

Hearing Date: November 16, 2004 at 10:00 a.m
Objection Deadline: November 3, 2004 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
RCN CORPORATION, et al., :
Debtors. : (Jointly Administered)
-----X

**DECLARATION OF JOHN M. DALEY IN SUPPORT OF RESPONSE TO
DEBTOR'S SECOND OMNIBUS OBJECTION TO CLAIM NO. 1096
SUBMITTED BY OLD DOMINION FREIGHT LINE, INC.**

I, John M. Daley, declare:

1. I am an attorney duly licensed to practice law in the State of California. I am counsel of record for Old Dominion Freight Line in the action entitled *Old Dominion Freight Line, Inc. v. JJ's Mae, Inc., et al.*, Case No. C 04-01781 FMS, United States District Court for the Northern District of California (hereinafter the "California action") in which debtor RCN Corporation is named as a defendant. I am

making this declaration in support of Old Dominion's objection to the claim filed by Old Dominion Freight Line in this action.

2. The debtor has objected to Old Dominion's claim on the grounds that, based upon review of its books and records, "it is possible that the [claim] represent[s] potential liabilities of non-Debtor subsidiaries of RCN corporation or unrelated entities." Debtor has also filed a declaration by Mr. Anthony M. Horvat, based solely upon information and belief, in which he asserts that the debtor "has no business relationship with Old Dominion Freight Line, Inc.," and that "Rather, RCN Telecom Services, Inc. engaged Old Dominion through a freight broker." However, this assertion is not supported by reference to any evidence whatsoever.

3. Furthermore, in discussions with me, counsel for RCN Corporation has admitted that it is liable for the amounts in issue. I first brought the issue of debtor RCN Corporation's liability for the freight charges in issue to its attention in a demand letter which I sent to its Chief Financial Officer on March 24, 2004. A true and correct copy of this letter is attached hereto as Exhibit A. My letter includes an explanation of the underlying facts, citations to authority which showed that RCN Corporation was liable for the amount demanded, and a schedule listing the shipments and amounts for which the debt was owed.

4. RCN Corporation did not respond to my demand letter. Accordingly, on or about May 5, 2004, I filed a Complaint in the action entitled *Old Dominion Freight Line, Inc. v. JJ's Mae, Inc., et al.*, Case No. C 04-01781 FMS, United States District Court for the Northern District of California (hereinafter the "California action"), in which debtor RCN Corporation is named as one of the two principal

defendants, which Complaint was duly served on the debtor. A true and correct copy of the Complaint I filed is attached hereto as Exhibit B. I then caused the Summons and Complaint to be served upon RCN Corporation.

5. After receipt of the Summons and Complaint, Mr. David Kunz, who told me that he was counsel for RCN Corporation, contacted me and offered to settle Old Dominion's claim for "\$.30 on the dollar," explaining that, if the offer was not settled, Old Dominion "may wind up being an unsecured creditor in RCN's bankruptcy proceeding." Mr. Kunz confirmed this offer in an e-mail dated May 19, 2004, a true and correct copy of which is attached hereto as Exhibit C.

6. On May 19, 2004, I responded to Mr. Kunz's offer with a series of questions, including (a) whether or not the "\$.30 on dollar" referred to the amount shown in the Complaint, (b) why Old Dominion should accept only "\$.30 on the dollar," when the information on RCN's web site was apparently promising to pay pre-petition creditors 100 cents on the dollar, and (b) in light of the imminent filing of a petition in bankruptcy, how would the payment be handled, since it would be considered a preference. A true and correct copy of my e-mail to Mr. Kunz on these matters is attached hereto as Exhibit D.

7. Mr. Kunz did not respond to my questions. Instead, on June 9, 2004, Mr. Kunz sent me an e-mail advising that a petition in bankruptcy had been filed. A true and correct copy of Mr. Kunz's e-mail is attached hereto as Exhibit E.

8. By offering to settle the claim and asserting that Old Dominion should settle for a reduced amount in light of the imminent filing of a petition in bankruptcy, the debtor implicitly admitted that it was liable for the debt in issue.

Moreover, I relied upon this admission in not pursuing inquiry concerning the potential liability of any other RCN entity and in filing Old Dominion's claim in this action.

9. As I explained at the time I filed Old Dominion's claim, the original amount claimed included amounts for shipments made under the name of "Star Power Communications" as the "shipper," but with respect to which Old Dominion asserts that RCN Corporation was the actual shipper. Since "Star Power" was listed as the "shipper" on the bills of lading, however, Old Dominion had also demanded payment for these shipments from Star Power. Shortly after debtor filed its Omnibus Objection, Old Dominion finally received a check from Star Power for these shipments. If the check clears, as Old Dominion expects, it will reduce the amount of its claim by the full amount claimed for these shipments, which was \$5,361.84, and which would reduce Old Dominion's claim to **\$16,191.19**.

10. If the Court does not allow Old Dominion's claim on the basis of its counsel's admission of liability, it should at least overrule debtor's objection and either grant Old Dominion leave to pursue the claim in the existing California action or in this Court so that it may establish definitively that RCN Corporation is indeed liable for the debt in issue. In order to do so, however, Old Dominion needs discovery from the debtor and other sources. As is explained in the Exhibit B, the shipping arrangements in issue were made by individuals by the name of Mike Paradee and Sam Caberos, who conducted business out of Morgan Hill, California under the name "Great Northwestern, Inc." At the request of RCN and these individuals, Old Dominion sent its invoices to this address. However, Old Dominion received payments, at least for the most part, from a company in Oregon which went by the name of "Great Northwest

Transport & Logistics, Inc. Old Dominion has since discovered that the Oregon company which was sending payments to Old Dominion, which is apparently known only as “Great Northwest Transport, Inc.” to the Oregon Secretary of State, that Messrs. Paradee and Cabrerros were not employees of this company, and that Messrs. Paradee and Cabrerros were not licensed to act as “property brokers.” For convenience, however, both the individuals and the Oregon company will collectively be referred to herein as “Great Northwest.”

11. Since the transportation arrangements were made by Great Northwest, and since Great Northwest who billed RCN and collected payments from it directly, the only information Old Dominion could provide to me with respect to the “arrangement” between RCN and Great Northwest at the time it filed its lawsuit is the bills of lading which were issued for the shipments itemized in its claim. Although this might appear to be unusual to someone unfamiliar with the industry, arrangements of this type are quite common, since shippers can actually benefit from the arrangement. In fact, through discovery in the Oregon action, I received a document in which Great Northwest touts the benefits which shippers can enjoy by using a broker, a true and correct copy of which is attached as Exhibit F. In the document, Great Northwest claims that shippers who dealt with it, in lieu of dealing directly with a motor carrier, could save “time and money” by taking advantage of the strengths of several different motor carriers.

12. In order to obtain further information with regard to the identity of the shippers involved, Old Dominion, through me, has served discovery both in the California action described above and in a separate action it filed entitled *Old Dominion*

Freight Line, Inc. v. Great Northwest Transport, Inc., et al., Case No. 04-CV-179-KI, which action is pending before the United States District Court for the District of Oregon. A true and correct copy of my file copy of the Complaint filed in the Oregon action is attached hereto as Exhibit G. Among other things, I have (1) served a request for production which seeks billing records, checks and customer lists maintained by Great Northwest, the response to which is due by mid-November 2004, and (2) noticed the depositions of Messrs. Mike Paradee (presently scheduled for November 30, 2004) and Sam Cabrerros (presently scheduled for December 1, 2004), both of which should result in the production of evidence which is relevant to information which is relevant to debtor's claim that it is not liable for the debt in issue.

13. Since the debtor has not responded to the Complaint, I have no idea whether the debtor objects to its claims on grounds other than a claim that it is not responsible the debt at all--i.e., that the debt is solely the responsibility of RCN Telecom, Inc. If the debtor has other objections to the claim, however, these objections could be most efficiently resolved by granting Old Dominion leave to proceed against the debtor in the California action, where objections similar to those made by debtor will undoubtedly be raised by other shipper defendants.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of November, 2004.

JOHN M. DALEY