



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**REPORT AND RECOMMENDATION OF
SPECIAL MASTER REGARDING CLASS MEMBER
ACCESS TO THE DISCOVERY RECORD**

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Special Master

Dated: May 19, 2023

PRELIMINARY STATEMENT

On May 5, 2023, Frank Maribito filed a “Statement of Objections” with the Court,¹ in which he requested access to the discovery record and provided evidence of his ownership of AMC Entertainment Holdings, Inc. (“AMC”) common stock. Since that time, other stockholders have requested access to the discovery exchanged in the case in connection with the potential pursuit of objections to the settlement. Some of these requests were delivered directly to plaintiffs’ counsel (as required by the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear).² Others were filed with the Court.³

Despite the parties’ insistence on an expedited settlement schedule,⁴ the parties did not respond to any of these requests or alert the Court regarding the nature of the requests.⁵ To my knowledge, no action was taken in response to the requests until May 11, 2023, when, after reviewing the requests, I asked the parties to provide submissions as to whether objectors and other class members should be permitted

¹ Trans. ID 69965734.

² Trans. ID 69923487 (the “Notice”).

³ *See, e.g.*, Trans. ID 69968438.

⁴ *See In re AMC Entm’t Holdings, Inc. Stockholder Litig.*, C.A. No. 2023-0215-MTZ, at 12, 19 (Del. Ch. Apr. 25, 2023) (TRANSCRIPT) (“Tr.”).

⁵ Consequently, class members were left in limbo without access to the discovery record or a response from any party.

access to the discovery record.⁶ On May 15, 2023, plaintiffs and defendants provided their respective positions.⁷

I noted in a previous report that a recommendation on requests for access to the discovery record was forthcoming.⁸ In this report and recommendation, I recommend that objectors and other class members seeking access to the discovery record in aid of objecting to the settlement be permitted access, subject to appropriate restrictions.

ANALYSIS AND RECOMMENDATION

A. Delaware Law Permits Objectors Access to Existing Discovery Records

As I read the pertinent case law, Delaware courts have not applied a gating analysis—such as requiring a plausible objection or an appropriately tailored discovery request—to determine whether an objector might be able to access an

⁶ Trans. ID 69999289. On May 8, 2023, I requested the parties’ positions on whether proposed intervenors were permitted access to the discovery record. Trans. ID 69972797.

⁷ Plaintiffs’ Opposition to Motion to Access Discovery and Response to Special Master Letter (Trans. ID 70017745) (“Plaintiffs’ Opposition”); Defendants’ Opposition to Requests to Access the Discovery Record (Trans. ID 70016779) (“Defendants’ Opposition”).

⁸ Trans. ID 70033944.

existing discovery record.⁹ The parties have asked me to apply that type of analysis.

I decline the invitation.

Defendants “oppose all pending requests to access the discovery record in the Action because the Objectors to date have not stated plausible objections to the Settlement and, instead, are attempting to obtain access to AMC’s material non-public information . . . for reasons wholly unrelated to the Settlement.”¹⁰ Defendants have not explained the basis for applying this broad statement to each class member who has made the request. Defendants only cite other motions Mr. Mathew filed,¹¹ which I addressed separately and denied. Moreover, defendants elsewhere acknowledge that class members have requested the discovery for purposes related to the settlement.¹²

⁹ See, e.g., *Ginsburg v. Phila. Stock Exch.*, 2007 WL 2982238, at *2 (Del. Ch. Oct. 9, 2007); *In re Amsted Indus., Inc.*, 521 A.2d 1104, 1108-09 (Del. 1986).

¹⁰ Defendants’ Opposition ¶ 2. Defendants have not provided supporting legal authority for this argument. Instead, they refer me to page 1110 of *Amsted*, where the Court discussed the rationale for rejecting an objector’s request for “*further* discovery on the merits of the claims and defenses” after a settlement had been reached. 521 A.2d at 1110 (emphasis added); Defendants’ Opposition ¶ 5 n.5. Nor have defendants explained how this would be practical under the current schedule. For example, defendants do not state (i) who would determine whether an objection is “plausible,” (ii) when that determination would be made or (iii) how, if that determination is wrong, a class member would obtain access to the discovery record in time to submit an objection to the settlement.

¹¹ Defendants’ Opposition ¶ 5 n.6.

¹² *Id.* ¶ 4 n.7.

Plaintiffs oppose providing any access to fellow class members who have made the requests because “[n]one of the individuals who have filed pending motions state that they are seeking access to discovery for the potentially valid basis of furthering an objection, or have even tried to tailor their requests to the essential.”¹³ I disagree. As set forth below, seeking access to the existing discovery record to determine whether to object or to fully and fairly present an objection is a valid basis under Delaware law, and that appears to be the aim of the requests.

B. Class Members Are Entitled to Review Discovery Taken in Aid of Objecting

In *Ginsburg*, this Court articulated an objector’s right to access the discovery record when that objector seeks to evaluate “the competence of the settlement (the timing of the settlement in the context of the litigation, the soundness of judgment to settle the case).”¹⁴ In those circumstances,

the Court will permit ... objectors to review “the court file in the case, all discovery that has already been taken and any other pertinent information generally available.” This rule serves the dual purpose of limiting discovery in the context of a settlement hearing and permitting objectors to fairly consider the judgment of the class representative in agreeing to settle.¹⁵

¹³ Plaintiffs’ Opposition ¶ 6.

¹⁴ 2007 WL 2982238, at *2.

¹⁵ *Id.* (citation omitted).

The Court described the foregoing as “clearly established precedent.”¹⁶

Neither party has provided any authority refuting this precedent. Citing *Ginsburg*, plaintiffs argue that an objector “only gets discovery when it demonstrates the necessity of the discovery to present the objection.”¹⁷ I do not read *Ginsburg* the same way. *Ginsburg* held that access to the already developed discovery record is “essential” to an objector’s ability to fairly present an objection to a settlement.

Defendants argue that the objectors have not “identified what additional already-discovered information they actually need.”¹⁸ But defendants offer no explanation for how class members could establish that specific parts of the discovery record are essential to fairly present their objection without knowing what is in the discovery record in the first place. As this Court noted in *Ginsburg*, “Delaware law requires that [] objectors have some opportunity to review the

¹⁶ See *id.*; accord D. WOLFE & M. PITTINGER, 2 CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 13.03[g] at 13-42 (2nd ed.) (same); see also *In re Countrywide Corp. S’holders Litig.*, 2008 WL 4173839, at *2 (Del. Ch. Sept. 10, 2008) (“The parties have provided the Objectors with the documents produced and the deposition transcripts generated in this action . . .”).

¹⁷ Plaintiffs’ Opposition ¶ 11. Defendants cite *Rome v. Archer*, 197 A.2d 49, 56 (Del. 1964) for a similar proposition that a stockholder seeking to review the discovery record must show more than the discovery would enable the stockholder to “determine the adequacy of the settlement.” Defendants’ Opposition ¶ 5. *Rome* addressed a request for additional discovery, not a review of the existing discovery record. 197 A.2d at 52.

¹⁸ Defendants’ Opposition ¶ 5.

discovery obtained by the class counsel during the course of the litigation.”¹⁹ The parties have not presented authority or a convincing rationale for deviating from this established Delaware law.

In addition, plaintiffs contend that objectors should not access documents produced by plaintiffs or third parties,²⁰ but do not cite any authority to support that claim. I also disagree with plaintiffs’ contention that there cannot be a “valid basis” for objectors to access plaintiffs’ documents.²¹ While plaintiffs in this action have not explained what specific documents they produced, typically in class actions plaintiffs produce documents that are relevant to whether a class should be certified and whether the plaintiffs should be appointed as class representatives. Plaintiffs here seek to be appointed class representatives and granted incentive awards at the settlement hearing. Documents that the plaintiffs produced in the litigation are relevant to their qualifications to serve as class representatives and likely other issues relevant to the case.

¹⁹ *Ginsburg*, 2007 WL 2982238, at *1.

²⁰ Plaintiffs’ Opposition ¶¶ 21-24.

²¹ *Cf. id.* ¶ 23. Plaintiffs do not dispute that the third-party documents would be relevant to an objector’s analysis of the merits of the settlement. *See id.* ¶ 25. Third-party documents will also be subject to the confidentiality order.

While the parties have expressed sincere and rational confidentiality concerns,²² those concerns do not override established Delaware precedent.²³ Consistent with Delaware law, confidentiality concerns are better addressed by a confidentiality order and potentially other guardrails than by depriving class members of the information entirely.²⁴

Thus, I recommend that objectors have access to the discovery record, which includes all documents that were produced in the litigation and transcripts (with

²² *See id.* ¶¶ 5, 16, 17, 18, 20; Defendants' Opposition ¶¶ 2, 3, 9, 13, 14, 16. One such concern is the disclosure of personal identifying information. I recommend permitting redactions for personal identifying information (*see* Ch. Ct. R. 5.1(b)(2)), so long as it does not unduly delay objectors' access to the discovery record.

²³ There are also due process concerns for class members whose rights may be affected by the settlement, further militating in favor of access to confidential discovery material. *See In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 434 (Del. 2012).

²⁴ *Ginsburg*, 2007 WL 2982238, at *3.

exhibits)²⁵ of all depositions taken in the litigation, subject to appropriate confidentiality restrictions.²⁶

C. Recommendations on the Inspection Process

1. Confidentiality Order

The parties have requested an amendment to the confidentiality order, including a new Exhibit B.²⁷ I view those changes and Exhibit B as reasonable and appropriate under these circumstances. I recommend that a revised confidentiality order be entered by the Court and that objectors who wish to access the discovery

²⁵ Plaintiffs contend that “access to the discovery record beyond that filed publicly with the parties’ settlement briefs” should not be provided. Plaintiffs’ Opposition ¶ 5. The Court previously indicated its preference for the parties to publicly file exhibits to their settlement briefs. *See* Tr. at 9 (“I would ask that the brief be posted on AMC’s investor relations website and that it be fully public and that all exhibits that are attached also be posted in a fully public manner.”). Plaintiffs, however, filed the exhibits to their settlement brief as confidential filings, limiting class access to the documents on which plaintiffs claim to have relied when entering into the settlement.

²⁶ Defendants note that it is “not feasible to provide Objectors access to a subset of non-confidential documents.” Defendants’ Opposition ¶ 6.

²⁷ While individual class members, who do not appear to have individually retained counsel, are seeking access to the discovery record, I have considered that (a) these individuals are not unrepresented in this class action because plaintiffs’ counsel seeks to be appointed class counsel and can assist if there are questions or concerns with respect to the use of confidential information and (b) defendants prepared Exhibit B, which explains what class members can and cannot do with confidential information and the consequences for any misconduct.

record execute and return Exhibit B thereto prior to review of any discovery materials.²⁸

2. Proof of Ownership

To access the discovery record, an individual must have standing to object to the settlement. To have standing to object, an individual must be a member of the settlement class, as defined by the Stipulation of Settlement.²⁹ I recommend the following process be followed by any class member who wishes to review the discovery record to determine whether to object or to aid in an objection. The class member should make any such request in an e-mail that provides the same evidence the class member would be required to provide to make an objection to the settlement. The e-mail should be sent to: AMCSettlementObjections@blbglaw.com and AMCSettlementObjections@rlf.com.³⁰ The e-mail communication should include the following in the e-mail subject line:

RE: AMC OBJECTOR / DISCOVERY ACCESS

²⁸ I have reviewed defendants' proposed revisions to the confidentiality order and Exhibit B and do not suggest any substantive revisions. I note that the Gallagher@rlf.com email domain should be amended to the AMCSettlementObjections@rlf.com email domain in defendants' proposed documents.

²⁹ Notice at 21-22.

³⁰ I would ask that the parties forward e-mail requests for access to discovery to my attention as soon as possible so that I am aware of the request for access and can address any discrepancy.

The e-mail communication should also include an executed, notarized copy of Exhibit B to defendants' proposed amended confidentiality order that I recommend be entered.³¹

The recipients to the e-mail should respond as soon as reasonably practicable to acknowledge the request and confirm (or deny) that access will be provided. If there is a problem with the documentation or access is otherwise denied, the parties should work with the purported stockholder to resolve the issue or provide a brief explanation of the basis for the denial of access.³²

3. Access

A more difficult issue to address is the manner in which stockholders may access and inspect the discovery record. While I do not make a specific recommendation as to how the discovery record is to be provided, I recommend that the parties adopt a method (or methods) that is (are) the most reasonable and practical under these expedited circumstances such that objectors or potential objectors have a fair opportunity to review the discovery record.³³

³¹ I also recommend that any class member, who would like to submit a revised objection based on the discovery record, be permitted to do that prior to or on the objection deadline (May 31, 2023).

³² I should be made aware of any unresolvable issues as soon as possible.

³³ One example of a reasonable method might be for the discovery record to be available on an electronic platform that is provided only to a class member who complies with the requirements set forth in this recommendation.

Defendants have requested that, if access to the discovery record is provided, it be during normal business hours at a location to be determined.³⁴ Defendants have not proposed where this location(s) would be or suggested any other logistical conditions. Whether an in-person inspection condition is reasonable depends on whether it is structured in a way that will permit objectors or potential objectors a fair opportunity to review the discovery record. For example, it would be unreasonable to require class members to travel to a physical location far from their place of residence on short notice and then limit their review to regular business hours.³⁵ The parties have requested an expedited schedule so all involved have had to work outside of normal business hours. The submissions do not address these issues and there is insufficient time to attempt to sort them out before issuing this recommendation, while still providing the parties with an opportunity to take exception to my recommendation before the Court acts.

Based on the record before me, I am unable to make a recommendation on the physical inspection condition. If the parties take exception to my recommendation, they may consider proposing a more specific in-person protocol for the Court to

³⁴ Defendants' Opposition ¶ 15.

³⁵ If the parties are able to provide physical access to the discovery record at a location that is in a reasonably proximity to a class member's residence, in a safe, secure location that may be a reasonable approach.

consider. Absent a more specific physical inspection proposal, providing electronic access may be the best approach.³⁶

CONCLUSION

I recommend that objectors to the settlement have access to the discovery record, subject to the appropriate restrictions described herein.

Dated: May 19, 2023

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Special Master

³⁶ One example of a reasonable electronic method might be for the discovery record to be available on an electronic platform or a virtual data room that is provided only to class members who comply with the requirements set forth in this recommendation.

CERTIFICATE OF SERVICE

I, Corinne Elise Amato, certify on this 19th day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Class Member Access to The Discovery Record* to be served via File & ServeXpress on the following counsel of record:

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