

**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 OF THE DEBTOR, PURSUANT TO 11 U.S.C. § 105(a), FOR  
AUTHORIZATION TO CONTINUE CUSTOMER PROGRAMS**

Dickinson Theaters, Inc., the debtor and debtor-in-possession in the above-captioned proceedings (the "Debtor"), through counsel, hereby moves the Court to grant Debtor's Motion Pursuant to 11 U.S.C. § 105(a), for Authorization to Continue Customer Programs (the "Motion"). In support thereof, 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 Section 105(a), 363, 1107(a) and 1108 of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**I. 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.

## **II. THE CUSTOMER PROGRAMS AND POLICIES**

8. By this Motion, the Debtor seeks entry of an order authorizing, but not directing, payment of amounts and satisfaction of certain obligations related to certain customer programs in the ordinary course of business and to continue such customer programs on a post-petition

basis. The Debtor believes that the majority of the amounts to be paid with regard to the customer programs will either (a) be entitled to priority claim treatment under Section 507(a)(7) of the Bankruptcy Code, or (b) arise post-petition and, therefore, will be entitled to administrative expense priority under Section 503 of the Bankruptcy Code. Nevertheless, because certain of the customer programs may give rise to post-petition payment obligations from pre-petition practices, the Debtor also seeks authority to make such payments in the ordinary course of its business.

9. In the ordinary course of business, as is customary in the cinema industry, the Debtor maintains various programs and policies for the benefit of its audience. The programs and policies maintained by the Debtor include:

Gift Certificates. The Debtor sells gift certificates that may be used by the holders of the gift certificates for free admission or to purchase concessions.

Advance Sales Policy/Group Ticket Sales. The Debtor sells to mostly local companies individual and blocks of tickets in advance of a particular movie showing, often at a discount.

(The Gift Certificate and Advance Sales Policy and other similar customer programs are, collectively referred to herein as, the "Customer Programs".)

**III. AUTHORIZING DEBTOR TO CONTINUE ITS CUSTOMER PROGRAMS IS IN THE BEST INTEREST OF THE DEBTOR, ITS CREDITORS AND ALL PARTIES IN INTEREST**

10. Sections 1107 and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. The Debtor seeks authorization pursuant to Section 105(a) of the Bankruptcy Code to continue the Customer Programs and accelerate payment of certain pre-petition obligations in respect thereof. Section 105(a) of the Bankruptcy Code provides:

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 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 an abuse of process.

11 U.S.C. § 105(a). The purpose of Section 105(a) is to assure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of its jurisdiction." 2 COLLIER ON BANKRUPTCY, ¶ 105.01, at 105-5 (15th ed. Revised 1997). The Debtor submits that the relief requested herein is critical to operating and reorganizing the Debtor's businesses successfully and is justified under Section 105(a) of the Bankruptcy Code. Moreover, if the Debtor did not honor the Customer Programs, individuals might have claims entitled to priority under Section 507(a)(7) of the Bankruptcy Code. Such claims could be considered to be claims arising from the deposits of money in connection with the purchase of services for personal or family use, and afforded priority in an amount up to \$2,600.00 for each individual.

11. More importantly, however, the success, viability and revitalization of the Debtor's business is wholly dependent upon the development and maintenance of consumer loyalty. The cinema industry is highly competitive, and continuation of the customer programs, including the payment of any related pre-petition obligations, is essential to the Debtor's ability to maintain the loyalty of its existing customer base and to attract new customers.

12. The Debtor believes that honoring the existing Customer Programs is critical to its continued operations. In the competitive markets in which the Debtor's products are sold, failure to increase marketing exposure and reward loyal customers is likely to have a material adverse impact on the Debtor's ability to retain its existing customer base. Moreover, the Debtor believes that if it is not authorized to continue the Customer Programs during the pendency of this Chapter 11 Case, its valuable business relationships with customers and consumers will be severely jeopardized. Even a short delay by the Debtor in continuing its Customer Programs could cause serious and irreparable harm to the value to the Debtor's estate.

13. The Debtor's customers are the life blood of its business. Any curtailment of the Debtor's ability to continue to provide the same service and programs to its customers, and the resulting negative public perception, may enable the Debtor's competitors to take advantage of the Debtor and may cause substantial harm to the Debtor's business generally. Accordingly, considering the extremely minimal expense of the relief requested herein as compared to the size of this Chapter 11 case, entry of an Order granting the relief requested herein is appropriate, and, indeed, essential to the Debtor's ability to successfully reorganize.

14. The Debtor submits that the foregoing demonstrates the substantial benefits that will inure to its estate, creditors and other parties-in-interest as a result of its maintaining and continuing their Customer Programs on a post-petition basis and honoring pre-petition obligations on account of the Customer Programs. Therefore, the Debtor submits that entry of an order authorizing but not directing it to honor the Customer Programs is necessary and appropriate to maintain the Debtor's going concern value.

**IV. FAILURE TO HONOR THE CUSTOMER PROGRAMS WITHIN  
TWENTY-ONE DAYS OF THE PETITION DATE WOULD  
CAUSE IMMEDIATE AND IRREPARABLE HARM**

15. Pursuant to Rule 6003 of the Bankruptcy Rules, the Court may grant relief regarding a motion to pay all or part of a pre-petition claim within twenty-one (21) days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. As described above, the Customer Programs are integral to the Debtor's continued operations because they are necessary to maintain the confidence and goodwill of the Debtor's customers, employees and other stakeholders. This is especially true in light of the highly competitive nature of the Debtor's industry.

16. Accordingly, the Debtor submits that it has satisfied the requirements of Rule 6003 of the Bankruptcy Rules to support immediate payment of its Customer Programs obligations.

**V. REQUEST FOR WAIVER OF STAY**

17. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise." As set forth above, honoring its Customer Programs obligations is essential to prevent potentially irreparable damage to the Debtor's operations, value and ability to reorganize. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the fourteen-day stay imposed by Rule 6004(h) of the Bankruptcy Rules, to the extent it applies.

**VI. RESERVATION OF RIGHTS**

18. Nothing contained herein is intended to or should be construed as an admission of the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim or an approval or assumption of any agreement, contract or lease under Section 365 of the Bankruptcy Code. The Debtor expressly reserves its rights to contest any invoice related to its Customer Programs under applicable non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to and should not be construed as an admission of the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

19. No trustee, examiner or creditors committee has been appointed in the Debtor's Chapter 11 case. Notice of this motion has been provided to the United States Trustee for the

District of Kansas, the attorneys for the Debtor's secured creditors and the Debtor's twenty largest unsecured creditors. The Debtor submits that no other or further notice need be provided.

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

WHEREFORE, the Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: September 21, 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,  
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*