

eviscerate protections that NCM not only bargained for (in good faith and at arms-length) but already paid substantially for through the proceeds of the 2007 Transaction.

52. To make matters worse, Regal has threatened that if NCM pays the Theater Access Fees or other payments even once after the Initial Payment Deadline, but within the Cure Period, it will “turn off” the screens, *i.e.*, terminate its performance, despite the Regal ESA explicitly prohibiting termination during the Cure Period. Regal thus may seek to leverage NCM’s right to use the contractually-agreed upon Cure Period to excuse its obligations under the Regal ESA.

Harm to NCM

53. Regal’s actual and proposed breaches of the Regal ESA – notably, an agreement that has a term running through February 13, 2041⁵ – would clearly not just lead to lead to sizable damages but would strike at the heart of NCM’s business model and relationship with all of the Founding Members. Regal screens represent approximately one-third of all screens in NCM’s network, and the associated attendance of Regal’s movie customers is a key revenue driver and an integral part of NCM’s ability to provide advertisers a national platform at appropriate rates. Accordingly, the disappearance of that revenue and attendance has the potential to lead to significant harm to NCM, beyond merely the loss of revenues from Regal itself.

54. Specifically, although its analysis is still ongoing, NCM currently estimates that Regal’s proposed breach of the Regal ESA, if permitted, would result in a damages claim in excess of one billion dollars. And, importantly, such claim (a) would not be subject to any statutory cap or known theory of subordination, (b) would be a claim that could be asserted directly against the Debtors’ operating company, and (c) would be structurally senior to the claims of both Cineplex

⁵ The Regal ESA originally had a thirty-year term (through February 13, 2037). A 2019 amendment by Regal to the Regal ESA extended the term through February 13, 2041. Thus, there are approximately 19 years remaining on the Regal ESA.

