

DELCATH SYSTEMS INC  
Form DFAN14A  
September 22, 2006

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**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

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

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, Laddcap Value Partners LP, Laddcap Value Advisors LLC and Laddcap Value  
**OPPOSING PARTY:** Delcath Systems, Inc. \_\_\_\_\_

Associates

LLC. \_\_\_\_\_

Plaintiff/Defendant  
 Appellant/Petitioner/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]

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Esq.

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Court/Judge/Agency: United States 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

B. been obtained?

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

Requested return date and explanation of emergency:

Requested return date: Monday, September 25, 2006

Yes  No.

**Is oral  
argument**

requested:  **X**

Yes  No  
(requests for  
oral argument  
will not  
necessarily be  
granted)

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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: \_\_\_\_\_