

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
RCN CORPORATION, et al., : Case No. 04-13638 (RDD)
Debtors. : (Jointly Administered)
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**STIPULATION AND ORDER APPROVING
MODIFICATION OF THE AUTOMATIC STAY TO ALLOW
SUPERIOR COURT OF NEW JERSEY—APPELLATE
DIVISION TO DECIDE MARIE DEWEES'S APPEAL**

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), and Marie DeWees (together with the Debtors, the "Parties"), hereby agree and stipulate (the "Stipulation"), subject to Bankruptcy Court approval, as follows:

WHEREAS, on January 12, 2000, Marie DeWees initiated a lawsuit against RCN styled Marie DeWees v. RCN Corporation, et al.; Superior Court of New Jersey Law Division, Mercer County (the "New Jersey State Court"), Case No. MID-L-3645-02 (the "State Court Litigation") alleging employee discrimination based on illegal gender and age discrimination; and

WHEREAS, RCN previously filed a Motion for Summary Judgment requesting dismissal of the State Court Litigation; and

WHEREAS, on February 5, 2003, the New Jersey State Court granted RCN's Motion for Summary Judgment and dismissed the State Court Litigation with prejudice; and

WHEREAS, on February 14, 2003, Marie DeWees filed a Notice of Appeal (the "Appeal") with the Superior Court of New Jersey—Appellate Division (the "Appellate Division"); and

WHEREAS, the Parties have both fully briefed the Appeal; and

WHEREAS, on December 17, 2003, the Appellate Division heard oral arguments with respect to the Appeal; and

WHEREAS, on May 27, 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"); and

WHEREAS, the Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108; and

WHEREAS, on August 2, 2004, Marie DeWees filed a Motion For an Order Modifying Automatic Stay Pursuant to 11 U.S.C. Section 362(d) And For an Extension of the Deadline to File an Adversary Complaint Pursuant to 11 U.S.C. 523(a)(6) (the "Lift Stay Motion") (Dkt. No. 137) requesting, inter alia, lifting of the automatic stay for the purposes of determining the value of Marie DeWees's employment discrimination claim or in the alternative modification of the automatic stay in order to allow the Appellate Division to decide the Appeal; and

WHEREAS, on or about August 6, 2004, Marie DeWees sent Creditor, DeWees' Notice to Produce Documents; and

WHEREAS, the Parties wish to resolve the Lift Stay Motion among themselves without any admission of liability and to avoid the expense of further litigation; and

WHEREAS, RCN has consented to modification of the automatic stay imposed by section 362(a) of the Bankruptcy Code for the limited purpose of allowing the Appellate Division to decide the Appeal but for no other purpose; and

WHEREAS, such resolution of the Lift Stay Motion is in the best interests of the Parties and the bankruptcy estate; and

WHEREAS, RCN intends to seek Bankruptcy Court approval of this Stipulation.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, the terms, conditions, and mutual agreements set forth herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged and subject to Bankruptcy Court approval;

IT IS HEREBY STIPULATED AND AGREED by and between the Debtors on the one hand, and Marie DeWees on the other, as follows:

1. The terms and conditions of this Stipulation, and the obligations of the Parties hereunder, shall become effective only upon entry of this Stipulation as an order of the Bankruptcy Court.

2. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified for the limited purpose of allowing the Appellate Division to decide the Appeal but for no other purpose.

3. The Lift Stay Motion is dismissed without prejudice, and may be refiled only after the Appellate Division decides the Appeal.

4. This Stipulation shall bind and inure to the benefit of the Parties, the Parties' respective administrators, assigns, successors in interest, officers, directors, shareholders (solely in their capacity as shareholders), agents, independent contractors, attorneys, employees, subsidiaries, parent corporations, sibling corporations, affiliates, partners, and beneficiaries and each of them.

5. Each Party hereto expressly represents and warrants that the individual executing this Stipulation on its behalf is fully authorized by such Party to execute this Stipulation and bind such Party.

6. This Stipulation constitutes the entire agreement between the Parties hereto and supersedes all oral or written agreements entered into either prior to or contemporaneously with this Stipulation. This Stipulation may not be modified except by written agreement dated subsequent to the date of this Stipulation and signed by all Parties hereto. No waiver of any of the provisions of this Stipulation shall constitute a waiver of any other provision of this Stipulation.

7. This Stipulation may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

8. The Bankruptcy Court shall retain jurisdiction over the Parties hereto and this Stipulation including, without limitation, for the purposes of interpreting, implementing, and enforcing its terms and conditions.

9. In the event this Stipulation is not approved by the Bankruptcy Court, this Stipulation shall have no force or effect, and nothing herein shall constitute an admission or be used against any of the Parties hereto for any reason.

IN WITNESS WHEREOF, each of the Parties to this Stipulation has caused a counterpart of this Stipulation to be executed and delivered by its duly authorized signatory as of the date indicated below.

STIPULATED AND CONSENTED TO:

Dated: September 17, 2004

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: /s/ D.J. Baker

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Dated: September 13, 2004

By: /s/ Jon W. Green

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So Ordered This _____ day of _____, 2004

UNITED STATES BANKRUPTCY COURT