

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

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**MOTION FOR ORDER UNDER SECTIONS 105(a) AND 502(c)(1) OF THE
BANKRUPTCY CODE ESTIMATING CERTAIN CLAIMS
FOR THE PURPOSE OF ESTABLISHING AN APPROPRIATE RESERVE**

Pegasus Satellite Television, Inc. and its subsidiaries and certain of its affiliates, each a Reorganized Debtor herein (collectively, the “Reorganized Debtors”), and the Liquidating Trustee of The PSC Liquidating Trust (collectively the “Movants”)¹ hereby submit this motion (the “Motion”) seeking the entry of an order under sections 105(a) and 502(c)(1) of title 11 of the United States Code (the “Bankruptcy Code”) estimating certain unliquidated and/or contingent claims at zero, which are identified on Exhibits “A”, “B”, and “C” annexed hereto (collectively, the “Estimated Claims”), for the purpose of establishing an appropriate reserve. Pursuant to the First Amended Joint Plan of Reorganization that became effective on May 5, 2005, it is necessary to establish reserves, either by way of agreement with the holders of contingent, unliquidated claims or pursuant to court order before distributions can be made to holders of

¹ 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.

general, unsecured claims. The Movants are currently attempting to negotiate consensual reserve amounts with the claimants that are the subject to this Motion. However, in the event consensual agreements are not reached, the Movants are seeking a court order establishing a reserve in order to allow Movants to make distributions as promptly as possible. In support of the Motion, the Movants respectfully represent as follows:

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.

THE DEBTORS' PLAN OF REORGANIZATION

5. Generally, the Plan provided for the transfer of the Debtors' assets, including the cash proceeds of the sale of the Debtors' satellite business, and, potentially, proceeds of a sale of the Debtors' broadcast television business, into the Liquidating Trust which is charged with resolving claims and making distributions on account thereof. See Plan at § 5.4(e). Under the Plan, the Liquidating Trustee is to distribute at least annually, beginning on the Effective Date or as soon thereafter as is practicable, all Liquidating Trust Available Cash on hand and permitted investments, except such amounts as are necessary, *inter alia*, to maintain the Reserves in established by the terms of the Plan. See Plan at § 5.4(m).

6. Among the Reserves established by the Plan is a claims reserve for the payment of Disputed Claims² that become Allowed Claims after the Effective Date of the Plan (the "Disputed Claims Reserve"). See Plan at § 9.3.³ Under the Plan, the Debtors are required to fund the Disputed Claims Reserve in an amount sufficient to pay, among other things, the costs and expenses projected to be incurred in connection with the resolution of the Disputed Claims and an amount on account of the Disputed Claims equal to either the amount set by order of the

² All capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

³ Section 9.3 of the Plan provides:

With respect to Claims to be paid by this Plan, the Liquidating Trustee shall hold in reserve either in the Liquidation Trust or in one or more separate taxable entities, for the benefit of each Holder of a Disputed Claim (the "Disputed Claims Reserve"), Cash, Remaining Assets and/or Liquidating Trust Interests in an amount required by order of the Bankruptcy Court, or in the absence of such order, equal to the Distributions which would have been made to the holder of such Disputed Claim if it were an Allowed Claim in respect of the Disputed Claim Amount. If and to the extent that a Disputed Claim becomes an Allowed Claim, pursuant to the provisions of this Plan or such other treatment as may be agreed to by such Holder. If a Disputed Claim is disallowed, in whole or in part, pursuant to a Final Order, on the first Distribution Date that is at least thirty (30) Business Days after such disallowance, the Liquidating Trustee shall: (a) first, reallocate Cash and/or Liquidating Trust Interests that had been reserved on account of such disallowed Disputed Claim to the Holders of then Allowed Claim in such Class and allocate to the Disputed Claims Reserve established for remaining Disputed Claims in such Class, Pro Rata, the Cash and/or Liquidating Trust Interests that have been so reallocated to such class in accordance with clause (a) of this Section."

Bankruptcy Court or the amount that would have been distributed to the Holders of Disputed Claims if the Disputed Claims were allowed. *See Plan* at § 9.3.

7. The Plan provides that the amount to be held in the Disputed Claims Reserve on account of a contingent or unliquidated Disputed Claim may be determined by order of the Bankruptcy Court. Section 1.44 of the Plan provides that the Disputed Claim Amount with respect to a Disputed Claim shall be the least of (i) the liquidated amount set forth in the proof of claim or request for payment of an Administrative Claim; (ii) the amount estimated by the Bankruptcy Court for purposes of Distributions in accordance with sections 105(a), 502(c), or 505 of the Bankruptcy Code; or (c) an amount agreed by the Holder of a Disputed Claim for purposes of estimation and/or allowance under sections 105(a), 502(c), or 505 of the Bankruptcy Code. *See Plan* at § 1.44. Moreover, the Plan permits the Reorganized Debtors and the Liquidating Trustee to request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to sections 105, 502(c) or 505 of the Bankruptcy Code. *See Plan* at § 9.1.⁴ The

⁴ Section 9.1 of the of the Plan provides:

On and after the Effective Date, only the Liquidating Trustee shall have the right to object to Claims including, without limitation, those Claims that are not listed in the Schedules, are listed therein as disputed, contingent or unliquidated in amount, or are listed therein at a different amount than asserted in the proof of claim. Subject to further extension by the Bankruptcy Court, the Liquidating Trustee shall file objections to the allowance of Claims on or before the Claims Objection Deadline. The respective Debtors, Reorganized Debtors, the Creditors' Committee or the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 105 and/or 502(c) and/or 505 of the Bankruptcy Code, regardless of whether a party previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any such contingent or unliquidated Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the amount of such Claim or a maximum limitation on the amount of such Claim, as determined by the Bankruptcy Court, to the extent permissible under the Bankruptcy Code. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment or Distribution on such Claim.

amount determined by the Bankruptcy Court pursuant to such estimation shall constitute either the amount of such Claim or a maximum limitation on the amount of such Claim. *See Plan* at § 9.1.

CLAIMS SOUGHT TO BE ESTIMATED

8. In these bankruptcy cases, there are numerous unliquidated and/or contingent claims that must be estimated in order to allow the Liquidating Trustee to retain the appropriate amounts in the Disputed Claims Reserve and, in turn, make distributions of the Liquidating Trust Assets. As filed, the Estimated Claims set forth claims for unliquidated and/or contingent amounts in their proofs of claim and the Movants have not agreed with the Holders of such claims on an amount for purposes of estimation or allowance with respect to the Estimated Claims. Moreover, the Estimated Claims do not contain sufficient information to allow the Movants to determine from the claims themselves (or any documentation attached thereto) what amounts, if any, are valid and owed to the claimants by the Reorganized Debtors.⁵

A. Claims of Directors and Officers for Indemnification

9. Each of the claims included on Exhibit A was filed by a former officer or director of the respective Debtor and 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 bases 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.⁶ None of the claims set

⁵ 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).

⁶ 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.

forth any documentation or information regarding a specific action, suit or proceeding instituted or threatened with respect to a claimant. Each claim on Exhibit A 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. Pursuant to their Fifth Omnibus Objection And Motion To Reclassify, Reduce Or Disallow Certain Claims, the Movants have sought an order disallowing and expunging each of the claims on Exhibit A pursuant to Bankruptcy Code section 502(e)(1)(B), Bankruptcy Rule 3007, and D. Me. LBR 3007-1 (the "Fifth Claims Objection").⁷

B. Claims By Pegasus Communications Corporation

10. Each of the claims included on Exhibit B was filed by Pegasus Communications Corporation ("PCC"), the Reorganized Debtors' former parent corporation, against one of the Reorganized Debtors and seeks recovery for: "(i) claims arising under the Support Services Agreement effective May 1, 2004, among the Pegasus Communications Management Company and each of the Pegasus Debtors and Pegasus Non-Debtors listed on the signature pages thereto, in an unliquidated amount;" (ii) claims arising under or in connection with a Custom Service Agreement between Sprint Communications Company, L.P. and PCC, signed by PCC on March 29, 2002 and Sprint on April 9, 2002, as amended in an unliquidated amount; and (iii) claims that may arise in connection with an investigation by the SEC of disclosures made by the Debtors regarding its subscriber numbers and the Debtors' policies and procedures for calculating such numbers, in an unliquidated amount. The basis for such claims are alleged to be "(i) under the Global Settlement Agreement [dated July 30, 2004] and any amendment to, modification of, or supplement to, such Agreement and (ii) arising after the filing of the Petitions, including but not limited to claims arising under the Support Services Agreement." Each claim on Exhibit B notes that the claimant seeks recovery for claims that

⁷ 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 (Docket No. 1370) was filed on May 19, 2005 is set for hearing on June 29, 2005 at 1:00 p.m.

include contingent and unliquidated claims.

C. Claim By The Pagon Trustee

11. The claim included on Exhibit C was filed by Michael B. Jordan, Trustee under Deed of Trust of Marshall W. Pagon, Settlor (the “Pagon Trustee”), against Pegasus Satellite Communications, Inc. and seeks recovery for unpaid premiums due on certain life insurance policies in an unliquidated amount.⁸ The basis for such claim is alleged to be the Split Dollar Agreement between Pegasus Communications Corporation (now known as Pegasus Satellite Communications, Inc.) and Nicholas A. Pagon, Holly T. Pagon and Michael B. Jordan, Trustees under Deed of Trust of Marshall W. Pagon, Settlor, dated October 30, 1996 (the “Split Dollar Agreement”) whereby the Trustees were to acquire life insurance policies to be owned by the Trustees and pay a portion of the premiums due on such policies as an additional employment or retirement benefit due to Marshall W. Pagon. Each claim on Exhibit C notes that the claimant seeks recovery for claims (i) in an amount not less than \$488,151.00; (ii) in an amount not less than \$242,646.00, and (iii) for unliquidated and contingent amounts. To the extent that the claim set forth on Exhibit C seeks claims greater than the “not less than” amounts and for unliquidated and/or contingent amounts, the Movants seek to estimate such claim as zero for the purpose of establishing reserves under the Plan.

JURISDICTION

12. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Plan and Confirmation Order. 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 sections 105(a) and 502(c) of the Bankruptcy Code.

⁸ The Movants note that the claim listed on Exhibit C amends a previously filed claim. To the extent the previously filed claim is deemed not to be withdrawn as a result of such amendment, the Movants seek identical relief with respect to the previously filed claim.

13. The Court continues to have jurisdiction over this matter subsequent to the confirmation of the Plan pursuant to sections 9.1 and 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 “determination of the allowability or estimation of Claims against, or the administrative expenses of, the Debtors,” and “the Reserves, Disputed Claims, Claims for disputed Distributions and recharacterization or equitable subordination of Claims.” See Plan at § 13.1(a) & (h).

RELIEF REQUESTED

14. In order to establish the Disputed Claims Reserve Trust so that distributions can be made to creditors as expeditiously as possible, the Movants seek to estimate the Estimated Claims set forth in Exhibits A, B, and C as zero. Because none of the Estimated Claims contain enough information to allow the Movants to determine from the claims themselves (or any documentation attached thereto) what amounts, if any, are valid and owed to the claimants by the Reorganized Debtors, the Movants request that the Estimated Claims be estimated as having no value for purposes of establishing the Disputed Claims Reserve under the Plan.

APPLICABLE LAW

15. If necessary to expedite the administration of the case, the Bankruptcy Code requires that contingent and unliquidated claims be quantified by estimation. See *In re CD Realty Partners*, 205 B.R. 651, 655 (Bankr. D. Mass. 1997). Section 502(c) of the Bankruptcy Code provides that “[t]here shall be estimated for purpose of allowance under this section -- (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case... .” Courts have observed that Section 502(c)(1) serves two purposes: (1) to avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of the actions; and (2) to promote a fair distribution to creditors through a realistic

assessment of uncertain claims. *See Matter of Ford*, 967 F.2d 1047, 1053 (5th Cir. 1992).⁹ The Movants submit that estimation of the Estimated Claims will promote each of these purposes.

16. While the Court has substantial discretion to create a procedure to estimate the claim, *see In re The Bible Speaks*, 65 B.R. 415, 427 (Bankr. D. Mass. 1986), that procedure “must be consistent with the policy underlying Chapter 11, that reorganization must be accomplished quickly and efficiently.” *In re Windsor Plumbing Supply Co., Inc.*, 170 B.R. 503,520 (Bankr. E.D.N.Y. 1994) (citing *Bittner*, 691 F.2d at 137). Courts have used Section 502(c) in a variety of ways in order to prevent undue delay in a bankruptcy case. In *In re C. F. Smith & Associates, Inc.*, 235 B.R. 153, 158 (Bankr. D.Mass. 1999), the Court adjudicated the merits of a debtor’s appeal pursuant to Section 502 because the state court “would not be able to render a decision for perhaps a year or more” and the court “rejected the approach of waiting for the result” from the state appellate court.

17. The administration of the cases at hand will be similarly unduly delayed unless the claims set forth on the Exhibits hereto are promptly estimated pursuant to Section 502(c). For example, the indemnification claims sought by the claimants listed on Exhibit A have the potential to delay the distributions of the Liquidating Trust Assets for years until the underlying claims, if any, are prosecuted, and then the liability of the Reorganized Debtors is adjudicated.

18. The Movants submit that the Estimated Claims must be valued at zero

⁹ The legislative history of Section 502(c) supports this interpretation and makes it clear that Congress, in drafting Section 502(c), intended that the Court should estimate any claim, actual liquidation of which would unduly delay closing of the estate. The Senate and House reports on this subsection contain identical language as follows:

Subsection (c) requires the estimation of any claim liquidation of which would unduly delay the closing of the estate, such as a contingent claim, or any claim for which applicable law provides only an equitable remedy, such as specific performance. This subsection requires that all claims against the debtor be converted into dollar amounts.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 354 (1977); Sen. Rep. No. 95-989, 95th Cong., 2nd Sess. 65 (1978), 1978 U.S.C.C.A.N. 5851, 6310.

because none of the Estimated Claims contain enough information to allow the Movants or the Court to determine from the claims themselves (or any documentation attached thereto) what amounts, if any, are owed or may be owed to the claimants. An estimation of zero value is well within the Court's power under Section 502(c)(1). Courts have held that the phrase "for purpose of allowance" in Section 502(c) is reasonably construed to encompass both the allowance and disallowance (through valuation at zero) of contingent or unliquidated claims. *See Ryan v. Loui (In re Corey)*, 892 F.2d 829, 834 (9th Cir. 1989) (affirming estimation of speculative claim at zero), *cert. denied*, 498 U.S. 815 (1990); *Bittner*, 691 F.2d at 137; *Handy & Harman*, 266 B.R. at 30; *Colorado Mountain Express, Inc. v. Aspen Limousine Serv., Inc. (In re Aspen Limousine Serv., Inc.)*, 193 B.R. 325, 337 (D.Colo. 1996); *Bunn v. Frontier Airlines, Inc. (In re Frontier Airlines, Inc.)*, 137 B.R. 811, 814 (D.Colo. 1992); *Baldwin-United Corp.*, 55 B.R. at 896. In fact, the merits of a claim may be finally adjudicated under an estimation procedure. *See In re C. F. Smith & Associates, Inc.*, 235 B.R. 153, 159-160 (Bankr. D.Mass. 1999). *See, e.g., Midway Motor Lodge v. Innkeepers' Telemangement & Equip. Corp.*, 54 F.3d 406 (7th Cir. 1995).

19. The Movants submit that such an estimation is warranted because facts forming a basis for damages simply have not and cannot be developed with respect to the Estimated Claims. "Chapter 11 proceedings may not be held hostage by the filing of claims so vague and unsupported that their estimation and liquidation become one and the same process." *See Aspen Limousine*, 193 B.R. at 338. None of the allegations in the Estimate Claims sets for any specific harm or financial loss to the claimants. There is simply nothing on which the Bankruptcy Court can base a value estimate.¹⁰

20. Accordingly, the Movants submit that the estimation of the Estimated Claims to ensure that distributions under the Plan can be made promptly. The Movants

¹⁰ The Movants note that the Holders of Estimated Claims will be able to have their claims reconsidered pursuant to Section 502(j), if and when, the claim's merits are finally adjudicated by the non-bankruptcy forum if "cause" is shown. Bankruptcy Rule 3008 implements this section and provides that a "party in interest" may move for reconsideration of an order allowing or disallowing a claim against the estate, and that the court, after a hearing on notice, should enter an appropriate order.

respectfully request that the Court enter an Order estimating the Estimated Claims listed on Exhibits A, B, and C as having no value for the purposes of establishing the Disputed Claims Reserve.

RESERVATION OF RIGHTS

21. 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 Exhibits A, B, and C 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 Claims listed in Exhibits A, B, and C on any other ground. To the extent that the Court determines that any of the claims subject to this Motion shall be accorded an estimated value, the Movants submit that such determination should be determined to be the maximum recovery upon the claims against the Debtors' estates and be without prejudice to the Movants' rights to pursue supplemental proceedings to object to the ultimate allowance of any of the Estimated Claims, including without limitation, to seek to subordinate or set off with respect to such claims, and reserve all rights to elect to pursue such proceedings. *See Plan* at § 9.1. The Reorganized Debtors and the Liquidating Trustee further reserve their rights to withdraw and/or modify this Motion.

NO PRIOR REQUEST

22. No prior motion for the relief requested herein has been made to this or any other court except for the relief requested in the Fifth Claims Objection.

NOTICE

23. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Maine, (ii) 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 (iii) each of the claimants identified in Exhibits A, B, and C

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 of the proposed Order submitted herewith, granting this Motion in all respects and granting such other and further relief as the Court deems just and proper.

Dated: June 13, 2005

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*