

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
)	Case No. 12-22602
DICKINSON THEATRES, INC.,)	
a Kansas corporation,)	Chapter 11
)	
Debtor.)	

**EX PARTE MOTION FOR AN ORDER ESTABLISHING NOTICING
REQUIREMENTS WITH RESPECT TO ALL PROCEEDINGS HEREIN**

Dickinson Theatres, Inc., debtor and debtor-in-possession in the above-captioned case (the "Debtor") by and through its undersigned counsel, hereby moves the Court for an order pursuant to Sections 102(1) and 105(a) of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code"), and Rule 2002(m) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), establishing minimum noticing requirements with respect to all future proceedings in these cases. As more particularly set forth in the Motion, Debtor requests the Court establish a minimum service list (the "Official Service List") and limit notice of certain proceedings in these cases to the parties on the Official Service List. Debtor submits this Motion requesting immediate *ex parte relief*, is appropriate in light of the circumstances set forth in the Motion.

JURISDICTION

1. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory bases for the relief requested herein are Sections 102(1) and 105(a) of the Bankruptcy Code and Rule 2002(m) of the Bankruptcy Rules.

BACKGROUND

3. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's Chapter 11 Case (the "Chapter 11 Case"). The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. With its voluntary petition, the Debtor contemporaneously filed this Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications (the "Hearing Motion"), wherein the Debtor requests an expedited hearing on, *inter alia*, this Motion.

5. The Debtor operates 18 movie theatres with 210 screens in seven states (the "Business"). All theatres are operated from leased facilities with the Debtor not operating any theatres from owned locations. The Business employs approximately 36 full-time employees, and approximately 650 part-time employees (collectively, the "Employees"), at the various theatres. .

6. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and disclosure statement ("Disclosure Statement") and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. The proposed Plan provides for payment of all allowed claims in full with interest over five years.

7. Upon emergence and consummation of the Plan, Debtor will be significantly stronger and better able to compete and thrive in the highly competitive theatre/entertainment market.

RELIEF REQUESTED

8. The parties in interest in Debtor's Chapter 11 case *exceed 230 persons and entities* (the "Master Mailing List") (emphasis added). With so many parties in interest, Debtor will incur substantial expense in copying costs, postal charges and other handling expenses relative to large mailings frequently required by the normal notice provisions in the Bankruptcy Code and the Bankruptcy Rules. Many pleadings and notices often involve merely administrative and housekeeping matters that do not directly or adversely affect the substantive rights of most creditors and interested parties. Thus, by establishing the minimum notice requirements, the administrative expenses incurred in the Chapter 11 cases can be greatly reduced without prejudice to the numerous parties in interest.

9. For all pleadings not otherwise required by the Bankruptcy Code or Bankruptcy Rules to be served on other or all parties in interest, Debtor requests authority to establish an Official Service List after due notice to all interested parties with sufficient opportunity to be included on the Official Service List. The Official Service List shall be composed of:

- a. Debtor and its counsel;
- b. The U.S. Trustee;
- c. The members of any Official Unsecured Creditors Committee, and counsel for any such Committee(s);

- d. Unless and until any Official Committee of Unsecured Creditors is appointed, the creditors listed on the List of Twenty Largest Unsecured Creditors filed by Debtor in this case; and
- e. Any person or entity that files an Entry of Appearance and Request for Notice.

10. Debtor will file with the Court the Official Service List and will thereafter periodically file and serve on the members of the Official Service List an amended Official Service List with the Court to reflect changes, additions and deletions. The Official Service List will then be available to any parties in interest for use in this Chapter 11 case.

BASIS FOR RELIEF

11. Bankruptcy Rule 2002(a) provides that the trustee, all creditors and all indenture trustees shall be given at least 21 days' notice by mail of the following:

- (1) the meeting of creditors under § 341 or § 1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;
- (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;
- (3) the hearing on approval of a compromise or settlement of controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;
- (4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$ 1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.¹

However, Bankruptcy Rule 2002(i) states, in relevant part:

Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees ... appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them.

In addition, Bankruptcy Rule 9014(a) states, in relevant part:

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.

This rule arguably requires that at least a notice of all motions filed in these cases be served on all creditors, equity security holders, and other parties in interest in order for them to be bound by any ruling on the motion. On the other hand, Bankruptcy Rule 9007 states:

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Similarly, Section 102(1) of the Bankruptcy Code states:

¹ The foregoing matters which must be noticed out under Rule 2002(a) shall be collectively referred to as "Rule 2002 Matters."

"after notice and a hearing", or a similar phrase means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances....

12. Because there are over 140 parties in interest on the Master Mailing List, Debtor respectfully submits that the mailings required by Bankruptcy Rule 2002(a)(2) regarding sales, (3) regarding settlements, and (6) regarding compensation applications, plus the mailings arguably required by Bankruptcy Rule 9014, would impose an undue burden on Debtor and other parties in interest. On the other hand, limiting the above mailings to the Official Service List, including any party in interest that has filed an Entry of Appearance and Request for Notices, will satisfy any relevant constitutional requirements of due process and other relevant law.

13. Debtor submits that the Official Service List should be used to notice out all pleadings and other matters, *except*: (i) the Section 341 initial meeting of creditors; (ii) the time fixed for accepting or rejecting a proposed modification to a plan of reorganization; (iii) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c); (iv) the time fixed for filing objections and the hearing to consider approval of a disclosure statement; (v) the time fixed for filing objections and the hearing to consider confirmation of a plan of reorganization, and (vi) all other proceedings for which this Court specifies a different notice. In order to further protect any person or entity that might be omitted from the Official Service List, Debtor proposes that all parties in interest should have the "reserved" right to request that the Court enter an order broadening (or further limiting) the Official Service List upon a showing of good cause.

14. To establish the Official Service List, and to give all significant parties-in-interest the opportunity to be included on the Official Service List, Debtor shall serve upon all parties-in-interest, a notice that requires them to file a written request to be included on the Official Service list. Accordingly, Debtor has attached hereto as Exhibit A a form of notice.

WHEREFORE, for the foregoing reasons, Debtor respectfully requests this Court enter an Order, establishing minimum notice requirements and related forms thereto applicable to all proceedings in these Chapter 11 cases; and granting Debtor such other and further relief as is just and proper under the circumstances of these cases.

Dated: September 21, 2012.

STINSON MORRISON HECKER LLP

By: s/ Sharon L. Stolte

Sharon L. Stolte, KS #14302
Paul M. Hoffmann, KS Fed. Bar No. 70170
Timothy M. Swanson, KS #24516
1201 Walnut, Ste. 2900
Kansas City, MO 64106
Tel: (816) 691-2456
Fax: (816) 412-9325
sstolte@stinson.com
phoffmann@stinson.com
tswanson@stinson.com

*Proposed Reorganization Counsel for
the Debtor and Debtor-in-Possession*

- and -

ROBERT J. RAYBURN, III,
ATTORNEY AT LAW

Robert J. Rayburn, III, KS #17102
7400 W. 110th Street, Ste. 600
Overland Park, KS 66210
Tel: (816) 215-5567
Fax: (888) 685-2224
robert@rayburngrp.com

*Proposed General Corporate and
Conflicts Counsel for the Debtor and
Debtor-in-Possession*