

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

In re:

DICKINSON THEATRES, INC.

Debtor.

Chapter 11

Case No. 12-22602

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO RETAIN AND EMPLOY PROTIVITI INC.
AS FINANCIAL ADVISOR, *NUNC PRO TUNC* TO OCTOBER 15, 2012**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-referenced chapter 11 cases of Dickinson Theatres, Inc. (the “Debtor”), hereby applies (the “Application”) for an order authorizing the employment of Protiviti Inc. (“Protiviti”) as financial advisor to the Committee, effective *nunc pro tunc* to October 15, 2012. In support of this Application, the Committee respectfully represents upon information and belief as follows:

Relief Requested

1. By this Application, the Committee requests, pursuant to sections 327(a), 328(a), and 1103(a) of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) Rule 2014(a), and the Local Rules for the United States Bankruptcy Court for the District of Kansas (the “Local Rules”), entry of the proposed order substantially in the form attached hereto as Exhibit B approving the employment and retention of Protiviti, *nunc pro tunc* to October 15, 2012, as its financial advisor in connection with this chapter 11 case, upon the terms and conditions contained in the letter dated October 15, 2012, by and between Protiviti and the Committee (the “Agreement”), a copy of which is attached hereto as Exhibit C and incorporated by reference herein.

Jurisdiction and Venue

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). No trustee or examiner has been appointed in this case.

Background

3. On September 21, 2012 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

4. Since the Petition Date, the Debtor has continued in possession of its properties and has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On October 2, 2012, the Court entered an order appointing the Committee. The Court amended that order on October 3 and 4, 2012. The Committee currently consists of six members: (i) The Hartley's Executive Cleaning; (ii) The Coca-Cola Company; (iii) Cinedigm Digital Cinema Corp.; (iv) GG&A Central Mall Partners, L.P.; (v) IMAX Corporation; and (vi) Prize Properties LLC. On October 15, 2012, the Committee selected Protiviti as its proposed financial advisor.

Services to be Provided and Qualifications

6. Protiviti is a restructuring, crisis management, and transaction services firm with broad experience providing financial advisory and related restructuring services to debtors, creditors committees, secured lenders, and other parties in interests in chapter 11 proceedings throughout the country.

7. Protiviti is a restructuring, crisis management, and transaction services firm with broad experience providing financial advisory and related restructuring services to debtors, creditors committees, secured lenders, and other parties in interests in mid and large size chapter 11 proceedings throughout the country. Protiviti has served as the financial advisor to creditors committees numerous times in several bankruptcy courts, including representations in the Circuit City Stores, Inc., et al.(Case No.: 08-35653, Eastern District of Virginia), Workflow Management, Inc., et al. (Case No.: 10-74617, Eastern District of Virginia), Erickson Retirement Communities, LLC, et al (Case No.: 09-37010, Northern District of Texas), and SSI Group Holding Corp., et al. (Case No.: 11-12917, District of Delaware) bankruptcies. Protiviti has also served as financial advisor for the debtor in the Linens Holding Co., et al. (Case No.: 08-10832, District of Delaware) and Metromedia Steakhouses Company, L.P., a Delaware limited partnership, et al. (Case No.: 08-12490, District of Delaware) bankruptcies. Michael Atkinson, Protiviti Managing Director, has over 20 years of bankruptcy experience and has several relevant credentials and certifications including being a Certified Public Accountant (“CPA”), Certified Insolvency and Restructuring Advisor (“CIRA”), and a Certified Valuation Analyst (“CVA”), among others. Additionally, Protiviti and Mr. Atkinson have testified several times in front of various courts regarding a myriad of bankruptcy issues including valuation, solvency, feasibility, plan confirmation and fraudulent conveyances.

8. As financial advisor, Protiviti will provide the following financial advisory services to the extent requested by the Committee and as agreed upon by Protiviti:

- (a) Assist the Committee’s review of the financial and cash flow projections to evaluate the feasibility of the Debtor’s projections included in its proposed plan of reorganization;
- (b) Assist the Committee and its counsel in developing strategies and related negotiations with the Debtor and

other interested parties with respect to elements of the Debtor's treatment of the unsecured creditors or alternative proposals; and

- (c) Performing all other services as may be required in the interests of the creditors.

Protiviti's Disinterestedness

9. Upon information and belief, Protiviti does not represent and does not hold any interest adverse to the Debtor's estate or its creditors in the matters upon which Protiviti is to be engaged as set forth in the declaration of Michael Atkinson, Managing Director (the "Atkinson Declaration") attached hereto as Exhibit A.

10. Based on the Atkinson Declaration, the Committee submits that Protiviti is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code. The Committee has been informed that Protiviti will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise, and if any new relevant facts or relationships are discovered, Protiviti will supplement its disclosure to the Court.

Professional Compensation

11. As set forth in the Agreement and herein, Protiviti proposes to charge the Debtor for its professional services on an hourly basis based on its hourly rates in effect on the date services are rendered.

12. The customary hourly rates, subject to periodic adjustments, charged by Protiviti's professionals and paraprofessionals anticipated to be assigned to this case, are as follows:

Professional Level	Standard Billing Rates (hourly)
Managing Directors	\$525 - \$590
Directors and Associate Directors	\$375 - \$465
Senior Managers and Managers	\$265 - \$370
Senior Consultants and Consultants	\$150 - \$275
Administrative	\$80 - \$100

13. Protiviti's professionals will maintain summarily time records in one tenth hour increments to support and document actual and necessary costs and expenses incurred in connection with its services in this chapter 11 case.

14. Protiviti intends to apply to the Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, and any additional procedures that may be or have already been established by the Court in this case.

15. Compensation for services rendered and expenses incurred by Protiviti on behalf of the Committee in this case shall be subject to allowance by this Court and, as to the timing of payment, upon the availability of sufficient assets and funds in the estate in accordance with sections 328, 330, and 331 of the Bankruptcy Code.

Applicable Authority

16. The Committee respectfully submits that the terms of the proposed retention are reasonable and comparable to similarly skilled practitioners in matters outside and other than chapter 11 cases, as well as cases under chapter 11, and have been approved and implemented in not just this jurisdiction but also in chapter 11 cases elsewhere. Indeed, the

entire engagement as set forth in the Agreement is considered to be at “below market” both in and out of chapter 11 proceedings, in each case, in light of Protiviti’s experience in reorganizations and the scope of the work to be performed pursuant to its retention. Accordingly, for the reasons set forth in this Application, the Committee respectfully submits that the terms of the proposed engagement of Protiviti should be approved.

17. For the reasons set forth in this Application, sections 327(a) therefore permits the Court to approve the terms of the proposed engagement of Protiviti as set forth in the Agreement.

Notice

18. The Committee has provided notice to: (i) counsel to the Debtor; (ii) the U.S. Trustee; (iii) all creditors holding secured claims; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Committee submits that no other or further notice is required.

No Prior Request

19. No previous request for the relief sought herein has been made to this or any other Court.


WHEREFORE, the Committee requests that the Court enter an order, substantially in the form attached hereto as Exhibit B: (i) finding that Protiviti and its employees are “disinterested” persons and that they neither hold nor represent any interest adverse to the estate and, therefore, are qualified professional persons to serve as financial advisor to the Committee in this case; (ii) authorizing the Committee to retain and employ Protiviti as its financial advisor, *nunc pro tunc* to October 15, 2012, in accordance with the Agreement and this Application; (iii) authorizing Protiviti to receive payment of 100% of its fees and 100% of its

expenses on an interim and ongoing basis, the final allowance of which is subject to further order of this Court; and (iv) granting such other and further relief as the Court may deem just and proper.

Dated: October 22, 2012

Respectfully submitted,

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF DICKINSON
THEATRES, INC.

By: 

The Coca-Cola Company
Chair of the Official Committee of Unsecured
Creditors of Dickinson Theatres, Inc.

Respectfully Submitted:

GRIMES & REBEIN, L.C.

By: s/ Cynthia F. Grimes

Cynthia F. Grimes, KS #12075

15301 W. 87th Street Parkway, #200

Lenexa, KS 66219

(913) 888-4800 Telephone

(913) 888-0570 Facsimile

grimreb@gmail.com

ATTORNEYS FOR

UNSECURED CREDITORS COMMITTEE