

**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 NOVEMBER 16, 2012, AS THE BAR DATE FOR
ALL GOVERNMENTAL UNITS TO FILE PRE-PETITION PROOFS OF CLAIM**

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 105(a), 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 November 16, 2012, as the bar dates for all governmental units to file pre-petition proofs of claims. 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 105(a), 501, 502, and 1111(a) of the Bankruptcy Code and Rules 2002(a)(7), 3003(c)(3) and 5005(a) 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. 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.

5. 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.

6. With its voluntary petition, the Debtor contemporaneously filed its Motion of the Debtor for Entry of an Order Establishing Bar Dates for Filing Proofs of Pre-petition Secured and Unsecured and § 503(b)(9) Administrative Expense Claims (the "Bar Date Motion"). (*See* Docket No. 18.) Additionally, the Debtor filed its Emergency Motion for Expedited Hearings on Certain Motions and Applications (the "Hearing Motion"), wherein the Debtor requested an expedited hearing on, *inter alia*, the Bar Date Motion (the "Emergency Hearing"). On September 27, 2012, the Court held the Emergency Hearing and granted the Bar Date Motion, and set **November 16, 2012**, as the bar date (the "Bar Date") for all secured, unsecured and

section 503(b)(9) creditor claimants of the Debtor to file any claims (each, a "Claim," collectively, the "Claims") they may have against the Debtor. However, in its order, the Court did not establish a bar date as to all governmental units, as that term is defined in section 101(27) of the Bankruptcy Code, who may have claims against the Debtor (the "Governmental Units").

7. As part of its order granting the Debtor's Bar Date Motion, the Court approved the Debtor's proposed notice of Bar Date (the "Bar Date Notice"). (*See* Docket No. 18-1.) Additionally, the court approved the Debtor's proposed form for filing proofs of Claim (the "Proof of Claim Form"). (*See* Docket No. 18-2.) Thus, all creditors will have received the Bar Date Notice and a copy of the Proof of Claim Form.

RELIEF REQUESTED

8. The Debtor respectfully requests entry of an order pursuant to sections 501, 502, and 1111(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(7), 3003(c)(3) and 5005(a) establishing November 16, 2012 as the bar date for all Governmental Units (the "Governmental Unit Bar Date") to file its proof of Claim against the Debtor.

BASIS FOR RELIEF REQUESTED

9. 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. However, section 502(b)(9) of the Bankruptcy Code provides that a Governmental Unit's Claim shall be timely if it is filed within one hundred eighty (180) days after the order for relief.

10. Section 105(a) of the Bankruptcy Code provides:

The court may issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest 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, or to prevent the abuse of process.

11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory or under equitable common law principles.

11. The circumstances of this Chapter 11 Case justifies fixing the Governmental Unit Bar Date as requested herein, and not in the manner provided by section 502(b)(9), which would fix a bar date of March 20, 2013. It is essential for the Debtor to quickly ascertain the full nature, extent and scope of the Claims of any Governmental Units 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 Governmental Unit Bar Date for the filing of Claims against the Debtor's estate for **November 16, 2012**, which is fifty-six (56) days after the Petition Date. Setting the Governmental Unit Bar Date for November 16, 2012, will harmonize the date for which all claims need to be filed against the Debtor.

12. To this end, harmonizing the Governmental Unit Bar Date with the Bar Date will allow the Debtor to fully assess its outstanding claims as it prepares to confirm its Plan.

13. The Debtor shall retain its 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.

14. 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.

15. In conjunction with setting the Governmental Unit Bar Date, the Debtor must ensure that all interested parties, *i.e.*, all Governmental Units, 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).

16. 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 Governmental Unit Bar Date to all known Governmental Units holding Claims.

17. In giving actual notice to known Governmental Units who may have a Claim, the Debtor proposes to give notice of the Governmental Bar Date, by serving the a copy of the Bar Date Notice and a copy of the order that is entered granting this Motion, in accordance with Bankruptcy Rule 9007, by first class mail at least twenty days (20) days before the Governmental Unit Bar Date, the notice required by Bankruptcy Rule 2002(a)(7). Given the twenty-day notice period contemplated by the Debtor, Governmental Units would have more than sufficient notice, time and opportunity to file their proofs of Claim.

WHEREFORE, the Debtor requests the Court (i) set **November 16, 2012**, as the last day for filing of claims and proofs of interest with respect to all Governmental Units, and (ii) grant such other relief as is proper under the circumstances.

Dated: October 1, 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*

CERTIFICATE OF SERVICE

This is to confirm that a copy of the foregoing Motion of the Debtor for Entry of an Order Establishing November 16, 2012, as the Bar Date for All Governmental Units to File Pre-Petition Proofs of Claim was electronically filed on October 1, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and the filing may be accessed through that system. A copy was also placed in the U.S. mail, postage prepaid, on October 1, 2012, addressed to the parties listed on the attached **Mailing Matrix**.

s/ Sharon L. Stolte

Sharon L. Stolte