

**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 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**

Dickinson Theatres, Inc., debtor and debtor-in-possession in the above-captioned proceedings (the "Debtor"), through its undersigned counsel, hereby submits this motion (the "Motion") pursuant to Sections 105(a) and 503 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 3002 and 3003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of an order establishing an orderly process for the assertion of any claims under Section 503(b)(9) of the Bankruptcy Code (the "Twenty-Day Claims") relating to goods received by the Debtors within twenty days prior to the Petition Date (the "Twenty-Day Period"). In support of this Motion, the Debtor respectfully 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). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and rule based predicates for the relief requested herein are Sections 105(a) and 503 of the Bankruptcy Code and Rules 3002 and 3003 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. 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. Prior to the Petition Date and in the ordinary course of its Business, the Debtor purchased a wide variety of goods used in their business operations, including, among other things, various food, beverage, cleaning supplies, ticket supplies, and other goods used in the ordinary course of its Business (collectively, the "Goods"). Such Goods are received by the Debtor on a regular basis.

RELIEF REQUESTED

9. By this Motion, the Debtor seeks entry of an order pursuant to Sections 105(a) and 503 the Bankruptcy Code and Bankruptcy Rules 3002 and 3003 establishing exclusive procedures for the assertion of any claims under Section 503(b)(9) of the Bankruptcy Code.

BASIS FOR RELIEF

10. Although Section 503(b)(9) assigns a higher priority in payment to prepetition claims for goods received by debtors within the Twenty-Day Period over other pre-petition unsecured claims, there is no reason to differentiate the procedures by which such claims are filed, objected to, and adjudicated from the procedures that will be applicable to other prepetition claims in this Chapter 11 Case. To eliminate any uncertainty regarding the procedures, claimants asserting Twenty-Day Claims (the "Twenty-Day Claimants") will need to follow, and to avoid piecemeal litigation, the Debtor seeks to establish exclusive procedures for the assertion (and determination) of Twenty-Day Claims (the "Procedures").

11. The Debtor has contemporaneously filed its Motion for Entry of an Order Establishing Bar Dates for Filing Proofs of Prepetition Secured and Unsecured and Section

503(b)(9) Administrative Expense Claims (the "Bar Date Motion"). The Debtor contemporaneously filed its schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules and Statements") with its voluntary petition.

12. To maintain uniformity and consistency, the Debtor seeks, in this Motion, entry of an order establishing procedures for the assertion (and determination) of Twenty-Day Claims that will be tied to the bar date to be set by the Court for the filing of all prepetition claims as follows:

(a) In connection with filing the Schedules and Statements, the Debtor will list all Twenty-Day Claims for which they believe its estate is liable.

(b) If a Twenty-Day Claimant disputes the amount or classification of its scheduled Twenty-Day Claim, if any, then and only then should they file a proof of claim asserting a Twenty-Day Claim.

(c) All Twenty-Day Claims shall be filed by the general claims bar date, which will be set for all pre-petition claims in these cases at a future date in accordance with Bankruptcy Rules 3002 and 3003, as requested in the Bar Date Motion.

(d) Twenty-Day Claimants shall utilize the proof of claim form appended as an exhibit to the Bar Date Motion which permits all parties to assert their claims, and priority (including priority under Section 503(b)(9) of the Bankruptcy Code) of such claims, in one standardized form.

(e) The Twenty-Day Claimants shall not file a motion to compel allowance or payment of administrative expenses for their Twenty-Day Claims or schedule a hearing to consider such claims. All timely filed Twenty-Day Claims shall be deemed accepted unless objected to by the Debtor or any other party in interest pursuant to Section 502(c) of the Bankruptcy Code, Bankruptcy Rule 3007, or in accordance with further procedures for claim allowance established by the Court. Should such an objection be filed, such claim shall be adjudicated and allowed in accordance with the further procedures for claim allowance established by the Court.

(f) To the extent a Twenty-Day Claim is allowed, the claim shall be paid: (i) pursuant to, and as set forth in, such plan of reorganization as confirmed by the Court, or (ii) at the sole discretion of the Debtor, but subject to the terms and conditions of any order authorizing the use of

cash collateral, at any time prior to the confirmation of a plan of reorganization.

(g) Nothing in these Procedures shall affect the rights and remedies of the Debtor, the Committee, or any other party in interest, including with respect to any avoidance action, and nothing in these Procedures shall provide any Twenty-Day Claimant a *prima facie* defense to the same.

APPLICABLE AUTHORITY

13. The proposed Procedures will provide clear guidance to all parties as to how Twenty-Day Claims shall be filed in these cases and will streamline the process for consideration of such claims. Requiring Twenty-Day Claimants to participate in the normal claims adjudication process will provide the Debtor the opportunity to address the allowance of Twenty-Day Claims in an orderly and efficient way, will not impair in any way the substantive rights of any parties, and will ensure that similarly-situated creditors receive equal treatment. Further, the proposed Procedures will ensure that the Debtor's management does not need to spend its time reconciling the amounts of asserted Twenty-Day Claims at the outset of these cases.

14. A "creditor" is defined in Section 101(10)(A) of the Bankruptcy Code as an "entity that has a claim against the debtor that arose at the time of or before the order for relief . . ." Accordingly, entities holding pre-petition claims, including pre-petition claims under Section 503(b)(9) of the Bankruptcy Code, are plainly "creditors" under the Bankruptcy Code and Bankruptcy Rules.

15. The inclusion of entities holding Section 503(b)(9) claims as "creditors" has important consequences, including being permitted to file proofs of claim. See 11 U.S.C. § 501(a) ("[a] creditor may file a proof of claim"). In fact, Bankruptcy Rules 3002(a) and 3003(c)(2) provide that creditors, such as the Twenty-Day Claimants, must file a proof of claim

in order for their claims to be allowed. Fed. R. Bankr. P. 3002(a) (a "creditor . . . must file a proof of claim or interest for the claim or interest to be allowed . . ."); Fed. R. Bankr. P. 3003(c)(2) ("Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.").

16. Section 502(a) of the Bankruptcy Code provides that "[a] claim or interest, proof of which is filed under Section 501 of this title, is deemed allowed, unless a party in interest ... objects." By classifying holders of pre-petition claims under Section 503(b)(9) as "creditors," Congress desired that such claimants be subjected to the claims filing and objection process established by Sections 501 and 502 of the Bankruptcy Code and Bankruptcy Rules 3001 through 3007. As a result, litigation in respect of a claim is instigated through the filing of an objection thereto, which places the control over the timing of objecting to a Section 503(b)(9) claim with the objector, not with the individual claimant.

17. Therefore, the logical sequence of events for the administration of Section 503(b)(9) claims begins with the Debtor filing its schedules and statements, followed by the Court's establishment of a bar date for the filing of proofs of claims and the subsequent filing of such proofs of claims by the Debtor's creditors.

18. The above process is completely consistent with Section 503 of the Bankruptcy Code, which grants the underlying priority status to the Twenty-Day Claims. Section 503(a) of the Bankruptcy Code provides that an entity may timely file a request for payment of an administrative expense. 11 U.S.C. § 503(a) Unlike post-petition administrative claims, this "request" can be made with respect to Twenty-Day Claims by the entities filing a proof of claim

(just as proofs of claim are filed for other pre-petition claims entitled to priority status). Once an entity files such a request on a proof of claim form, "after notice and hearing, there shall be allowed administrative expenses, including — the value of any goods received by the debtor within 20 days before the date of commencement of a [Chapter 11 case, but only if such] goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(1), (b)(9). As discussed above, the filing of the proof of claim will provide an opportunity for review by the Debtors and, if necessary, an objection and a hearing. Thus, addressing Twenty-Day Claims through the proof of claim process, as proposed by the Debtor, is entirely consistent with the Bankruptcy Code and the Bankruptcy Rules.¹

19. This usual process of deferring claims litigation to later in a Chapter 11 case avoids burdening the debtor with claims litigation during the early stages of a case, when the debtor faces a host of pressing financial, operational, and structural issues. Moreover, by employing the customary claims administration process in this case, the Debtor will be able to structure the claims review process to maximize efficiency. For example, the Debtor will be able to analyze all claims of various categories in one coordinated process, and will be able to structure contested litigation so that multiple claims can be addressed at the same hearing, to the extent permitted by this Court. Accordingly, witnesses will not need to come to Court time and

¹ The proposed Procedures do not impede any creditor's right to payment because there is no immediate right to payment of Twenty-Day Claims. Section 503(b)(9) of the Bankruptcy Code makes no mention of the timing by which any claim allowed thereunder must be paid. Indeed, there is nothing in the text of Section 503(b)(9) that even suggests that a claimant has a right to immediate payment. *See In re Global Home Prods., LLC*, No. 06-10340, 2006 WL 3791955 at *5 (Bankr. D. Del. Dec. 21, 2006) (finding that a 503(b)(9) claimant was not due immediate payment of his claim); *accord In re Bookbinders' Rest., Inc.*, No. 06-12302, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006) ("The text of § 503(b)(9) neither states nor even implies that allowance of the expense encompasses an unqualified right to immediate payment ... [n]or does the text of the provision suggest that an administrative expense allowed under § 503(b)(9) is to be treated in a more favorable manner than any other allowed § 503(b) administrative expense.").

time again, and such an organized process will otherwise reduce the expense of the claims administration and reconciliation process for the benefit of the Debtor's estate and its creditors.

20. The process of including the Twenty-Day Claims as part of the Bar Date Motion to establish a bar date, and including such claims as part of the proof of claim and bar date process, is consistent with the process established in other Chapter 11 cases. *See, e.g., In re Aegis Mortgage Corp.*, No. 07-11119 (BLS) (Bankr. D. Del. Nov. 26, 2007); *In re Radnor Holdings Corp.*, No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006); *accord In re Chrysler LLC*, No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 20, 2009); *In re Pilgrim's Pride Corp.*, No. 08-45664 (DML) (Bankr. N.D. Tex. Dec. 31, 2008); *In re Quebecor World (USA) Inc.*, No. 08-10152 (JMP) (Bankr. S.D.N.Y. Apr. 21, 2008); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Jul. 19, 2006).

21. The terms and conditions of any settlement authorized by an order granting this Motion shall be expressly conditioned on any order, then in effect, for the use of cash collateral. If any conflict exists between the orders, the cash collateral order shall control.

NO PRIOR REQUEST

22. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, for the reasons stated above, the Debtor respectfully requests that the Court (a) enter an order granting the relief sought herein and (b) granting to the Debtor such other and further relief as the Court may deem just and proper.

Dated: September 22, 2012.

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