

Hearing Date: June 29, 2005  
Time: 1:30 p.m.  
Place: Portland  
Response Deadline: June 24, 2005  
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

---

In re:	:	Chapter 11
	:	
PEGASUS SATELLITE TELEVISION, INC., et al.,	:	Case No. 04-20878
	:	
	:	(Jointly Administered)
Debtors.	:	

---

**THE REORGANIZED DEBTORS AND THE LIQUIDATING TRUSTEE'S FIFTH  
OMNIBUS OBJECTION AND MOTION TO RECLASSIFY, REDUCE OR  
DISALLOW CERTAIN CLAIMS PURSUANT TO 11 U.S.C. §502(E)(1)(B),  
BANKRUPTCY RULE 3007, AND D. ME. LBR 3007-1**

Pegasus Satellite Television, Inc. and its subsidiaries and certain of its affiliates, each a Reorganized Debtor herein (collectively, the "Reorganized Debtors")<sup>1</sup> and the Liquidating Trustee of The PSC Liquidating Trust (the "Liquidating Trustee") hereby object (the "Objection") to each of the claims listed in Exhibit A attached hereto (the "Contingent Indemnification Claims") and move this Court, pursuant to 11 U.S.C. § 502(e)(1)(B), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and D. Me. LBR 3007-1 for entry of an order reclassifying, reducing or disallowing such claims as set forth herein. In support of the Motion, the Reorganized Debtors and the Liquidating Trustee respectfully represent as follows:

---

<sup>1</sup> The Reorganized Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry Country MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., and WTLH License Corp.

## **BACKGROUND**

1. On June 2, 2004 (the “Petition Date”), the Reorganized Debtors filed petitions for relief under chapter 11 of the Bankruptcy Court in the United States Bankruptcy Court for the District of Maine (the “Court”). On June 4, 2004, the Court entered an order directing joint administration of the Reorganized Debtors’ cases for procedural purposes only.

2. The Reorganized Debtors continued in possession of their respective property and continued to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code throughout their chapter 11 cases.

3. On June 10, 2004, the United States Trustee for the District of Maine appointed the Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102(a) of the Bankruptcy Code.

4. On January 31, 2005, the Reorganized Debtors filed their First Amended Joint Plan of Reorganization (the “Plan”) and Disclosure Statement in connection with the solicitation of acceptances of the Plan. On February 9, 2005, this Court entered an order approving the Disclosure Statement, as modified on the record. On April 15, 2005, the Court entered an order (“Confirmation Order”) confirming the Plan, as modified by the Confirmation Order. The Plan became effective on May 5, 2005 (the “Effective Date”). Pursuant to the Plan and Confirmation Order, Ocean Ridge Capital Advisors, LLC was appointed the Liquidating Trustee of The PSC Liquidating Trust established under the Plan.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 502(e)(1)(B) of the Bankruptcy Code, Bankruptcy Rule 3007, and D. Me. LBR 3007-1.

6. The Court continues to have jurisdiction over this matter subsequent to the confirmation of the Plan pursuant to paragraph 13.1 of the Plan and paragraph 26 of the Confirmation Order which expressly provide that the Bankruptcy Court shall retain jurisdiction over, among other things, the allowability of claims against the Reorganized Debtors.

### **BAR DATE AND PROOFS OF CLAIM**

7. On June 4, 2004, this Court entered an order appointing The Trumbull Group, L.L.C. (“Trumbull”) as claims and noticing agent in these chapter 11 cases. Trumbull is authorized to maintain (i) all proofs of claim filed against the Debtors and (ii) an official claims register (the “Claims Register”) by docketing all proofs of claim in a claims database containing, inter alia, information regarding the name and address of each claimant, the date the proof of claim was received by Trumbull, the claim number assigned to the proof of claim, and the asserted amount and classification of the claim.

8. On September 1, 2004, the Court entered an order (the “Bar Date Order”) (i) establishing October 12, 2004. (the “General Bar Date”) as the final date and time for all persons and entities, other than governmental entities, holding or asserting a claim (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors to file proofs of claim in these chapter 11 cases and (ii) establishing November 30, 2004 (the “Governmental Bar Date”; and together with the General Bar Date, the “Bar Dates”) as the final date and time for all governmental entities holding or asserting a claim (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors to file proofs of claim in these chapter 11 cases, and (ii) approving the form and manner of notice of the Bar Dates.

9. Pursuant to the Bar Date Order, on or about September 3, 2004, Trumbull sent actual notice of the Bar Date (the “Bar Date Notice”) to (i) the Office of the United States Trustee for the District of Maine; (ii) counsel to the Committee and the members thereto; (iii) counsel to the Agent for the Debtors’ pre-Petition Date secured lenders; (iv) the administrative

agents to the Debtors' prepetition credit facilities; (v) the indenture trustees and their counsel; (vi) the prepetition senior secured lenders and their respective counsel; (vii) the prepetition junior secured lenders and their respective counsel; (viii) all entities who have filed a notice of appearance or request for service of papers pursuant to Bankruptcy Rule 2002; (ix) all persons or entities listed in the Debtors' schedules; (x) all known parties to executory contracts or unexpired leases with the Debtors; (xi) all known holders of equity securities in the Debtors as of the Petition Date; and (xii) all of the Debtors' employees. In addition, the Debtors published a shortened version of the Bar Date Notice (the "Publication Notice") in the national edition of The Wall Street Journal and the national editions of the New York Times and USA Today on or about September 9, 2004.

### **RELIEF REQUESTED**

10. By this Objection, the Reorganized Debtors and the Liquidating Trustee seek entry of an order, pursuant to section 502(e)(1)(B) of the Bankruptcy Code, Bankruptcy Rule 3007, and D. Me. LBR 3007-1, disallowing in full and expunging each of the Contingent Indemnification Claims identified on Exhibit A hereto as claims that are for reimbursement or for contribution, are contingent, and therefore must be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

11. **CLAIMANTS ARE ADVISED TO REVIEW EACH PAGE OF EACH EXHIBIT ATTACHED HERETO, AS THEIR CLAIMS MAY BE SUBJECT TO MULTIPLE OBJECTIONS AS DESCRIBED HEREIN.**

### **APPLICABLE LAW**

12. Each of the Contingent Indemnification Claims included on Exhibit A has been filed by a former officer or director of the respective Debtor. Each of the Contingent Indemnification Claims seeks (i) recovery for indemnification against expenses (including attorneys' fees), judgments fines, excise taxes, and amounts paid in settlement in connection with

an action, suit or proceeding, if the claimant was or is a party or threatened to be a party to an action, suit or proceeding by reason of the claimant's service on behalf of the Debtor; and (ii) the advance of expenses for defending such an action. The basis for such claims are alleged to be pursuant to provisions of the respective Debtor's by-laws requiring such indemnification and advancement and pursuant to relevant state law.<sup>2</sup> None of the claims set forth any documentation or information regarding a specific action, suit or proceeding instituted or threatened with respect to a claimant.<sup>3</sup> Each Contingent Indemnification Claim notes that the claimant seeks recovery for claims which include contingent and unliquidated claims, including without limitation, claims arising under the relevant provision of the Debtor's by-laws and state law in an unliquidated amount.

13. Section 502(e)(1)(B) of the Bankruptcy Code provides in pertinent part that:

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor to the extent that--

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution;

11 U.S. C. § 502(e)(1)(B).

14. The application of section 502(e)(1)(B) to disallow a claim requires that three elements be established: (1) the claim must be one for reimbursement or contribution; (2)

---

<sup>2</sup> The Reorganized Debtors note that claims filed against Golden Sky Systems, Inc. do not seek the advance of expenses pursuant to that company's by laws but do seek such advancement pursuant to section 145 of the Delaware General Corporation Law.

<sup>3</sup> To the extent that any such documentation does exist, the Reorganized Debtors submit that the claimants were required to provide such documentation upon the filing of the Claim. *See* Bankruptcy Rule 3001(c). As filed, such Claims do not contain enough information to allow the Reorganized Debtors to determine from the claims themselves (and any documentation attached thereto) what amounts, if any, are valid and owed to the claimants by the Reorganized Debtors. For these reasons, each of the Claims should be disallowed and expunged in their entirety.

the entity asserting the claim for reimbursement or contribution must be “liable with the debtor” on the claim; and (3) the claim must be contingent at the time of its allowance or disallowance. See *In re Carroll*, 2003 WL 22298518, at \*1 (Bankr. D.N.H. 2003) (citing *In re Drexel Burnham Lambert Group*, 148 B.R. 982, 985 (Bankr. S.D.N.Y. 1992) (*Drexel II*) (citing *In re Provincetown-Boston Airlines, Inc.*, 72 B.R. 307, 309 (Bankr. M.D.Fla. 1987)). See also *In re GCO, LLC*, --- B.R. ----, 2005 WL 1081421, at \*4 (Bankr. S.D.N.Y., May 05, 2005); *In re Drexel Burnham Lambert Group, Inc.*, 146 B.R. 98, 100-101 (Bankr. S.D.N.Y. 1992) (*Drexel I*). In *In re Hemingway Transport, Inc.*, 993 F.2d 915, 922 (1st Cir. 1993), the First Circuit favorably cited *In re Provincetown-Boston Airlines, Inc.*, for the determination of a “contingent” claim.

15. The first element of the above test is met by the Contingent Indemnification Claims because, for the purposes of section 502(e)(1)(B), an indemnification claim amounts to a claim for reimbursement. See *Capitol Industries, Inc. v. Regal Cinemas, Inc. (In re Regal Cinemas, Inc.)*, 393 F.3d 647, 650 (6th Cir. 2004). See also *GCO*, 2005 WL 1081421, at \*5; *Drexel I*, 146 B.R. at 95 (“the concept of reimbursement includes indemnity.”); *In re Wedtech Corp.*, 85 B.R. 285, 289 (Bankr. S.D.N.Y. 1988). “One contractually provides for the reimbursement of loss incurred by another by indemnifying her.” *In re Pacor, Inc.*, 110 B.R. 686, 690 (E.D. Pa. 1990) (interpreting § 502(e)(1)); see also *In re Pettibone Corp.*, 162 B.R. 791, 809 (Bankr. N.D. Ill. 1994) (“A claim for indemnification, as well as contribution, has been considered to be for ‘reimbursement’ within the meaning of § 502(e)(1)(B).”); 4 Collier on Bankruptcy ¶ 502.06[2][a] (“Claims for reimbursement include indemnity claims.”).

16. The second prong of section 502(e)(1)(B) asks whether a debtor is “liable with” the claimant. This prong requires “a finding that the causes of action in the underlying lawsuit assert claims upon which, if proven, the debtor could be liable but for the automatic stay.” *Wedtech*, 85 B.R. at 290. The language of the provision is “broad enough to encompass any type of liability shared with the debtor, whatever its basis,” including claims “based on a

contractual relationship.” *Regal Cinemas, Inc.*, 393 F.3d at 650 (quoting *In re E. Texas Steel Facilities, Inc.*, No. 3:90-CV-2042, 2000 WL 340281, at \*3 (N.D. Tex. Mar. 31, 2000) (quotation marks omitted)); *see also* 4 Collier on Bankruptcy ¶ 502.06[2][b] (“Under section 502, codebtor status is broadly interpreted, and a claim for reimbursement has been held to presuppose a codebtor relationship.”) Claimants’ contractual and statutory claims for indemnification clearly satisfy this prong of § 502(e)(1)(B). Insofar as Claimants have any right to indemnification or contribution from the Debtor, that right is dependent on co-liability with the Debtor, and therefore the second prong of § 502(e)(1)(B) has been satisfied.

17. The portion of each Contingent Indemnification Claim seeking the advancement of defense costs also meets the second prong of section 502(e)(1)(B). *See Drexel I*, 146 B.R. at 98 (noting that “attempts to segregate [defense] cost-related claims from the underlying indemnity claims on the basis of co-liability ignores the fact that they are simply different facets of the same unified whole.”) *See also Wedtech*, 85 B.R. at 288-290.

18. The third element of section 502(e)(1)(B), the contingency element, is also easily satisfied because the underlying liability of the former directors and officers had not yet been determined. *See Drexel I*, 146 B.R. at 95; *Wedtech Corp.*, 85 B.R. at 289. The contingency in section 502(e)(1)(B) relates to both payment and liability. *See Carroll*, 2003 WL 22298518, at \*2; *Drexel Burnham*, 148 B.R. at 986; *In re Pacor, Inc.*, 110 B.R. at 689. A claim is contingent where it “has not yet accrued and ... is dependent upon some future event that may never happen.” *Matter of Provincetown-Boston Airlines, Inc.*, 72 B.R. at 310.

19. Accordingly, pursuant to Bankruptcy Code section 502(e)(1)(B), Bankruptcy Rule 3007, and D. Me. LBR 3007-1, the Court should disallow and expunge each of the Contingent Indemnification Claims.

## RESPONSES TO OBJECTIONS

20. Filing and Service of Responses. To contest the Objection, a Claimant must file and serve a written response to the Objection (a “Response”) so that it is actually received by the Clerk of the Bankruptcy Court no later than 4 p.m. Eastern Time on June 24, 2005. Claimants should read the proposed Order and the exhibit attached to this Objection carefully. A Response must address each ground upon which the Reorganized Debtors and the Liquidating Trustee object to a particular Claim. A hearing to consider the Objection of the Reorganized Debtors and the Liquidating Trustee shall be held on June 29, 2005 at 1:30 p.m. Eastern Time, before the Honorable James B. Haines, Jr., United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maine, 537 Congress Street, 2nd Floor, Portland, Maine 04101 (the “Hearing”).

21. Every Response shall be filed and served upon the following entities at the following addresses: (a) Office of the Clerk of the United States Bankruptcy Court; (b) Lowenstein Sandler, PC, Attn: Paul Kizel, Esq., 65 Livingston Avenue, Roseland, New Jersey 07068; and (c) Preti, Flaherty, Beliveau, Pachios & Haley, LLP, Attn: John P. McVeigh, Esq., One City Center, P.O. Box 9546, Portland, Maine 04112-9546, so as to be received by June 24, 2005.

22. Content of Responses: Every Response to the Objection must contain, at a minimum, the following:

- (a) a caption setting forth the name of the Bankruptcy Court, the above referenced case number and the title of the Objection to which the Response is directed; the name of the claimant and description of the basis for the amount of the Claim;
- (b) a concise statement setting forth the reasons why a particular claim should not be reclassified, reduced, or disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection at the Hearing;



- (c) all documentation or other evidence of the claim in question, to the extent not already included with the claimant's proof of claim, upon which the claimant will rely in opposing the Objection at the Hearing;
- (d) the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) possessing ultimate authority to reconcile, settle, or otherwise resolve the claim on behalf of the claimant; and
- (e) the name, address, telephone number, and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom the Reorganized Debtors and the Liquidating Trustee should serve any reply to the Response.

23. Timely Response Required. If a Claimant fails to file and serve a timely Response, then without further notice to the claimant or a hearing, the Reorganized Debtors and the Liquidating Trustee will present to the Court an order disallowing or modifying the Claims indicated herein.

24. Service Address. If a Response contains an address for the Claimant different from that stated on the Claim, the address in the Response shall constitute the service address for future service of papers upon the Claimant with respect to the Objection unless or until counsel for the Reorganized Debtors and the Liquidating Trustee receive written notice from the Claimant or the Claimant's counsel of a changed service address.

### **RESERVATION OF RIGHTS**

25. The Reorganized Debtors and the Liquidating Trustee expressly reserve the right to amend, modify or supplement this Objection and to file additional objections to any proofs of claim filed in these chapter 11 cases including, without limitation, objections as to the liability, amount or priority of any claims listed in Exhibit A hereto. Should one or more of the grounds for this Objection be dismissed or overruled, the Reorganized Debtors and the Liquidating Trustee reserve the right to object to any Contingent Indemnification Claims listed in Exhibit A on any other ground. The Reorganized Debtors and the Liquidating Trustee further reserve their rights to withdraw and/or modify this Motion.

**NO PRIOR REQUEST**

26. No prior motion for the relief requested herein has been made to this or any other court.

**NOTICE**

27. Notice of this Objection has been given to (i) the Office of the United States Trustee for the District of Maine, (ii) counsel for the Committee, (iii) each of the parties on the All Notices List in accordance with (and as defined in) the Order Establishing Case Management Procedures and Hearing Schedule dated July 9, 2004, and (iv) each of the claimants identified in Exhibit A and their counsel, if known. In light of the nature of the relief requested herein, the Reorganized Debtors and the Liquidating Trustee submit that no further notice is necessary.

**CONCLUSION**

**WHEREFORE**, the Reorganized Debtors and the Liquidating Trustee respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit B, granting this Objection in all respects and granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

**LOWENSTEIN SANDLER PC**  
Kenneth A. Rosen, Esq. (KAR 4963)  
Paul Kizel, Esq. (PK 4176)  
Jeffrey A. Kramer, Esq. (JAK 8278)  
65 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 597-2500 (telephone)  
(973) 597-2400 (facsimile)

-and-

**PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLP**

By:     /s/John P. McVeigh  
John P. McVeigh, Esq.  
One City Center, P.O. Box 9546  
Portland, Maine 04112-9546  
(207) 791-3000 (telephone)  
(207) 791-3111 (facsimile)

*Counsel to the Reorganized Debtors and the  
Liquidating Trustee of The PSC Liquidating  
Trust*

Dated: May 19, 2005