

Hearing Date: March 3, 2005 at 10:00 a.m

John M. Daley, Esq. (Cal. SBN 065574)  
**LAW OFFICES OF JOHN M. DALEY**  
28 Third Avenue, Suite B  
San Mateo, CA 94401  
Telephone: (650) 558-4092  
Facsimile: (650) 558-8690  
Attorneys for Claimant Old Dominion Freight Line, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
In re	:	Chapter 11
	:	
RCN CORPORATION, et al.,	:	Case No. 04-13638 RDD
	:	
Debtors.	:	(Jointly Administered)
	:	
-----x		

**REQUEST FOR CONTINUANCE OF HEARING ON DEBTOR'S SECOND  
SECOND OMNIBUS OBJECTION TO CLAIM NO. 1096 SUBMITTED BY  
OLD DOMINION FREIGHT LINE, INC.**

Claimant Old Dominion Freight Line, Inc. ("Old Dominion") hereby requests that the Court continue the hearing on the debtor's Second Omnibus Objection to Claim No. 1096 submitted by Old Dominion Freight Line, Inc. ("Old Dominion") on the following grounds:

1. Prior to the filing of the petition in bankruptcy in this matter, Old Dominion filed a lawsuit 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 was named as one of the two principal defendants, which Complaint was duly served on defendant.

2. Thereafter, Old Dominion received notice of the filing of the petition in bankruptcy in this action. Accordingly, Old Dominion notified the Court in the California action that its claim against RCN Corporation was automatically stayed, then filed its claim and supporting documents in this proceeding.

3. In its Second Omnibus Objection, debtor RCN Corporation objected to Claim No. 1096 on the grounds that the debt claimed is not a debt owing by RCN Corporation, but instead is a debt of RCN Telecom Services, Inc., a non-bankrupt entity. Old Dominion believes and contends, however, that RCN Corporation is jointly liable for the debt with RCN Telecom Services, Inc. and other RCN-related entities. However, in reliance upon the representations made by RCN Corporation in its Objection, Old Dominion amended its Complaint in the California action to add RCN Telecom Services, Inc. as a defendant, then served that entity with the Summons and Amended Complaint.

4. On January 31, 2004, Old Dominion served RCN Telecom Services, Inc. with a Request for Production and First Set of Interrogatories in the California action. By this discovery, Old Dominion seeks information which is relevant to RCN Corporation's claim that RCN Telecom Services, Inc. is responsible for the debt which is the subject of Claim No. 1096.

5. On or about February 2, 2005, shortly after service of this discovery, counsel for RCN Corporation called and advised counsel for Old Dominion

of his intention to set a date of March 3, 2005 for hearing on its Objection to Claim No. 1096. At the same time, counsel suggested that the parties discuss possible settlement of the claim asserted in this proceeding. Counsel for RCN Corporation also extended an offer to settle the claim for a particular amount.

6. On or about February 3 and 4, counsel for RCN Corporation and counsel for Old Dominion had further discussions concerning the possibility of settlement. Although counsel for RCN Corporation initially confirmed that he was negotiating on behalf of RCN Corporation only, and that he was not trying to obtain a release of RCN Telecom Services, Inc., counsel for RCN Corporation later insisted that any settlement of Old Dominion's claim in this action would have to include a release of the claims Old Dominion was asserting against RCN Telecom Services, Inc. Counsel for Old Dominion responded that he would not agree to a settlement which used the bankruptcy proceeding as a device to reduce the amount to be paid by RCN Telecom Services, Inc., a non-bankrupt entity.

7. On February 7, 2005, counsel for RCN Corporation believed that the parties had reached agreement on a settlement which recognized both the liability of RCN Corporation under the Plan of Reorganization, and of RCN Telecom Services, Inc. as a non-bankrupt entity. However, counsel for Old Dominion asked counsel for RCN Corporation to prepare a stipulation which reflected the proposed settlement, and he agreed to do so.

8. On February 15, 2005, counsel for RCN Corporation provided counsel for Old Dominion with a draft stipulation. However, the stipulation would have

required Old Dominion to release its claims against RCN Telecom Services, Inc., without providing any consideration for that release.

9. On October 17, 2005, after confirming with counsel for RCN Corporation that the stipulation would require Old Dominion to release RCN Telecom Services, Inc. without compensation, counsel for Old Dominion served counsel for RCN Corporation with a First Request for Production and First Set of Interrogatories, copies of which are attached hereto as Exhibits A and B.

10. At the same time, counsel for RCN Corporation asked counsel for RCN Corporation to stipulate to a continuance of the hearing on its Objection to Old Dominion's claim so that the hearing could be held after Old Dominion had received the information requested both in this action and in the California action. A true and correct copy of this request is attached hereto as part of Exhibit C.

11. On February 17, 2005, counsel for RCN Corporation refused to continue the hearing. A true and correct copy of counsel's refusal is attached hereto as part of Exhibit C.

12. On February 18, 2005, counsel for Old Dominion asked counsel for RCN Corporation to agree to produce the documents and respond to the interrogatories prior to the hearing. As of the date that this Request for Continuance is being prepared, counsel for RCN Corporation has not responded to this request.

13. Old Dominion needs the information requested in the discovery propounded upon RCN Telecom Services, Inc. and RCN Corporation in order to present its case at the hearing on RCN's Objection to Claim No. 1096. Among other things, these entities are the only parties which have (a) the purchase orders issued for the

shipments, since these orders were not provided to Great Northwest Transport, Inc., the transportation broker which arranged the shipments, and (b) the contract, memoranda and/or other documents which explain why the broker was directed to send all invoices for the shipments to RCN Corporation in New Jersey, California.

For the foregoing reasons, Old Dominion respectfully requests that the hearing on RCN Corporation's Objection to Claim No. 1096 be continued to for at least 45 days so that Old Dominion may obtain and review the documents and other information which it has requested from RCN Corporation and RCN Telecom Services, Inc. so that the Court may have the information necessary to rule on the merits of debtor's objection.

Dated: February 18, 2005.

**LAW OFFICES OF JOHN M. DALEY**

By 

JOHN M. DALEY

Attorneys for Claimant Old Dominion Freight  
Line, Inc.

John M. Daley, Esq. (Cal. SBN 065574)  
**LAW OFFICES OF JOHN M. DALEY**  
28 Third Avenue, Suite B  
San Mateo, CA 94401  
Telephone: (650) 558-4092  
Facsimile: (650) 558-8690  
Attorneys for Claimant Old Dominion Freight Line, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	:
	:
RCN CORPORATION, et al.,	:
	:
Debtors.	:
	:
-----X	
OLD DOMINION FREIGHT LINES, INC.	:
	:
Plaintiff,	:
vs.	:
	:
RCN CORPORATION,	:
	:
Defendant.	:
	:
-----X	

Chapter 11  
Case No. 04-13638 RDD  
(Jointly Administered)  
Claim No. 1096  
[To be Treated as  
Adversary Proceeding  
Per Order of the Court]

**OLD DOMINION'S FIRST SET OF INTERROGATORIES  
TO RCN CORPORATION**

Pursuant to Rule 7033 of the Federal Rules of Bankruptcy Procedure and Rule 33 of the Federal Rules of Civil Procedure, claimant Old Dominion Freight Lines, Inc. hereby requests that you respond to the following interrogatories within 30 days of the date of service of this First Set of Interrogatories.

## **INTERROGATORIES**

### **Interrogatory No. 1.**

Please state all facts upon which your objection to the Claim filed by Old Dominion is based.

### **Interrogatory No. 2.**

Please describe in detail the billing and payment arrangements between RCN Telecom Services, Inc. and RCN Corporation with respect to shipments of goods during the calendar year 2003.

### **Interrogatory No. 3.**

Please describe in detail the basis for your assertion that "RCN Corporation has no business relation with Old Dominion."

### **Interrogatory No. 4.**

Please describe in detail the basis for your assertion that "rather, RCN Telecom Services, Inc. engaged Old Dominion through a freight broker."

Dated: February 17, 2005.

**LAW OFFICES OF JOHN M. DALEY**

By \_\_\_\_\_  
JOHN M. DALEY  
Attorneys for Claimant Old Dominion Freight  
Line, Inc.

### **PROOF OF SERVICE BY E-MAIL**

I, John M. Daley, declare that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to this action, and my business address is 28 Third Avenue, Suite B, San Mateo, CA 94401.

On February 17, 2005, I served the following document(s):

#### **OLD DOMINION'S FIRST SET OF INTERROGATORIES TO RCN CORPORATION**

By prior agreement with counsel, the documents were converted to Adobe pdf format and served electronically on the following counsel at the e-mail addresses which follow:

Milbank, Tweed, Hadley & McCloy  
Counsel, Official Committee of Unsecured Creditors  
One Chase Manhattan Plaza  
New York, NY 10005  
Attn: Susheel Kirpalani, Esq.      e:mail: *skirpalani@milbank.com*  
Dierdre Ann Sullivan, Esq.      e:mail: *dsullivan@milbank.com*  
Jeffrey Milton, Esq.      e:mail: *jmilton@milbank.com*

I am readily familiar with the business practice of the Law Offices of John M. Daley for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, the correspondence would be placed in a sealed envelope, with postage fully prepaid, and deposited with the United States Postal Service that same day in the ordinary course of business.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this proof of service was executed on February 17, 2005 at San Mateo, California.

---

JOHN M. DALEY

John M. Daley, Esq. (Cal. SBN 065574)  
**LAW OFFICES OF JOHN M. DALEY**  
28 Third Avenue, Suite B  
San Mateo, CA 94401  
Telephone: (650) 558-4092  
Facsimile: (650) 558-8690  
Attorneys for Claimant Old Dominion Freight Line, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
RCN CORPORATION, et al.,	:	Case No. 04-13638 RDD
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		
OLD DOMINION FREIGHT LINES, INC.	:	
	:	Claim No. 1096
Plaintiff,	:	[To be Treated as
vs.	:	Adversary Proceeding
	:	Per Order of the Court]
RCN CORPORATION,	:	
	:	
Defendant.	:	
	:	
-----X		

**OLD DOMINION'S FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS TO RCN CORPORATION**

Pursuant to Rule 7034 of the Federal Rules of Bankruptcy Procedure and  
Rule 34 of the Federal Rules of Civil Procedure, claimant Old Dominion Freight Lines,  
Inc. hereby requests that you produce the documents described herein for inspection and

copying at the Law Offices of John M. Daley, 28 Third Avenue, Suite B, San Mateo, California at 9:00 a.m. on March 23, 2005.

### **DOCUMENT REQUESTS**

#### **Request No. 1.**

All documents which evidence, refer or relate to the shipments described in the documents submitted by Old Dominion in support of its claim, including, without limitation, checks issued by RCN Corporation in payment of the amounts charged for the shipments.

#### **Request No. 2.**

All documents which evidence, refer or relate to the relationship between RCN Telecom Services, Inc. and Great Northwest Transport, Inc. and/or Messrs. Michael Paradee and Sam Cabrerros, including, without limitation, all communications with these individuals, all contracts or evidence of contracts between RCN Corporation and/or RCN Telecom Services, Inc. and these individuals, and all marketing or other materials provided to you by these individuals, without regard to whether the documents relate to the handling of the shipments described in the exhibits submitted by Old Dominion in support of its claim.

#### **Request No. 3.**

All documents which support, evidence, refer or relate to your claim that "RCN Corporation has no business relation with Old Dominion."

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**Request No. 4**

All documents which support, evidence, refer or relate to your claim that and that “rather, RCN Telecom Services, Inc. engaged Old Dominion through a freight broker.”

**Request No. 5.**

All documents which evidence, refer or relate to any agreement by RCN Corporation to pay for the shipments described in the documents submitted by Old Dominion in support of its claim.

**Request No. 6.**

All documents which evidence or support your responses to Old Dominion’s First Set of Interrogatories addressed to you.

Dated: February 17, 2005.

**LAW OFFICES OF JOHN M. DALEY**

By \_\_\_\_\_  
JOHN M. DALEY  
Attorneys for Claimant Old Dominion Freight  
Line, Inc.

### **PROOF OF SERVICE BY E-MAIL**

I, John M. Daley, declare that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to this action, and my business address is 28 Third Avenue, Suite B, San Mateo, CA 94401.

On February 17, 2005, I served the following document(s):

#### **OLD DOMINION'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO RCN CORPORATION**

By agreement with counsel, the documents were converted to Adobe pdf format and served electronically on the following counsel at the e-mail addresses which follow:

Milbank, Tweed, Hadley & McCloy  
Counsel, Official Committee of Unsecured Creditors  
One Chase Manhattan Plaza  
New York, NY 10005  
Attn: Susheel Kirpalani, Esq.      e:mail: *skirpalani@milbank.com*  
Dierdre Ann Sullivan, Esq.      e:mail: *dsullivan@milbank.com*  
Jeffrey Milton, Esq.      e:mail: *jmilton@milbank.com*

I am readily familiar with the business practice of the Law Offices of John M. Daley for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, the correspondence would be placed in a sealed envelope, with postage fully prepaid, and deposited with the United States Postal Service that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this proof of service was executed on February 17, 2005 at San Mateo, California.

---

JOHN M. DALEY

**John M. Daley**

---

**From:** John M. Daley [jdaley@johnmdaley.com]  
**Sent:** Friday, February 18, 2005 1:40 PM  
**To:** Milton, Jeffrey  
**Subject:** RE: RCN Corporation/Old Dominion Claim No. 1096

Dear Mr. Milton:

The agreement for e-mail was made orally prior to your involvement. You may confirm this with your compatriots shown on the service list, who received prior e-mail service from this office.

Please let me know if you will produce the documents and respond to the interrogatories I served prior to the hearing. If not, Old Dominion will seek a continuance, since RCN is in sole possession of the information we need to establish some of the facts which relate to our claim and your objection to the claim.

In particular, according to Mr. Sam Cabrerros, the individual at Great Northwest Transport, Inc. (the transportation broker who is mentioned in our Response) who was responsible for arranging the shipments in question, RCN Corporation in Princeton, New Jersey, the debtor in this action, was the only party who actually agreed to pay the bills for the shipments in issue as a matter of contract.

Although individuals from several different RCN locations called Great Northwest to arrange for shipments, Great Northwest was instructed to send all bills to RCN Corporation and was given no identifying information about the any other "RCN" entity. So far as Mr. Cabrerros knew, all of the entities were simply "RCN." Furthermore, although Great Northwest was instructed to list the Purchase Order Number on its invoices, it was never provided with the actual purchase orders.

Thus, it is not possible to have a hearing which addresses the merits of RCN's objection unless and until RCN produces the documents and responds to the interrogatories we have served upon you. I have served similar requests and interrogatories on RCN Telecom Services, Inc. in the California action, and those responses will not be received in time for the hearing either.

As to the settlement you proposed, I have already explained that the settlement is unacceptable because and only because it requires Old Dominion to abandon, for no consideration whatsoever, claims against RCN Telecom Services, Inc., the non-bankrupt entity which RCN identified in its Objection as the party responsible for the charges in issue.

I also explained that I consider your insistence on a release of a non-bankrupt entity as a condition of reaching a settlement with RCN Corporation to constitute an abuse of these bankruptcy proceedings.

When we originally discussed the possibility of settlement, you assured me that we were discussing only a resolution of the claims asserted against the debtor, and that we would be free to pursue any non-debtor RCN entities. You reversed that position after we had reached a tentative agreement on the amount of the claim to which you would agree.

The only possible explanation for your reversal of course on this issue is that you are attempting to use the bankruptcy proceeding to obtain an advantage for the non-bankrupt entity, and you are spending resources of the bankrupt estate in order to do so.

I remain--

Very cordially yours,  
John M. Daley

**LAW OFFICES OF JOHN M. DALEY**  
28 Third Avenue, Suite B

2/18/2005

**EXHIBIT C**

San Mateo, CA 94401  
(650) 558-4092 voice  
(650) 558-8690 facsimile  
website: [www.johnmdaley.com](http://www.johnmdaley.com)

**BUSINESS, TRANSPORTATION AND CUSTOMS LAW AND LITIGATION**

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-----Original Message-----

**From:** Milton, Jeffrey [mailto:JMilton@milbank.com]  
**Sent:** Thursday, February 17, 2005 4:07 PM  
**To:** jdaley@johnmdaley.com  
**Cc:** Kirpalani, Susheel; Sullivan, Deirdre  
**Subject:** RE: RCN Corporation/Old Dominion Claim No. 1096

Dear Mr. Daley:

As discussed, and as indicated in my previous e-mail to you, RCN is prepared to enter into a stipulation which would provide for the allowance of Old Dominion's claim in full for the amount of \$16,191.19 (the remaining amount after subtracting the amount it previously received as indicated in its amended response) in exchange for a complete release against all RCN entities. The allowed claim would receive treatment under the Plan as a Class 5 Claim. As indicated in my previous e-mail, and as you acknowledged, I am sure you can appreciate that RCN cannot allow a claim in its chapter 11 case for more than the claim asserts.

Unless we are able to reach a consensual resolution of RCN's objection to Old Dominion's claim, we are prepared to go forward as noticed with the hearing on the Second Omnibus Objection with respect to Old Dominion's claim scheduled for March 3, 2005 at 10:00 a.m. (EST) before the Honorable Robert D. Drain at the United States Bankruptcy Court located at the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004.

In addition, kindly advise of the "previous agreement" with Milbank to which you refer in the first paragraph of your e-mail below.

Please contact me with any questions.

Regards,  
Jeffrey K. Milton

**Milbank, Tweed, Hadley & McCloy LLP**  
**Financial Restructuring Group**  
**Jeffrey K. Milton**

One Chase Manhattan Plaza  
New York, New York 10005  
T: 212-530-5136 F: 212-822-5136  
[jmilton@milbank.com](mailto:jmilton@milbank.com)  
[www.milbank.com](http://www.milbank.com)

2/18/2005



---

**From:** John M. Daley [mailto:jdaley@johnmdaley.com]  
**Sent:** Thursday, February 17, 2005 12:53 PM  
**To:** Milton, Jeffrey  
**Cc:** Kirpalani, Susheel; Sullivan, Deirdre  
**Subject:** RCN Corporation/Old Dominion Claim

Dear Mr. Milton:

Since you are no longer offering the \$16k in RCN Corporation stock you previously promised, I have no alternative but to proceed with this matter. Accordingly, I am serving you with a First Request for Production and First Set of Interrogatories via e-mail, per the previous agreement with your firm.

Please advise whether you will stipulate to a continuance of the hearing on RCN's Objection for at least 45 days from March 3 so that we may have the time to complete this discovery and the discovery previously served upon RCN Telecom Services, Inc. in the California lawsuit.

I look forward to your prompt response to this request, as I will be out of the country from February 19 through February 27.

I remain--

Very cordially yours,  
John M. Daley

**LAW OFFICES OF JOHN M. DALEY**

28 Third Avenue, Suite B  
San Mateo, CA 94401  
(650) 558-4092 voice  
(650) 558-8690 facsimile  
website: [www.johnmdaley.com](http://www.johnmdaley.com)

**BUSINESS, TRANSPORTATION AND CUSTOMS LAW AND LITIGATION**

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2/18/2005

**PROOF OF SERVICE VIA FEDERAL EXPRESS  
AND ELECTRONIC MAIL**

I, John M. Daley, declare:

I am a citizen of the United States, over the age of 18 years, and not a party to this action, and my business address is 28 Third Avenue, Suite B, San Mateo, CA 94401.

On February 18, 2005, I served the following document(s):

**REQUEST FOR CONTINUANCE OF HEARING  
ON DEBTOR'S SECOND SECOND OMNIBUS  
OBJECTION TO CLAIM NO. 1096 SUBMITTED  
BY OLD DOMINION FREIGHT LINE, INC.**

By agreement with counsel, the documents were converted to Adobe pdf format and served electronically on the following counsel at the e-mail addresses which follow:

Milbank, Tweedy, Hadley & McCloy  
Counsel, Official Committee of Unsecured Creditors  
1 Chase Manhattan Plaza  
New York, NY 10005  
Attn: Susheel Kirpalani, Esq.                      e:mail: [skirpalani@milbank.com](mailto:skirpalani@milbank.com)  
Dierdre Ann Sullivan, Esq.                      e:mail: [dsullivan@milbank.com](mailto:dsullivan@milbank.com)  
Jeffrey K. Milton, Esq.                              e:mail: [jmilton@milbank.com](mailto:jmilton@milbank.com)

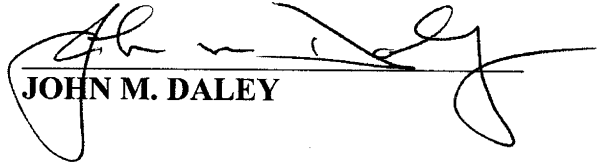
Simpson Thacher & Bartlett LLP  
Counsel, Agent for the Prepetition Credit Facility  
425 Lexington Avenue  
New York, NY 10017-3954  
Attn: Peter V. Pantaleo, Esq.                      e-mail: [ppantaleo@stblaw.com](mailto:ppantaleo@stblaw.com)

The document(s) were placed in an envelope and served via Federal Express to the person(s) and at the address(es) which follow:

Office of the United States Trustee for the Southern  
District of New York  
33 Whitehall Street, 21st Floor  
New York, NY 10004  
Attn: Paul K. Schwartzberg, Esq.

I am readily familiar with the business practice of the Law Offices of John M. Daley for collection and processing of correspondence for service by Federal Express. In accordance with that practice, the correspondence would be placed in a sealed envelope and deposited in a box or other facility regularly maintained by Federal Express, or delivered to an authorized courier or driver authorized by Federal Express to receive documents, in an envelope or package designated by Federal Express, with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address last given by that person on any document filed in the cause and served on the party making service.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this proof of service was executed on February 18, 2005 at San Mateo, California.

  
**JOHN M. DALEY**

**PROOF OF SERVICE VIA FEDERAL EXPRESS  
AND ELECTRONIC MAIL**

I, John M. Daley, declare:

I am a citizen of the United States, over the age of 18 years, and not a party to this action, and my business address is 28 Third Avenue, Suite B, San Mateo, CA 94401.

On February 18, 2005, I served the following document(s):

**REQUEST FOR CONTINUANCE OF HEARING  
ON DEBTOR'S SECOND SECOND OMNIBUS  
OBJECTION TO CLAIM NO. 1096 SUBMITTED  
BY OLD DOMINION FREIGHT LINE, INC.**

By agreement with counsel, the documents were converted to Adobe pdf format and served electronically on the following counsel at the e-mail addresses which follow:

Milbank, Tweedy, Hadley & McCloy  
Counsel, Official Committee of Unsecured Creditors  
1 Chase Manhattan Plaza  
New York, NY 10005  
Attn: Susheel Kirpalani, Esq.                      e-mail: [skirpalani@milbank.com](mailto:skirpalani@milbank.com)  
Dierdre Ann Sullivan, Esq.                      e-mail: [dsullivan@milbank.com](mailto:dsullivan@milbank.com)  
Jeffrey K. Milton, Esq.                              e-mail: [jmilton@milbank.com](mailto:jmilton@milbank.com)

Simpson Thacher & Bartlett LLP  
Counsel, Agent for the Prepetition Credit Facility  
425 Lexington Avenue  
New York, NY 10017-3954  
Attn: Peter V. Pantaleo, Esq.                      e-mail: [ppantaleo@stblaw.com](mailto:ppantaleo@stblaw.com)

The document(s) were placed in an envelope and served via Federal Express to the person(s) and at the address(es) which follow:

Office of the United States Trustee for the Southern  
District of New York  
33 Whitehall Street, 21st Floor  
New York, NY 10004  
Attn: Paul K. Schwartzberg, Esq.

I am readily familiar with the business practice of the Law Offices of John M. Daley for collection and processing of correspondence for service by Federal Express. In accordance with that practice, the correspondence would be placed in a sealed envelope and deposited in a box or other facility regularly maintained by Federal Express, or delivered to an authorized courier or driver authorized by Federal Express to receive documents, in an envelope or package designated by Federal Express, with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address last given by that person on any document filed in the cause and served on the party making service.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this proof of service was executed on February 18, 2005 at San Mateo, California.

---

**JOHN M. DALEY**