

**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.)

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 105, 363, 364,
1107 AND 1108 AUTHORIZING (i) MAINTENANCE OF EXISTING BANK
ACCOUNTS, (ii) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (iii)
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEMS**

Dickinson Theatres, Inc., debtor and debtor-in-possession in the above-captioned proceedings (the "Debtor"), through its undersigned counsel, hereby files this Motion requesting this Honorable Court enter its order authorizing (i) the maintenance of existing bank accounts, (ii) the continued use of existing business forms, and (iii) the continued use of existing cash management system (the "Motion"). In 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 statutory bases for the relief requested herein are sections 105, 363, 364, 1107 and 1108 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code").

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

A. The Debtor Should Be Granted Authority to Maintain Existing Bank Accounts

8. The Office of the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases. These guidelines require Chapter 11 debtors to, *inter alia*, (i) close all existing bank accounts and open new debtor-in-possession bank accounts, (ii) establish one debtor-in-possession account for all estate monies required for payment of taxes, including payroll taxes, (iii) maintain a separate debtor-in-possession account for cash collateral, and (iv) obtain checks for all debtor-in-possession accounts which bear the designation "Debtor-in-Possession," the bankruptcy case number, and the types of accounts. This requirement is designed to provide a clear line of demarcation between pre-petition and post-petition transactions and operations and prevent the inadvertent post-petition payment of pre-petition claims.

9. The Debtor seeks a waiver of the United States Trustee's requirement that the pre-petition bank accounts be closed and that new post-petition bank accounts be opened. If enforced in this case, such requirements would disrupt the Debtor's business and would impair the Debtor's efforts to reorganize.

10. The Debtor employs an integrated, centralized cash management system (the "Cash Management System") involving a series of independent depository accounts at the myriad of different locales in which operational proceeds are deposited. In general Debtor maintains local bank accounts for each individual theater as identified on Exhibit A (collectively, the "Local Accounts") and a primary/concentration account at People's Bank in Overland Park, Kansas which earns interest (the "Concentration Account"). In addition, Debtor maintains certain "zero balance accounts" at People's Bank in Overland Park (the "Zero Balance

Accounts") (the Local Accounts, Concentration Account and Zero Balance Accounts are, collectively, the "Bank Accounts"). The Zero Balance Accounts do not earn interest. Rather, when Debtor writes checks on its Zero Balance Accounts and such checks are presented to People's Bank, funds sufficient to pay the amount of each check are transferred from Debtor's Concentration Account to Debtor's Zero Balance Account.

11. People's Bank is, upon information and belief, has been designated as an authorized depository for debtor-in-possession accounts by the United States Trustee. The Debtor believes that substantially all of Debtor's Bank Accounts are in financially stable banking institutions with FDIC and FSLIC insurance. Each of the financial institutions are either authorized depositories in this or other jurisdictions or are of equal financial sophistication and security as those financial institutions that are authorized. Consequently, a waiver of the requirement to comply with Section 345(b)'s investment guidelines should pose no risk to the Debtor's estate or creditors.

12. Closing and changing over the myriad of Bank Accounts to debtor-in-possession accounts will likely result in confusion and delays in payments to administrative creditors, including the Debtor's employees, and disruption to Debtor's operations. To ensure a smooth transition into Chapter 11 with minimal disruption, and to aid in the Debtor's efforts to reorganize, it is essential that the Debtor be permitted to continue to maintain its existing Bank Accounts and if necessary, open new accounts, wherever they are needed, irrespective of whether such banks are designated depositories in the District of Kansas.

13. A waiver of the account closing requirements is necessary and appropriate in the instant case. *See In re Team Financial, Inc.*, Case No. 09-10925 (REN) (Bankr. D. Kan., Docket No. 48, May 12, 2009, allowing debtors to use current bank accounts and waive the United

States Trustee's requirements of debtor in possession accounts). The Debtor requests that its Bank Accounts be deemed to be debtor-in-possession bank accounts and that this Court authorize their maintenance and continued use, in the same manner and with the same account numbers, styles, and document forms employed during the pre-petition period.

B. The Debtor Should Be Granted Authority to Use Existing Business Forms and Checks

14. In order to minimize expenses to the estate, the Debtor also requests that it be authorized to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, invoices, etc.) and checks existing immediately prior to the Petition Date, without reference to the Debtor's status as debtor-in-possession.

15. Parties doing business with the Debtor undoubtedly will be aware, as a result of the size and notoriety of the Chapter 11 Case, of the Debtor's status as a Chapter 11 debtor-in-possession. Changing correspondence and business forms is time consuming and could result in delays and disruption in the Debtor's operations. For these reasons, the Debtor requests that it be authorized to use existing checks and business forms without being required to place the label "debtor-in-possession" on each until the existing stock is depleted. *See, e.g., In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding United States Trustee's requirement prohibiting issuance of checks without "debtor-in-possession" designation to be unenforceable); *In re Pliant Corp.*, Case No. 06-10001 (MFW) (Bankr. D. Del. Jan. 4, 2006) (allowing debtor to use existing business forms but requiring that "DIP" be used on re-orders); *In re Young*, 205 B.R. 894 (Bankr. W.D. Tenn. 1997) (finding that that the debtor need not imprint "debtor-in-possession" on its checks).

C. Continuation of the Existing Cash Management Systems Is in the Best Interests of the Debtor's Estate and Creditors.

16. The Debtor currently maintains the Bank Accounts at the institutions indicated on Exhibit A.

17. To use certain property of the estate and ensure an orderly transition into Chapter 11, the Debtor also requests authorization to continue to use its existing Cash Management System, as described above, through which the Debtor manages cash, fund disbursements, and otherwise conduct financial transactions.

18. As previously noted, each individual theatre deposits its revenues, the bulk of which are cash, into a Local Account on a regular basis. The money deposited into the Local Accounts is then automatically, electronically transferred to Debtor's Concentration Account at People's Bank in Overland Park, Kansas.

19. Additionally, Debtor maintains its Zero Balance Accounts at People's Bank from which it draws checks. When the checks are presented to People's Bank, funds sufficient to pay the amount of each check are transferred from Debtor's Concentration Account to the Zero Balance Accounts.

20. By utilizing the Concentration Account, Debtor has maximized the interest generated on its deposits. Continuation of the existing system will allow the Debtor's estate to similarly benefit. Accordingly, the Court should grant the Debtor's request to continue to use its existing Cash Management System.

21. The basic structure of the Cash Management System described herein constitutes the Debtor's ordinary, usual and essential business practice. The Cash Management System is similar to those commonly employed by companies in the same industry and/or corporate enterprises of comparable size and complexity to the present case. The widespread use of such

systems is attributable to the numerous benefits they provide, including the ability: (a) to tightly control corporate funds; (b) to ensure cash availability; and (c) to reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information.

22. In addition, given the corporate and financial structure of Debtor, it would be difficult, if not impossible, for it to establish an entirely new system of accounts and a new cash management system. For example, if the Debtor were required to open separate debtor-in-possession accounts and rearrange its Cash Management System, there would be delays in the Debtor's ability to move funds from its theatre locations and provide operating cash to operate its business. Thus, under the circumstances, maintenance of the Debtor's Cash Management System is not only essential and critical, it is also in the best interests of the estate and creditors. Furthermore, preserving the usual business atmosphere (to the extent possible) and avoiding the distractions that would inevitably be attendant with any disruption in the Cash Management System will facilitate the Debtor's reorganization.

23. If the Debtor is not permitted to continue to utilize its Cash Management System as described herein, its operations will not only be severely impaired, but critical funds may not be collected on account of certain accounts receivable and valuable resources will be expended unnecessarily implementing a new cash management system. Accordingly, the Court should authorize the Debtor's continued use of the existing Cash Management System.

24. Furthermore, prior to the Petition Date, the Debtor issued checks in the aggregate amount of approximately \$95,000 for goods and tax payments in the ordinary course of business that had not cleared as of the Petition Date (the "Outstanding Checks").¹ Failure to honor these

¹ This amount does not include approximately \$40,000 in uncleared payroll checks, which the Debtor is seeking authority to honor under its employee wages motion filed concurrently herewith.

Outstanding Checks will likely cause vendors to refuse to continue to supply goods to the Debtor, which would cause a serious disruption to the Debtor's operations. The Debtor, therefore, out of an abundance of caution, seeks authority for the deposit banks where it maintains Bank Accounts to honor the Outstanding Checks.

25. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see also In re Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985) (affirming decision denying a creditor's motion for leave to appeal the bankruptcy court's cash management order, holding that authorizing the debtors to utilize its prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code).

26. It is critical both to the continued operation of the Debtor's business and to the preservation of the value of the business that the Debtor continues to utilize its existing Cash Management System without disruption. Accordingly, it is appropriate and consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve continued use of the Cash Management System in its current form.

D. The Court Should Authorize the Debtor to Deposit Funds in Accordance with Its Prepetition Practices

27. Section 345(a) of the Bankruptcy Code authorizes debtors in possession to deposit or invest an estate's money (including cash) so as to yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment. While section 345(b) of the Bankruptcy Code requires that, generally, with respect to investments other than those "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States"

the estate must require a bond in favor of the United States secured by the undertaking of a court-approved corporate surety, the Court is allowed to dispense with this limitation "for cause."

28. As this Motion is being filed on the first day of the Debtor's Chapter 11 Case and the Debtor has in excess of 140 creditors, the Debtor requests that the Court enter an order waiving, on a final basis, the requirements of Section 345(b).

29. Given the complexity of the Debtor's Cash Management System and the relative security of the Cash Management System, the Debtor submits that cause exists to grant a final waiver of the requirements of section 345(b) of the Bankruptcy Code.

30. Courts routinely waive the investment and deposit requirements set forth in section 345 of the Bankruptcy Code and have authorized a debtor's continued use of investment and deposit guidelines that do not strictly comply with section 345 of the Bankruptcy Code. *See, In re Enesco Group, Inc.*, Case No. 07-00565 (ABG) (Bankr N.D. Ill. Jan. 22, 2007); *In re UAL Corp., et al.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002); *In re Dade Behring Holdings Inc.*, No. 02-29020 (BWB) (Bankr. N.D. Ill. Aug. 1, 2002); *In re Nat'l Steel Corp.*, No. 02-08699 (JHS) (Bankr. N.D. Ill. Mar. 6, 2002); *In re Amfac Hawaii LLC*, No. 02-07637 (BWB) (Bankr. N.D. Ill. Feb. 27, 2002); *In re ABC-NACO, Inc.*, No. 01-36484 (ERW) (Bankr. N.D. Ill. Oct. 22, 2001); *In re Comdisco, Inc.*, No. 01-24795 (RB) (Bankr. N.D. Ill. Jul. 16, 2001); *In re Humphreys, Inc.*, No. 01-13742 (REG) (Bankr. N.D. Ill. Apr. 18, 2001). Similar relief should be granted here.

31. The Debtor submits that cause exists for the Court to allow the Debtor to continue depositing its cash in accordance with its past business practices.

WHEREFORE, the Debtor respectfully requests the Court grant the relief requested herein and grant such further relief as is just and proper.

Dated: September 21, 2012.

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