

Hearing Date: November 18, 2005
Time: 10:30 a.m.
Place: Portland
Objection Deadline: November 8, 2005
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OBJECTION TO, AND MOTION TO DISALLOW CLAIM NUMBER 860 AND ALL OTHER CLAIMS SUBMITTED ON BEHALF OF WILLIAM J. DORRAN PURSUANT TO 11 U.S.C. § 502(b), BANKRUPTCY RULE 3007, AND D.ME.LBR 3007-1

The PSC Liquidating Trust (the “PSC Trust”), on behalf of the Reorganized Debtors,¹ by and through its undersigned counsel, hereby objects (the “Objection”) to claim number 860, and all other claims submitted on behalf of William J. Dorran (“Dorran”), and moves this Court, pursuant to 11 U.S.C. § 502(b), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and D.Me.LBR 3007-1 for entry of an order disallowing such claims as set forth herein. In support of this Objection, the PSC Trust respectfully states as follows:

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 County 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.

JURISDICTION, VENUE AND STATUTORY PREDICATES

1. On June 2, 2004 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

2. 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. No request was made for the appointment of a trustee or examiner in these cases.

3. Prior to confirmation of the Debtors’ First Amended Joint Chapter 11 Plan of Reorganization (the “Plan”), the Debtors continued in possession of their properties and operated and maintained their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On April 15, 2005 (the “Confirmation Date”), the Bankruptcy Court approved the Plan and entered the Findings of Fact, Conclusions of Law, and Order Confirming the Debtors’ First Amended Joint Chapter 11 Plan (the “Confirmation Order”). The Plan became effective on May 5, 2005 (the “Effective Date”). The PSC Trust was established under the Plan and, pursuant to the terms of the Plan, has the authority and responsibility to object to, settle, compromise, and prosecute disputed claims.

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(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and D. Me. LBR 3007-1.

THE DORRAN PROOFS OF CLAIM

6. On or about October 12, 2004, Dorran filed multiple proofs of claim in all of the Debtors' cases (the "Dorran Claims"), including a claim against Debtor DTS Management, LLC ("DTS"), in case number 04-20884, which was assigned claim number 860 (the "Disputed Claim" or "Claim 860"). A copy of Claim 860 is attached hereto as Exhibit A.

7. Claim 860, as well as all the other Dorran Claims, asserts an unsecured, non-priority claim in the amount of \$175,000. It alleges generally that the claim is predicated on an entitlement to a severance payment pursuant to the terms of an employment agreement dated November 19, 1996 between Dorran and a non-debtor entity called Columbia DBS Management, LLC ("Columbia").

8. In the Debtors' First Omnibus Objection to and Motion to Reclassify, Reduce or Disallow Certain Claims Pursuant to 11 U.S.C. § 502(b), Bankruptcy Rules 3001 and 3007, and D. Me. LBR 3007-1 (the "First Omnibus Objection"), the Debtors objected to all of the Dorran Claims, with the exception of Claim 860, seeking to expunge them as multi-debtor claims.²

9. On or about January 14, 2005, Dorran filed the Opposition of William J. Dorran to Debtors' First Omnibus Objection to and Motion to Reclassify, Reduce or Disallow Certain Claims Pursuant to 11 U.S.C. § 502(b), Bankruptcy Rules 3001 and 3007, and D.Me. LBR 3007-1; Declaration of William J. Dorran in Support Thereof (the "Opposition"). Dorran's Opposition challenged the First Omnibus Objection on the grounds that the Debtors had offered

² The Dorran Claims were assigned claim numbers 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868 and 869.

no evidence, and made no representations as to exactly which of the Debtor entities may be liable to Dorran under the Agreement.

10. The Dorran Claims included in the First Omnibus Objection and Dorran's Opposition thereto remain unresolved.

11. By this Objection, the PSC Trust seeks entry of an order, pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and D.Me. LBR 3007-1, disallowing in full and expunging all the Dorran Claims, including Claim 860 as claims that do not represent a liability owed by the Debtors.

BASIS FOR OBJECTION³

The Employment Agreement:

12. On November 19, 1996, Dorran entered into an executive employment agreement (the "Employment Agreement") with Columbia DBS Management, LLC (the "Company" or "Columbia"). A copy of the Employment Agreement is attached hereto as Exhibit B.

13. The Employment Agreement provides, in pertinent part, that in the event Dorran is terminated other than for cause,⁴ but not in the event of a voluntary termination,⁵ he shall be entitled to severance compensation in the amount of one year's base salary. See Agreement, ¶ 7c.

³ All allegations set forth herein are based upon information and belief.

⁴ Under the Agreement, Dorran may be terminated "for Cause" in the event that the Board determines that he has (a) materially and substantially breached his obligations under the Agreement; (b) has been convicted of a felony constituting a crime of moral turpitude (whether or not in conjunction with the performance of his duties under the Agreement); or (c) has through willful misconduct or gross negligence engaged in an act or course of conduct that causes material injury to the Company or any member of the Group. Dorran may not be terminated "for Cause" unless he is given written notice informing him that his conduct constitutes grounds for termination and is allowed at least thirty (30) days to remedy the refusal or failure. See Agreement, ¶ 7.

⁵ Under the Agreement, Dorran's resignation from the Company would be deemed a "Voluntary Termination." See Agreement, ¶ 7.

14. The Agreement also states that “the Company is in the business of providing management services to a group of affiliated entities, substantially all of the equity interests of which are currently owned directly or indirectly by” Columbia DBS Holdings, LLC (“Holdings”). Agreement, page 1. The Agreement goes on to define the “Group” collectively as Holdings, the Company and all entities controlled by Holdings or the Company, whether currently existing or formed in the future.

15. Subsequent to the execution of the Employment Agreement, Columbia was acquired by DTS, which at that time was not affiliated with any of the Debtors. Thereafter, on or about April 27, 1998, DTS was acquired by Debtor Pegasus Satellite Communications, Inc.

16. Thereafter, in or about August 1999, Dorran became an employee of Pegasus Development Corporation (“PDC”), a non-debtor affiliate of DTS, and remained an employee of PDC until he was terminated.

17. In particular, Dorran was terminated from his employment with non-debtor PDC, effective December 31, 2004, by letter dated January 13, 2005 (the “Termination Letter”). A copy of the Termination Letter is attached hereto as Exhibit C.

I. The Dorran Claims Should Be Disallowed Because Dorran’s Transfer from DTS to PDC Constituted a Voluntary Termination Under the Employment Agreement, Thereby Disqualifying him from Eligibility for Severance Compensation

18. Paragraph seven (7) of the Agreement clearly conditions Dorran’s eligibility for severance compensation on a termination by the Company “other than for Cause, but not in the event of a Voluntary Termination.” Agreement, ¶ 7. There is no evidence to suggest that Dorran’s transfer from DTS to PDC was anything but a voluntary termination from his position with DTS, in order to accept a different position with a separate corporate entity, PDC. Accordingly, the Debtors have no liability under any of the Dorran Claims as Dorran’s

voluntary termination rendered him contractually ineligible for severance compensation under the terms of the Agreement.

19. As stated above, Dorran entered into the Agreement with Columbia on or about November 19, 1996. Thereafter, in or about August 1999, he voluntarily accepted a position with non-debtor PDC, who advised Dorran that it would honor Dorran's Employment Agreement.

20. Subsequent to the change of employment, Dorran received compensation and other benefits from PDC, not from DTS, up until he was terminated by PDC effective December 31, 2004.

21. For these reasons, the PSC Trust objects to the allowance of any of the Dorran Claims as claims for which the Debtors bear no liability and requests that all of the Dorran Claims be disallowed in their entirety and expunged.

II. The Dorran Claims Should Be Disallowed Because Dorran's Final Employer, Non-Debtor Entity PDC, Terminated him; Any Claim for Severance Compensation Should Be Asserted Against PDC, not Against Dorran's Previous Employers

22. As mentioned above, in August 1999, Dorran voluntarily became an employee of PDC, and his new employer agreed to honor the Employment Agreement. Subsequently, in January 2005, PDC formally terminated Dorran as established in the Termination Letter. Accordingly, the Debtors have no liability for the Dorran Claims; if Dorran has a severance claim against any entity, it should be asserted against non-debtor PDC, not against any of the Debtor entities.

23. For these reasons, the PSC Trust objects to the allowance of any of the Dorran Claims as claims for which the Debtors bear no liability and respectfully requests that all of the Dorran Claims be disallowed in their entirety and expunged.

APPLICABLE AUTHORITY

24. Pursuant to section 101 of the Bankruptcy Code, a creditor holds a claim against a bankruptcy estate only to the extent that it has a “right to payment” for the asserted liability. See 11 U.S.C. §§ 101(5) and 101(10). By contrast, there is no right to payment – and therefore no claim – to the extent that the asserted liability is not due and owing by a debtor. The PSC Trust believes, based on a review of the relevant documents, as applicable, that Dorran has no right to payment on account of any of the Dorran Claims. Accordingly, all of the Dorran Claims should be disallowed and expunged.

25. Section 502(b) of the Bankruptcy Code provides in pertinent part that:

the court, after notice and a hearing, shall determine the amount of (a) claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that...such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S.C. § 502(b) (1).

26. Pursuant to Bankruptcy Code section 502(b)(1), Bankruptcy Rule 3007, and D.Me.LBR 3007-1 the Court should disallow and expunge Claim 860 and all of the other Dorran Claims as claims for which no Debtor entity bears liability.

RESPONSES TO OBJECTIONS

27. Filing and Service of Responses. To contest this Objection, a claimant must file and serve a written response to this Objection (a “Response”) so that it is actually received by the Clerk of the Bankruptcy Court by no later than 4:00 p.m. Prevailing Eastern Time on November 8, 2005. Claimants should read the proposed Order and the exhibits attached to this Objection carefully. A Response must address each ground upon which the PSC Trust objects to the Dorran Claims. A hearing to consider the Objection shall be held on November 18, 2005 at 10:30 a.m. Prevailing 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”).

28. 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, District of Maine, 537 Congress Street, 2nd Floor, Portland, Maine 04101; (b) Lowenstein Sandler, PC, Attn: Paul Kizel, Esq., 65 Livingston Avenue, Roseland, New Jersey 07068; (c) Preti, Flaherty, Beliveau, Pachios & Haley, LLP, Attn: John P. McVeigh, Esq., One City Center; P. O. Box 9546; Portland, ME 04112-9546.

29. 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 disallowed or reduced 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 PSC Trust should serve any reply to the Response.

30. Timely Response Required: If a claimant fails to file and serve a timely Response, then without further notice to the claimant, the PSC Trust will present to the Court an order disallowing Claim 860 and all of the Dorran Claims as indicated herein.

31. 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 PSC Trust receives written notice from the claimant or the claimant's counsel of a changed service address.

RESERVATION OF RIGHTS

32. The PSC Trust expressly reserves 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 Claim 860 or any of the other Dorran Claims. Should one or more of the grounds for this Objection be dismissed or overruled, the PSC Trust reserves the right to object to any of the Dorran Claims on any other ground.

NO PRIOR REQUEST

33. No prior request for the relief sought herein has been made by the Reorganized Debtors or the PSC Trust to this or any other Court.

NOTICE

34. Notice of this Objection 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) counsel for Dorran. In light of the nature of the relief requested herein, the PSC Trust submits that no further notice is necessary.

