

DELCATH SYSTEMS INC
Form DFAN14A
September 22, 2006

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A INFORMATION

**Consent Solicitation Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934**

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

DELCATH SYSTEMS, INC.
(Name of Registrant as Specified In Its Charter)

**ROBERT B. LADD
JONATHAN A. FOLTZ
MICHAEL KARPf, M.D.
PAUL WILLIAM FREDERICK NICHOLLS
FRED S. ZEIDMAN
LADDCAP VALUE ASSOCIATES LLC
LADDCAP VALUE PARTNERS LP**

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1)	Title of each class of securities to which transaction applies: N/A
(2)	Aggregate number of securities to which transaction applies: N/A
(3)	

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Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule

0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

N/A

(4) Proposed maximum aggregate value of transaction: N/A

(5) Total fee paid: N/A

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing:

(1) Amount previously paid: N/A

(2) Form, Schedule or Registration Statement No.: N/A

(3) Filing party: N/A

(4) Date Filed: N/A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone:
212-857-8500

MOTION INFORMATION STATEMENT

Docket Not yet assigned; District Court Caption
Number(s): Docket No. [use short title]
06-cv-6420

EMERGENCY Modification of Temporary Restraints
Motion for: and Immediate Temporary Remand to
District
Court

Robert Ladd, et al.,
Defendants-Appellants,

vs.

Delcath Systems,
Inc.,
Plaintiff - Appellee.

Set forth below precise, complete statement of relief sought:
Appellants move for an emergency order (i) modifying interim restraints entered by the District Court against Appellants by permitting Appellants to deliver written shareholder consents they have collected to Appellee or its registered agent pursuant to Delaware General Corporation Law Section 228(c) by September 25, 2006, thereby preserving the legal viability of the shareholder vote pending the completion of further proceedings in this Court and in the District Court on remand, and (ii) temporarily remanding this case to the District Court for a plenary hearing on Appellee's application for entry of a preliminary injunction, to be immediately followed by further appellate proceedings in this Court should the District Court grant the application in whole or in part.

MOVING PARTY: Robert Ladd, **OPPOSING PARTY:** Delcath Systems, Inc.
Laddcap
Value
Partners LP,
Laddcap
Value
Advisors LLC
and Laddcap
Value

Associates

LLC.

Plaintiff
 Appellant
 Defendant
 Appellee/Respondent

MOVING

OPPOSING ATTORNEY:

ATTORNEY:

[name of attorney,with firm, address, phone number and e-mail]

[name of attorney,
with firm,
address, phone
number and
e-mail]

Steven M. Hecht,
Esq.

Adam H. Offenhartz,
Esq.

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PC

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shecht@lowenstein.com

Email: aoffenhartz@gibsondunn.com

Court-Judge: U.S. District Court for the Southern District of New York, Hon. Loretta A. Preska,
appealed U.S.D.J.
from:

**Please check
appropriate
boxes:**

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS
AND INJUNCTIONS PENDING APPEAL:**

Has **consent**
of opposing
counsel:
A. been
sought?

Has request for relief been made **below?** Yes No

Has this relief been previously sought
in this Court? Yes No

Yes No
B. been
obtained?
Yes No.

Requested return date and explanation of emergency:
Requested return date: Monday, September 25, 2006

**Is oral
argument**

requested:

X

Yes No

(requests for
oral argument
will not
necessarily be
granted)

18104/4

09/21/2006 2019181.01

Has argument date of appeal been set? ..
Yes No

Appellants are in the process of conducting a shareholder consent solicitation campaign to unseat the current board of directors of Appellee, a publicly-traded company that is organized under Delaware law. Under Delaware law, this process must be completed by September 25, 2006. Accordingly, the window of time within which this Court can provide meaningful relief to Appellants from an Order entered by the District Court on September 20, 2006 is extremely limited. The District Court's September 20, 2006 Order extended a TRO which prohibits Appellants from delivering written shareholder consents in its possession to Appellee's registered agent. Under § 228(c) of the Delaware General Corporation Law, if Appellants fail to deliver the consents by the close of business on September 25, 2006 -- less than four days from the date of this motion -- the written consents will become null and void, and the shareholder vote will be rendered a nullity. Once the statutory deadline passes, no Court has the power to undo that result under Delaware law. Accordingly, emergency relief is necessary to prevent the irretrievable loss of the shareholders' decision in this election and to preserve that decision for the benefit of whichever party proves to be the winner in the consent solicitation campaign.

If yes, enter date _____

Signature of Moving Attorney:

21, 2006 Date: September Has **service** been effected? Yes No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of the Court

Date: _____

By: _____