

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

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

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER ESTABLISHING
BAR DATES FOR FILING PROOFS OF PREPETITION SECURED AND
UNSECURED AND § 503(B)(9) ADMINISTRATIVE EXPENSE CLAIMS**

Dickinson Theatres, Inc., the debtor and debtor-in-possession in the above-captioned proceeding (the "Debtor"), by and through its undersigned counsel, hereby files this Motion (the "Motion") pursuant to sections 501, 502, 503(b)(9) and 1111(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002(a)(7), 3003(c)(3) and 5005(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), establishing bar dates for filing proofs of prepetition unsecured and secured and section 503(b)(9) administrative claims.¹ In further support of this Motion, the Debtor states as follows:

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). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 501, 502, 503(b)(9) and 1111(a) of the Bankruptcy Code and Rules 2002(a)(7), 3003(c)(3) and 5005(a) of the Bankruptcy Rules.

¹ Holders of Section 503(b)(9) administrative claims must also follow the proposed procedures as set forth in the *Debtor's Motion for An Order Establishing Procedures for the Assertion of Section 503(b)(9) Claims Relating to Goods Received Within Twenty Days Prior to the Petition Date* which was contemporaneously filed with this Motion.

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.

8. At the time of the filing of this case, the Debtor had in excess of 140 creditors. The names, addresses and amounts owed to these creditors was set forth in the Debtor's schedules of liabilities filed in this case pursuant to Section 521(1) of the Bankruptcy Code.

RELIEF REQUESTED

9. The Debtor respectfully requests entry of an order pursuant to sections 501, 502, 503(b)(9) and 1111(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(7), 3003(c)(3) and 5005(a) establishing various bar dates and approving the form and manner of notice thereof, as follows:

- a. Except as otherwise provided below, establishing **November 5, 2012** (the "General Bar Date") as the deadline for all persons and entities (each a "Creditor" and, collectively, the "Creditors") holding or wishing to assert a prepetition unsecured or secured, priority or nonpriority claim (as defined in section 101(5) of the Bankruptcy Code), including, without limitation, any administrative expense claim arising under section 503(b)(9) of the Bankruptcy Code, against any Debtor arising or accruing prior to the Petition Date (each a "Claim" and, collectively, the "Claims"), to file a proof of such Claim in this Chapter 11 Case;
- b. Establishing the later of the General Bar Date or thirty (30) days after a Creditor is served with notice that any Debtor has filed or amended its Schedules of Assets and Liabilities (the "Schedules"), reducing, deleting or changing the amount or status of a Claim not previously scheduled as disputed, and/or contingent and/or unliquidated, of such Creditor, as the bar date for filing a proof of Claim with respect to such amended scheduled Claim (the "Amended Schedule Bar Date");
- c. Except as otherwise set forth in any order authorizing rejection of an executory contract or unexpired lease, establishing the later of the General Bar Date or thirty (30) days after the effective date of any order authorizing the rejection of an executory contract or unexpired lease as the bar date by which a proof of Claim relating to the Debtor's rejection of such contract or lease must be filed (the "Rejection Bar Date");
- d. Establishing **March 20, 2013** (the "Governmental Unit Bar Date") as the deadline for all governmental units (as defined in section 101(27) of the Bankruptcy Code) to file a proof of Claim in this Chapter 11 Case (the General Bar Date, the Amended Schedule Bar Date, the Rejection Bar Date and the Governmental Unit Bar Date are collectively referred to herein as the "Bar Dates"); and

- e. Approving the Debtor's proposed forms and manner of notice of the Bar Dates.

BASIS FOR RELIEF REQUESTED

10. Bankruptcy Rule 3003(c)(3) provides that "[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Neither this Court's rules nor the local rules specify a time by which proofs of claim must be filed in Chapter 11 Cases, except as is provided by section 502(b)(9) of the Bankruptcy Code for governmental units.

11. The circumstances of this Chapter 11 Case justifies fixing the Bar Dates as requested herein. It is essential for the Debtor to quickly ascertain the full nature, extent and scope of the Claims asserted against its estate, as the Debtor expects to emerge from Chapter 11 as expeditiously as possible. Accordingly, the Debtor requests that the Court set the Bar Dates for the filing of Claims against the Debtor's estate.

12. To this end, the Debtor requests that the Court set November 5, 2012, as the General Bar Date for filing Claims, which is more than 35 after the Debtor filed its petition.

13. The Debtor proposes that the Bar Dates apply to all Persons or Entities (each as defined in section 101(41) and 101 (15), respectively, of the Bankruptcy Code) holding Claims against the Debtor arising or accruing prior to the Petition Date.

14. The Debtor shall retain the right to: (a) dispute, or assert offsets or defenses against, any filed Claim as to its nature, amount, liability, classification or otherwise; or (b) subsequently designate any Claim as disputed, contingent or unliquidated.

15. The Debtor proposes that if it amends its Schedules to reduce the undisputed, noncontingent and liquidated amounts or to change the nature or classification of a Claim against the Debtor reflected therein, then the affected Creditor shall have until the Amended Schedule

Bar Date to file a proof of Claim, or to amend any previously filed proof of Claim in respect of such amended scheduled Claim. Notwithstanding the foregoing, nothing set forth herein should preclude the Debtor from objecting to any Claim, whether scheduled or filed, on any grounds.

16. The Debtor anticipates that certain Creditors may assert Claims in connection with the Debtor's rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Debtor proposes that, for any Claim relating to the Debtor's rejection of an executory contract or unexpired lease that is approved by an order of the Court, unless otherwise stated in such order, the bar date for filing any such Claim shall be the Rejection Bar Date.

17. Pursuant to Bankruptcy Rule 3003(c)(2), any Person or Entity that is required to file a proof of Claim in these Chapter 11 Cases but that fails to do so in a timely manner should be forever barred, estopped and enjoined from: (a) asserting any such unscheduled Claim against the Debtor that such Person or Entity has that (i) exceeds the amount, or (ii) is of a different nature or in a different classification, if any, of that which is set forth in the Schedules (any such claim referred to as an "Unscheduled Claim"); and (b) voting upon, or receiving distributions under, any plan in this Chapter 11 Case with respect to an Unscheduled Claim.

18. In conjunction with setting the Bar Dates, the Debtor must ensure that all interested parties receive appropriate notice of such dates. To determine the adequacy of the notice given to a creditor, bankruptcy law distinguishes between "known" and "unknown" creditors. *See In re S.N.A. Nut Co.*, 198 B.R. 541 (Bankr. N.D. Ill. 1996); *In re Envirodyne Indus., Inc.*, 206 B.R. 468 (Bankr. N.D. Ill. 1997). As the court in *S.N.A. Nut Co.* explained:

When a creditor is unknown to the debtor, publication notice of the claims bar date will satisfy the requirements of due process. . . .
However, if a creditor is known to the debtor, notice by publication

is not constitutionally reasonable and actual notice of the relevant bar dates must be afforded to the creditor.

S.N.A. Nut Co., 198 B.R. at 543-44. The Supreme Court has characterized a "known" creditor as one whose identity is either known or is "reasonably ascertainable by the debtor." *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490 (1988). An "unknown" creditor is one whose "interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950).

19. In defining the efforts required to identify "known" creditors, the court in *Envirodyne Industries* stated:

The debtor is under an obligation to make reasonably diligent efforts to identify creditors and their claims Reasonable diligence varies depending on the context. The requisite search focuses on the debtor's own books and records It does not require that a debtor engage in impracticable and extended searches . . . in the name of due process It is not the debtor's duty to search out every conceivable or possible creditor and urge that person to make a claim against it.

206 B.R. at 473-74. As for the particular efforts a debtor must exert to identify known creditors, "[w]hether a creditor received adequate notice of a bar date 'depends upon the facts and circumstances of a given case.'" *In re The Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997) (citing *Oppenheim, Appel, Dixon & Co. v. Bullock (In re Robintech Inc.)*, 863 F.2d 393, 396 (5th Cir.), *cert. denied*, 493 U.S. 811 (1989)). In this Chapter 11 Case, the Debtor proposes to provide actual written notice of the Bar Dates to all known Persons and Entities holding Claims.

20. In giving actual notice to known Persons and Entities who may have a Claim, the Debtor proposes to give notice of the Bar Dates, substantially in the form of the notice annexed

hereto as Exhibit A (the "Bar Date Notice"), in accordance with Bankruptcy Rule 9007, by first class mail at least twenty days (20) days before the General Bar Date, the notice required by Bankruptcy Rule 2002(a)(7). Given the twenty-day notice period contemplated by the Debtor, Creditors would have more than sufficient notice, time and opportunity to file their proofs of Claim.

21. Together with the Bar Date Notice, the Debtor will include a proof of claim form substantially conforming to Official Bankruptcy Form 10, that may be used to assert prepetition unsecured, secured and 503(b)(9) administrative priority claims (as attached hereto as Exhibit B, the "Proof of Claim Form").

22. Notice of this Motion is being served on the U.S. Trustee, the Debtor's secured creditors and the twenty largest creditors. Debtor submits that due to the nature of the relief requested, and the notice being provided, that *ex parte* relief is appropriate under the circumstances and an order may be entered forthwith.

WHEREFORE, the Debtor requests the Court (i) set November 5, 2012, as the last day for filing of claims and proofs of interest, (ii) approve the form of notice attached hereto as Exhibit A, or a notice substantially similar, for service on the creditors and interested parties, and (iii) grant such other relief as is proper under the circumstances.

Dated: September 21, 2012.

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