EFiled: Jul 25 2023 01:34PM EDT
Transaction ID 70478767
Case No. 2023-0215-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION	))))	Consolidated C.A. No. 2023-0215-MTZ

PLAINTIFFS' RESPONSE TO
THE COURT'S JULY 24, 2023 LETTER

Plaintiffs Allegheny County Employees' Retirement System and Anthony Franchi (together, "Plaintiffs") respectfully submit this response to the Court's July 24, 2023 letter requesting briefing on various issues (Trans. ID 70469771) (the "July 24 Letter").

ARGUMENT

1. Plaintiffs believe that the Proposed Settlement,[1] which was already an exceptional achievement in the context of a novel voting rights claim that did not easily lend itself to monetary relief absent a negotiated resolution, is only more attractive for the Class[2] today than when it was first reached, for at least two reasons:

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[1] "Proposed Settlement" mean the proposed settlement set forth in the Stipulation and Agreement of Compromise, Settlement, and Release (Trans. ID 69906464) (the "Stipulation") as modified by the parties' July 22, 2023 Addendum to Stipulation and Agreement of Compromise, Settlement, and Release (Trans. ID 70460360) (the "Addendum").

[2] Capitalized terms not defined herein have the same meaning as set forth in Plaintiffs' Opening Brief in Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards (Trans. ID 69958454).

- The Delaware Supreme Court's recent ruling in *Coster v. UIP Companies, Inc.*[3] added legal and practical risks to Plaintiffs' ability to prove their equitable claims;[4] and

- The Court narrowed the scope of the release of claims. Although Plaintiffs do not believe that the now-excluded claims have any value, narrowed releases are necessarily an additional benefit—in the form of option value—for stockholders.[5]

2. As to enjoining any approval of the Proposed Settlement pending appeal, it remains in the Class's interest that the Proposed Settlement be effectuated, and the very concerns that motivated Plaintiffs to pursue settlement in lieu of a preliminary injunction apply with greater force against entry of injunction pending appeal. Plaintiffs respond to the Court's specific questions in the July 24 Letter in more detail as follows:

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[3] --- A.3d ----, 2023 WL 4239581 (Del. June 28, 2023) (referred to hereinafter as "*Coster II*").

[4] The pending adoption of 8 *Del. C.* § 242(d), set to become effective on August 1, 2023, also will add risks because it will statutorily modify the stockholder voting standard to increase the number of authorized shares, from a majority of outstanding shares to a majority of votes cast. In other words, the specific voting standard that AMC's Board allegedly inequitably circumvented has been removed on a going forward basis by the Delaware legislature.

[5] As the Court may appreciate, paragraph 12 of the parties' Stipulation is a standard provision requiring them to "to use their individual and collective best efforts to obtain Court approval of the Settlement." Thus, other than making clear that Plaintiffs did not view any APE-related claims of Class members to have material value and supporting narrowing the release in response to the Court's questions during the settlement hearing, Plaintiffs were constrained in pressing Defendants to concede until the Court's Opinion created the conditions for a narrower release.

I. Notice Of Business Needs On The Horizon

3. Plaintiffs cannot speak directly to AMC's now current business needs regarding timing of the Proposed Settlement.[6] Plaintiffs understand, however, that even if the Proposed Settlement is promptly approved, AMC still must make a regulatory filing with the New York Stock Exchange to give the exchange approximately ten business days' notice of any reverse split, which it has not done pending resolution of the Proposed Settlement. And the period to market and issue new AMC shares to raise capital also will likely take further time beyond effecting the Proposed Settlement itself. Finally, Plaintiffs refer to their Reply in Further Support of Settlement, Award of Attorneys' Fees and Expense, and Incentive Awards with respect to the Company's capital needs at the time agreement to the Stipulation was reached.[7]

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[6] Plaintiffs note that on July 23, 2023, AMCs CEO Adam Aron advised AMC stockholders via Twitter, as later disseminated through a Form 8-K, that: "AMC must be in a position to raise equity capital. I repeat, to protect AMC's shareholder value over the long term, we MUST be able to raise equity capital." AMC Entertainment Holdings, Inc., Form 8-K (July 24, 2023), *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0001411579/000110465923083194/tm2321869d1_8k.htm (emphasis in original).

[7] Trans. ID 70161266 at 13 n.20 ("AMC's liquidity quandary is not binary, where—on some identifiable future date—the Company will be unable to continue as a going concern, and any resolution before that is equally (un)favorable to the Class. Rather, the liquidity runway is a projection, affected by how movies actually end up doing or what actually happens with AMC's cost structure. The longer the Company remains cash flow negative without the ability to sell stock, the smaller the margin for error."); *see also id.* at 11-13 (citing and discussing specific documents in AMC's

II. *Coster II*

4. As discussed during the settlement hearing, which took place in the immediate aftermath of the Delaware Supreme Court's issuance of *Coster II*, that decision concerned an actual battle for control of a corporate board[8] and the Supreme Court's analysis specifically cabined itself to such contests.[9] Nonetheless, if the parties to this Action were to litigate this matter today, Defendants would surely argue that the holding of *Coster II*, which folded a *Blasius* analysis into a *Unocal* analysis,[10] would constrain a traditional application of *Blasius* on these facts (potentially supporting dismissal of this case under the business judgment rule).

5. As Plaintiffs explained at the time, and reconfirm here, any judicial doctrine permitting pre-discovery dismissal under the business judgment rule of a case like this would be terrible policy and inconsistent with longstanding

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production that Plaintiffs believed demonstrated a time-sensitive and compelling need for an equity capital raise).

[8] 2023 WL 4239581, at *3.

[9] *See, e.g.*, *id.* at *11 ("Experience has shown that *Schnell* and *Blasius* review, as a matter of precedent and practice, have been and can be folded into *Unocal* review to accomplish the same ends – *enhanced judicial scrutiny of board action that interferes with a corporate election or a stockholder's voting rights in contests for control*."); *id.* at *12 ("As we explained in our earlier decision in this case, the court's review is situationally specific and is independent of other standards of review. *When a stockholder challenges board action that interferes with the election of directors or a stockholder vote in a contest for corporate control*, the board bears the burden of proof.").

[10] *Id.* at *11.

precedent.[11] But while Plaintiffs continue to believe that *Coster II* does not change the standard of review for the claims brought in this Action, Plaintiffs would not blithely ignore the risk that the Delaware Supreme Court might extend *Coster II* in such a detrimental manner. Accordingly, if the Court agrees that Plaintiffs achieved a meaningful (if not historic) monetary recovery on their *Blasius* claim, that recovery looks only better in light of the subsequent issuance of *Coster II*.

III. The Court Should Not Grant Any Injunction Pending Appeal

6. Regarding Your Honor's request for briefing on the propriety of an injunction pending appeal of any approval of the Proposed Settlement, Plaintiffs believe that allowing for an injunction pending appeal or maintenance of the *Status Quo* Order would be inappropriate here. While the Court in its discretion can grant an injunction or stay pending appeal,[12] the Supreme Court "reviews for abuse of discretion the Court of Chancery's decision to deny a motion for a preliminary injunction" and "will not disturb that decision on appeal in the absence of a showing

[11] *Coster II* did not overrule *Blasius* or address its continued vitality in contexts outside that of battles for corporate control. *See, e.g.*, *In re Columbia Pipeline Grp. Merger Litig.*, --- A.3d ---, 2023 WL 4307699, at *52 (Del. Ch. June 30, 2023) (discussing the interplay of *Coster II*, *Unocal*, and *Blasius* and concluding that "[w]hat results is enhanced scrutiny applied with a special sensitivity to the stockholder franchise").

[12] *Archstone Partners, L.P. v. Lichtenstein*, 2009 WL 2031785, at *6 (Del. Ch. July 10, 2009) (citing Del. S. Ct. R. 32(a)).

that it constituted an abuse of discretion."[13] To determine the propriety of an injunction pending appeal, the Court must:

> (1) [] make a preliminary assessment of likelihood of success on the merits of the appeal; (2) [] assess whether the petitioner will suffer irreparable injury if the stay is not granted; (3) [] assess whether any other interested party will suffer substantial harm if the stay is granted; and (4) [] determine whether the public interest will be harmed if the stay is granted.[14]

7. Plaintiffs continue to believe that the Proposed Settlement offers an excellent outcome for Class members that may not be available even if they showed likely success on the merits of their claims at a preliminary injunction hearing. To grant an injunction pending appeal, the Court must first determine that the appellant is likely to succeed on the merits of the appeal, which here, will be evaluated under an abuse of discretion standard.[15] If the Court were to approve the Proposed Settlement, such conclusion would necessarily result from its exhaustive consideration of the relevant law and facts and conclusion that the Proposed Settlement should be effected.

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[13] *Id*. (citing and quoting *Box v. Box*, 697 A.2d 395, 397 (Del. 1997)).

[14] *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357 (Del. 1998). Even if the request for relief is framed as a stay, this Court has held that the *Kirpat* factors set the appropriate framework for the Court's analysis. *Zhou v. Deng*, 2022 WL 1617218 ¶ 2 (Del. Ch. May 23, 2022).

[15] *See Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1281 (Del. 1989) ("Under our standard of review, we cannot say that the Chancellor abused his discretion in approving the settlement.").

8. While the Delaware Supreme Court is not unwilling to reverse this Court when it deems that doing so is necessary, Plaintiffs believe such reversal to be an unlikely outcome given the Court's careful review of the Proposed Settlement and settlement process here, especially accounting for changes in the law that introduced additional risk to Plaintiffs' claims, making the harm from issuing the requested injunction that much more pronounced. This factor strongly weighs against allowing an injunction pending appeal.

9. Next, the Court must evaluate whether the would-be appellant will suffer irreparable harm should an injunction not be granted. The contemplated reverse stock split and conversion could not easily be reversed. Nonetheless, should settlement approval be determined on appeal to be an abuse of discretion, Ms. Izzo would be free to press the post-closing damages theory her counsel has espoused in prior filings.[16] Therefore, this factor is neutral.

10. Then, the Court must evaluate whether anyone else would suffer irreparable harm should the injunction be granted pending appeal. Plaintiffs do not have ongoing nonpublic insight into AMC's financial condition since the settlement hearing, and believe it is for Defendants to answer the Court's question to the extent it focuses on prejudice to AMC from the continued delay resulting from any future

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[16] For the avoidance of doubt and as stated at the settlement hearing, Ms. Izzo's theory of recovery is incoherent and unsupported by the facts of this case or Delaware law.

injunction. Plaintiffs note, however, that in Adam Aron's public letter from this weekend, he cited the ongoing writers' and actors' strikes in response to the potential use of artificial intelligence to displace many jobs as factors that could impair or delay the release of future "blockbuster" movies, and Aron emphasized repeatedly the need for AMC to have access to equity markets *now*.[17]

11. Plaintiffs and non-appealing Class members are also at risk of suffering irreparable harm should an injunction be ordered pending appeal. If the injunction is granted and AMC cannot raise capital, there is a risk that AMC would not be able to satisfy any subsequent judgment.[18] Therefore, Plaintiffs and Class members alike would potentially suffer irreparable harm should the Court grant an injunction pending appeal. In this regard, the public interest weighs against a stay considering that the theoretical possibility that the Class could enjoy a better recovery through continued litigation is likely outweighed by the risk that AMC and the Class itself could suffer far worse harm if litigation continues and AMC fails to raise capital.

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[17] *See supra* n.6 ("Raising fresh equity in the near term is critical to our company, so it is important that we work to address the concern raised in the Delaware Court of Chancery's ruling on Friday.").

[18] *See Kansas City S. v. Grupo TMM, S.A.*, 2003 WL 22659332, at *5 (Del. Ch. Nov. 4, 2003) ("TMM's precarious financial situation demonstrates that KCS will suffer irreparable harm if the injunction does not issue, as TMM may be unable to satisfy a money judgment.").

12. In sum, if Plaintiffs made a rational assessment of the issues the Court would have to weigh (whether or not ultimately prescient about the outcome) in determining the balance of equities for the preliminary injunction, the same reasoning should apply with greater force to any application by any Class member for an injunction against implementation of the Proposed Settlement's terms (whether or not such Class member is has economic interests adverse to the Class).

13. Accordingly, Plaintiffs respectfully submit that Ms. Izzo and her counsel's requested injunction is a cavalier attempt to derail the Proposed Settlement in direct affront to the retail investors whose interests they purportedly want to represent. Plaintiffs believe Ms. Izzo and her counsel have come nowhere close to providing sufficient grounds to support such further delay, much less the granting of an injunction pending appeal.

Dated: July 25, 2023

Respectfully submitted,

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