

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.)

**MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105(a) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Dickinson Theatres, Inc., debtor and debtor-in-possession (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for the entry of an administrative order, pursuant to 11 U.S.C. §§ 105(a) and 331 establishing procedures for interim compensation and reimbursement of expenses of professionals (the "Motion"). In support of this Motion, the Debtor represents 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)(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 105(a) and 331 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code") and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and D. Kan. LBR 2016.1 of the Local Rules of Bankruptcy Practices (the "Local 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 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. Simultaneously with the filing of this motion, the Debtor is filing an application to retain Stinson Morrison Hecker LLP as their primary bankruptcy counsel. Debtor has also filed

an application to retain Robert Rayburn as General Corporate and Conflicts Counsel. A statutory committee of unsecured creditors (the "Committee") may be appointed in these cases and, if so, likely will retain counsel and possibly other professionals as well (collectively, with the professionals set forth above, the "Professionals").

9. Chapter 11 Professionals retained under sections 327(a), 327(e) or 328(a) of the Bankruptcy Code in this Chapter 11 Case will be required to submit interim and final applications for payment of fees and reimbursement of expenses in accordance with Sections 330 and 331 of the Bankruptcy Code.

10. By this Motion, the Debtor requests the entry of an order authorizing and establishing procedures for compensating and reimbursing the Professionals on a monthly basis, comparable to those procedures established in other chapter 11 cases filed in this District. Such an order would enable Professionals to receive timely payment of fees and reimbursement of expenses while allowing the Court, the United States Trustee for the District of Kansas (the "U.S. Trustee") and other parties in interest to effectively monitor the Professionals' fees and expenses incurred in this Chapter 11 Case.

11. Specifically, the Debtor proposes that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

- (a) No later than the 20th day of each calendar month, each Professional seeking interim compensation and expense reimbursement shall file its monthly invoice (the "Monthly Statement") for the prior month (the "Compensation Period") and serve a copy of such Monthly Statement on: (i) counsel to Dickinson Theatres, Inc., Stinson Morrison Hecker LLP, Attn: Sharon L. Stolte, Esq., 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106; (ii) counsel to the Official Committee of Unsecured Creditors, once appointed; and (iii) the Office of the United States Trustee, United States Trustee, 301 North Main Street, Suite 1150, Wichita, Kansas 67202 (collectively, the "Notice Parties").

- (b) All Monthly Statements shall comply with the timekeeping and detail requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable law, the Local Rules of this Court and the "United States Trustee Fee Guidelines - Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (Appendix A to 28 C.F.R. § 58)" (the "US Trustee Fee Guidelines"). Each Notice Party will have ten (10) days after service and filing of a Monthly Statement to object thereto (the "Objection Deadline"). Upon the expiration of the Objection Deadline, the Debtor shall be authorized and directed to pay each Professional an amount (the "Actual Monthly Payment") equal to the lesser of (i) one hundred percent (100%) of the fees and one-hundred percent (100%) of the expenses requested in the Monthly Statement (the "Maximum Monthly Payment"); and (ii) one hundred percent (100%) of the fees and one-hundred percent (100%) of the expenses not subject to an objection pursuant to subparagraph (c) below.¹
- (c) If any Notice Party objects to a Professional's Monthly Statement, it must serve on the affected Professional and each of the Notice Parties a written objection (the "Objection"), which must be received by the affected Professional and the Notice Parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within twenty (20) days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.
- (d) Beginning after the period ending January 31, 2013, at four-month intervals or at such other intervals convenient to the Court, each of the Professionals must file with the Court and serve to the Notice Parties an interim application ("Interim Fee Application") for Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Applications filed in respect of such three-month period (the "Interim Fee Period"). Each Interim Fee Application must include copies of the Monthly Statements that are the subject of the application and any other information requested by the Court or required by the Bankruptcy Rules or the Local Rules. Each Professional must file its Interim Fee Application

¹ Subject to each Professional holding no less than ten percent (10%) of any fees in trust pending approval of an interim or final fee application per D. Kan. LBR 2016.1(b).

within twenty (20) days after the end of the Interim Fee Period for which the application seeks allowance of fees and reimbursement of expenses. Each Professional must file its first Interim Fee Application on or before February 20, 2013, and the first Interim Fee Application should cover the Interim Fee Period from the commencement of this case through and including January 31, 2013. Any Professional that fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted by the Professional or such requirement is waived by the Court after notice and hearing.

- (e) The Debtor shall request that the Court schedule a hearing on the Interim Fee Applications at least once every four months, or at such other intervals as the Court deems appropriate.
- (f) The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses.
- (g) Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

12. The Debtor further requests that the Court limit the notice of hearings to consider interim and final fee applications to: (a) the Notice Parties; and (b) all parties who have filed a notice of appearance with the Clerk of this Court and requested such notice. Such notice should reach the parties most active in these Chapter 11 Cases and will save the expense of undue duplication and mailing.

13. The Debtor further requests that each member of the Committee (once appointed, if appointed) be permitted to submit statements of expenses and supporting vouchers to counsel for the Committee, which will collect and submit such requests for reimbursement in accordance with the foregoing procedure for monthly and interim compensation and reimbursement of Professionals.

14. Debtor will include all payments made to Professionals in accordance with the compensation procedures in its monthly operating reports identifying the amount paid to each of the Professionals.

AUTHORITY FOR RELIEF REQUESTED

15. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. . . .

11 U.S.C. § 331.

16. D. Kan. LBR 2016.1 also provides:

(a) In a Chapter 11 or 12 case, any attorney employed or seeking employment under §327 to conduct the case may file a separate motion for monthly payment of fees and expenses. The motion must state the filing date of the application to employ and, if applicable, the date an order granting the application to employ was entered of record.

(b) The motion must state the percent amount of fees and expenses the professional seeks to collect on a monthly basis. The motion may request that up to 100% of the fees and 100% of the expenses be paid monthly. The motion and the proposed order granting the motion must provide that in the event 100% of the fees are paid, the professional will hold no less than 10% of the fees in trust pending the court's approval of an interim or final fee application, unless the court orders otherwise.

17. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules. . . .

11 U.S.C. § 105(a). Procedures comparable to those proposed in this Motion have been established in other chapter 11 cases. Such an order will permit the Court, the Office of the United States Trustee, and all other interested parties to effectively monitor the fees and expenses incurred in these cases.

18. Further, such procedures are needed not only to encourage Professionals to provide services in connection with this Chapter 11 Case, but also to avoid having Professionals fund these cases. *In re Int'l Horizons, Inc.*, 10 B.R. 895, 897-98 (Bankr. N.D. Ga. 1981) (establishing procedures for monthly interim compensation). Appropriate factors to consider include "the size of [the] reorganization cases, the complexity of the issues included, and the time required on the part of the attorneys for the Debtor in providing services necessary to achieve a successful reorganization of the Debtor." *Id.*; see also *In re Mariner Post-Acute Network, Inc.*, 257 B.R. 723, 727-28 (Bankr. D. Del. 2000) (approving monthly interim compensation procedures for professionals, noting that, given the large quantity of time likely invested by professionals, their receiving payment only once every four months may impose an intolerable burden on them and may place them at a significant economic disadvantage to the professionals retained by the creditors); *In re Werth*, 32 B.R. 442 (Bankr. D. Colo. 1983) (finding that when applications for compensation are justifiable and reasonable that the court should grant the applications). The Debtor submits that the procedures sought to be approved herein are appropriate considering these factors.

19. Notice of this Motion has been given, in accordance with D. Kan. LBR 2016.1, to: (a) the Office of the United States Trustee; (b) the creditors on the Debtor's list of twenty (20) largest unsecured creditors; (c) all creditors holding secured claims; and (d) all other parties requesting notice pursuant to Bankruptcy Rule 2002.

20. No previous request for the relief sought in this motion has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests the Court enter an order substantially in the form attached hereto as Exhibit A; and granting Debtor such other and further relief as the court may deem proper.

Dated: September 22, 2012.

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