

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

FILED ON NOVEMBER 9, 2007

1 Laurel E. Davis (NV Bar No. 3005)
FENNEMORE CRAIG, P.C.
2 300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
3 Telephone: (702) 692-8004
Email: ldavis@fclaw.com

4 Richard M. Pachulski (CA Bar No. 90073)
5 Dean A. Ziehl (CA Bar No. 84529)
Stanley E. Goldich (CA Bar No. 92659)
6 PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Boulevard, 11th Floor
7 Los Angeles, California 90067-4100
Telephone: (310) 277-6910
8 Email: dziehl@pszjlaw.com

9 Attorneys [Proposed] for Debtors and
Debtors in Possession

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re:
13 VESCOR DEVELOPMENT, LLC,
14 Debtor.

Chapter 11
Case No. 07-15210-MKN
Case No. 07-15211-MKN
Case No. 07-15212-MKN
Case No. 07-15213-MKN

15 In re:
16 ADL 1, LLC,
17 Debtor.

**Jointly Administered Under
Case No. 07-15210-MKN**

18 In re:
19 IDL 9, LLC,
20 Debtor.

Date: November 13, 2007
Time: 9:30 a.m.
Place: Courtroom # 2

21 In re:
22 JDL 10, LLC,
23 Debtor.

**DEBTORS' MOTION TO STRIKE, AND
OBJECTION TO, (1) PORTIONS OF TRUSTEE'S
REPLY TO DEBTOR'S OPPOSITION TO MOTION
FOR THE APPOINTMENT OF A TRUSTEE
PURSUANT TO 11 U.S.C. §1104(a) WHICH EXPAND
THE ARGUMENTS AND RELY ON EVIDENCE NOT
24 RAISED IN THE MOVING PAPERS AND (2)
EXHIBITS 13 THROUGH 20, AND ANY RELATED
FOUNDATIONAL WITNESSES, ON THE UNITED
25 STATES TRUSTEE'S WITNESS AND EXHIBIT LIST**

Affects:
23 All Debtors
24 Vescor Development, LLC
 ADL 1, LLC
 IDL 9, LLC
25 JDL 10, LLC

1 VESCOR DEVELOPMENT, LLC, a Nevada limited liability company (“VesCor
2 Development” or “Debtor”), ADL 1, LLC (“ADL 1”), Case No. BK-S-07-15211-MKN, IDL 9, LLC
3 (“IDL 9”), Case No. BK-S-07-15212-MKN, JDL 10, LLC (“JDL 10”), Case No. BK-S-07-15213
4 (collectively, Vescor Development, ADL 1, IDL 9, and JDL 10 are referred to as the “Debtors”)
5 hereby submit this Motion to Strike and Objection (the “Motion/Objection”) to (1) the United States
6 Trustee’s (“UST”) Reply to Debtor’s Opposition to Motion for the Appointment of a Trustee
7 Pursuant to 11 U.S.C. § 1104(a) (“Trustee Reply”) and (2) Witness and Exhibit List.

8 This Motion/Objection is made on two grounds. First, as stated in U.S. Ex. Rel. Giles v.
9 Sardie, 191 F.Supp.2d 1117, 1127 (C.D. Cal. 2000), “[i]t is improper for a moving party to introduce
10 new facts or different legal arguments in the reply brief than those presented in the moving papers.”
11 The reason for this is basic fairness, since “it is well settled that arguments may not be raised for the
12 first time in a reply brief as that tactic denies the plaintiff the opportunity to respond.” Marcoux v.
13 Farm Service and Supplies, Inc., 290 F.Supp.2d 457, 484, fn. 28 (S.D.N.Y. 2003).

14 In the instant case, the substantial bulk of the Trustee Reply presents “new facts” (i.e.,
15 numbered paragraphs 8 through 15 of the Statement of Facts at p. 3, line 20 – p. 7, line 10 [the “New
16 Facts”]) and “different legal arguments (i.e., Part II, C, 2 and Part II, D [misdesignated as a second
17 Part II, C] at p. 10, line 3 – p. 14, line 23 (the “Different Legal Arguments”) which patently seek to
18 remedy the absence of any affirmative evidence of “cause” for the appointment of a trustee. See
19 generally, Debtor’s Opposition, pp. 10-15. In the interest of fundamental fairness, this Court should
20 strike, and refuse to consider, all of the New Facts and Different Legal Arguments because UST’s
21 failure to present them as part of its initial moving papers has precluded Debtor from addressing and
22 refuting them in its opposition papers.

23 Second, in a belated attempt to provide an evidentiary basis for the assertion in New Fact 10
24 (Trustee Reply, p. 4, line 17 – p. 6, line 5) that “debtors had been named in not less than 8 lawsuits
25 pending in two states (Nevada and Utah) on the petition date.” (id., p. 4, lines 17-19), UST has
26 listed nine pleadings from those lawsuits as part of its Witness and Exhibit List (i.e., Exhibits 13

1 through 20). This Court, however, should refuse to admit or consider any of such exhibits, which
2 are not only untimely for the reasons discussed immediately above, but also patently irrelevant,
3 incompetent and at best hearsay insofar as they are submitted as evidence supporting the truth of the
4 matters alleged in the complaints in the actions in which they are filed.

5 Dated this 9th day of November, 2007.

6 Respectfully submitted,

7 FENNEMORE CRAIG, P.C.

8 PACHULSKI STANG ZIEHL & JONES LLP

9
10 By: /s/ Richard M. Pachulski

11 Richard M. Pachulski (CA Bar No. 90073)
12 Dean A. Ziehl (CA Bar No. 84529)
13 Stanley E. Goldich (CA Bar No. 92659)

14 Attorneys for [Proposed] Debtors and
15 Debtors in Possession
16
17
18
19
20
21
22
23
24
25
26

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA