq.

Holly G. Rogers, Esq. (HG-7457)
Riverside Claims, LLC,
c/o ReGen Capital LLC
P.O. Box 626
Planetarium Station
New York, NY 10024-0540
(212) 501-0990/7088 (fax)
e-mail: notice@regencap.com

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.

/s/Kevan Lee Rinehart
Kevan Lee Rinehart
Perkins Olson, P. A.
Thirty Milk Street
P.O. Box 449
Portland, Maine 04112

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