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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:	)	
	)	
SHASTA PAPER COMPANY,	)	Case No. 01-32653-B-7
	)	
Debtor(s).	)	
	)	
_____	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
INC.,	)	
	)	Adv. No. 06-2356-B
Plaintiff(s)	)	
	)	
vs.	)	
	)	Docket Control No. FEC-1
SCHNEIDER NATIONAL, INC.,	)	
ET AL,	)	Date: December 12, 2006
	)	
Defendant(s).	)	Time: 9:30 a.m.
	)	
_____	)	

19 On or after the calendar set forth above, the court issued  
20 the following ruling. The official record of the ruling is  
appended to the minutes of the hearing.

21 Because the ruling constitutes a "reasoned explanation" of  
22 the court's decision under the E-Government Act of 2002 (the  
23 "Act"), a copy of the ruling is hereby posted on the court's  
Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
24 format, as required by the Act. However, this posting does not  
constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

**DISPOSITION AFTER ORAL ARGUMENT**

25  
26 The court notes that respondent Schneider National, Inc.,  
27 ("Schneider") filed a separate statement of disputed facts. In  
28 this instance, the court does not find that an evidentiary

1 hearing is required as the alleged disputed fact is the meaning  
2 of this court's civil minute order entered May 19, 2006.  
3 Schneider's request to continue this matter is also denied. No  
4 motion to remand is filed in this adversary proceeding. The  
5 court notes that Schneider appears to have filed it in the main  
6 bankruptcy case instead.

7 The trustee's motion to dismiss is granted without leave to  
8 amend.

9 The purpose of a motion to dismiss under Rule  
10 12(b)(6) of the Federal Rules of Civil Procedure,  
11 made applicable here under F.R.B.P. 7012, is to test  
12 the legal sufficiency of a plaintiff's claims for  
13 relief. In determining whether a plaintiff has  
14 advanced potentially viable claims, the complaint is  
15 to be construed in a light most favorable to the  
16 plaintiff and its allegations taken as true.

17 Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40  
18 L.Ed.2d 90 (1974); Church of Scientology of Cal. v.  
19 Flynn, 744 F.2d 694, 696 (9th Cir.1984).... The  
20 complaint should not be dismissed for a failure to  
21 state a claim unless it appears that the plaintiff  
22 can prove no set of facts in support of the claim  
23 which would entitle plaintiff to relief. Conley v.  
24 Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80  
25 (1957); Jacobson v. Hughes Aircraft Co., 105 F.3d  
26 1288, 1292 (9th Cir.1997).

27 Quad-Cities Constr., Inc. v. Advanta Business Services Corp. (In  
28 re Quad-Cities Constr., Inc.), 254 B.R. 459, 465 (Bankr. D. Idaho  
2000).

The court may "consider exhibits submitted with the  
complaint, documents whose contents are alleged in the complaint  
when authenticity is not questioned and matters that may be  
judicially noticed pursuant to Federal Rule of Evidence 201."

Neilsen v. Union Bank of California, 290 F.Supp.2d 1101, 1112  
(C.D. Cal. 2003) *citing* Branch v. Tunnell, 14 F.3d 449, 454 (9<sup>th</sup>

1 Cir. 1994) *et al.* In this instance, the court grants the  
2 trustee's request for judicial notice. The court takes judicial  
3 notice pursuant to Federal Rule of Evidence 201 of exhibits A  
4 through K attached to the trustee's request for judicial notice.  
5 Exhibits B, C and K are copies of the documents attached to  
6 trustee's notice of removal (Dkt. No. 1). The remaining exhibits  
7 are documents from this court's file in Bankruptcy Case No. 01-  
8 32653 (*In re Shasta Paper Company*).

9 Schneider's Second Amended Cross-Complaint is void as a  
10 violation of the automatic stay. *In re Schwartz*, 954 F.2d 569  
11 (9<sup>th</sup> Cir. 1992). The Second Amended Cross-Complaint is itself an  
12 act to obtain possession of property of the estate or from the  
13 estate or to exercise control over property of the estate. 11  
14 U.S.C. § 362(a)(3). Schneider's arguments to the contrary are  
15 unpersuasive. It assumes that only the ultimate act of  
16 collection would violate that section. That narrow view ignores  
17 that the filing of a complaint is the first step of many in such  
18 a collection action.

19 Contrary to Schneider's assertion in its opposition, this  
20 court did not in any way modify the automatic stay to allow  
21 Schneider to file suit against the trustee or the chapter 7  
22 estate. The language referenced in the opposition that the stay  
23 is "modified as to the estate and the debtor" is merely a  
24 recognition of the two different interests at issue under Section  
25 362(a) and is language that appears in essentially every chapter  
26 7 relief from stay ruling. Schneider's opposition essentially  
27 ignores the continuation of that sentence which is: "in order to  
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1 permit the movant to prosecute claims against the debtor in Union  
2 Pacific Railroad v. Schneider Nat'l Carriers, Inc., Case No.  
3 24799 in the California State Court, Plumas County, all in  
4 accordance with applicable non-bankruptcy law;..." The quoted  
5 part of the ruling defined the scope of relief. The court  
6 permitted Schneider to include debtor as a nominal cross-  
7 defendant in order to reach debtor's insurance coverage in effect  
8 when the alleged tortious conduct occurred.

9       Nowhere did the court permit Schneider to sue the trustee.  
10 Nor could this court have done so. Schneider's motion was  
11 unopposed. Therefore, pursuant to Fed. R. Bankr. P. 7054  
12 incorporating Fed. R. Civ. P. 54(c) [applicable pursuant to Fed.  
13 R. Bankr. P. 4001(a)(1) and 9014(c)], the judgment by default  
14 could "not be different in kind from or exceed in amount that  
15 prayed for in the demand for judgment." The demand for judgment  
16 (prayer) in the motion for relief from the automatic stay (Dkt.  
17 No. 367) only sought permission to "pursue [Schneider's]  
18 indemnification rights against Debtor Shasta Paper Company."  
19 Relief against the trustee or the estate is nowhere mentioned.

20       Leave to amend is denied because the complaint cannot be  
21 amended to name the trustee without first obtaining additional  
22 relief from the automatic stay and because relief against the  
23 bankruptcy estate is not necessary to proceed in state court  
24 against debtor's insurance company. Movant is under the  
25 erroneous impression that the filing of the bankruptcy petition  
26 somehow caused Shasta Paper Company to cease to exist. Schneider  
27 cites no authority for this proposition and the court is aware of  
28

1 no authority supporting such a theory. Shasta Paper Company  
2 continued to exist after the bankruptcy case was filed; however,  
3 all of its assets were transferred by operation of law to the  
4 bankruptcy estate. See 11 U.S.C. § 541(a). Shasta Paper Company  
5 will cease to exist only if the state takes action against it,  
6 e.g., for failure to pay the minimum franchise tax. In any  
7 event, the proper course of action is to crossclaim against  
8 debtor, as permitted by this court's order, and debtor's  
9 insurance company.

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