

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE HUGH W.A. BAILEY,

Chapter 11 Case Number
13-82645-CRJ-11

Debtor.

DEBTOR'S SEVENTH AMENDED CHAPTER 11 DISCLOSURE STATEMENT

I. INTRODUCTION

On August 28, 2013, Hugh W.A. Bailey, as Debtor and Debtor-in-Possession ("Debtor"), filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (Title 11 is subsequently referred to as the "Bankruptcy Code" or "Code") in the United States Bankruptcy Court for the Northern District of Alabama, Northern Division (the "Court"). Pursuant to §1125 of the Code, the Debtor submits this disclosure statement (the "Disclosure Statement") in connection with the Fifth Amended Chapter 11 plan (the "Plan") he has filed which is dated May 22, 2016. The definitions used in the Plan are incorporated by reference into this Disclosure Statement. Except where the context or the Plan indicates otherwise, the terms used in this Disclosure Statement are as defined in the Code. This Disclosure Statement is being provided to all the Debtor's known creditors and parties in interest in this Case to provide them with information the Bankruptcy Court has determined to be adequate for them to reach a reasonably informed decision regarding the Plan.

This Disclosure Statement describes the circumstances giving rise to the filing of this Case, summarizes the anticipated future of the Debtor, provides a liquidation analysis of the Debtor and summarizes the Plan. A great deal of effort has been made to describe the matters contained in this Disclosure Statement fully and completely; however, there are no warranties made regarding the accuracy or depth of the matters discussed herein. Parties holding Claims are urged to read the Plan carefully and to consult with their lawyers, accountants, and other professionals to fully understand the Plan and its significance. The Plan is an important legal document and is based on complex legal and factual considerations.

Section 1125 of the Bankruptcy Code requires the Debtor, before soliciting acceptance of the plan, to submit a written Disclosure Statement. As indicated above, the purpose of the Disclosure Statement is to provide sufficient detailed information to allow each holder of a Claim to make an informed decision regarding whether or not to accept the Plan. Prior to soliciting votes in favor of the Plan through the Disclosure Statement, the Court must approve the Disclosure Statement.

II. DISCLAIMER

No representations concerning the Debtor, particularly those dealing with the Debtor's future business operations or the value of the Debtor's assets, have been authorized by the Proponent except as set forth in this Disclosure Statement. You should not rely on any other representations or inducements made or given to you to secure your acceptance or to influence your decision regarding voting on the Plan. You should report any person making any such representations or offering any such inducements to counsel for the Debtor at Ledlow Law P.C., 104D Melbourne Park Circle, Charlottesville, Virginia 22901.

For various reasons, the business and financial records of the Proponent dealing with the time prior to the preparation of the Plan and Disclosure Statement have not always been complete. The accuracy of the information submitted with this disclosure statement is dependent upon the accounting work performed by the Debtor, his accountant, and other financial professionals. Every effort has been made to provide the most accurate and complete information available; however, the Proponent is not able to warrant or represent all information presented in this Disclosure Statement and Plan is without error. No known errors are included in the Disclosure Statement or the Plan. Every effort has been made to ensure that the assumptions made in the Disclosure Statement and Plan are correct, but, under the circumstances, neither the Debtor, his attorneys, his accountant, nor any of his financial professionals can certify or warrant the absolute accuracy of the projections.

This Disclosure Statement includes a liquidation analysis of substantially all of the Debtor's property. The values placed on Debtor's property set forth in this Disclosure Statement are the Debtor's best estimate of the values of the property as of the time of the filing of this Disclosure Statement. Those values may differ from those placed on the same property at the time of the commencement of this Reorganization Case and any schedules filed or amended after the commencement of this Case.

III. CHAPTER 11 EXPLAINED

Chapter 11 is one of the reorganization chapters in the Bankruptcy Code. In a Chapter 11 case, the Debtor tries to reorganize its business and/or financial affairs for the benefit of the holders of Claims. This is accomplished by the Debtor's filing of a plan of reorganization.

One of the most significant provisions in the Bankruptcy Code is §362. The provision prohibits those holding Claims that arose before the Case was filed from trying to collect those Claims once the Case is filed and, generally and more broadly speaking, prevents any individual or entity from taking actions that interfere with the Debtor's management of its real or personal property and/or its business affairs. Section 362 of the Bankruptcy Code provides for a "stay" of all attempts to collect Claims that arose prior to the commencement of the bankruptcy case or to otherwise interfere with or

impede the Debtor's efforts to manage its property or business affairs. If a case is a single-asset real estate case, the court is required to grant relief from the automatic stay unless, within 90 days after filing, the debtor has submitted a Plan that has a reasonable possibility of being confirmed.

Confirmation of a Chapter 11 Plan requires either that all Classes of Claims entitled to vote either accept that plan or that the plan be accepted by the holders of at least one impaired class of claims (not counting the claims of "insiders" as defined in the Code). The Plan must also be in the "best interests" of the holders of Claims, essentially meaning the cash or property that will be distributed under the Plan is not less than the holders of Claims would not receive less than they would if the Debtor's assets were liquidated and distributed pursuant to Chapter 7 of the Code.

For a Class to accept the plan, more than ½ in number and 2/3 in amount of the total allowed Claims in that Class must vote in favor of the Plan. As long as one class of non-insider impaired claims or interests accepts the Plan, it does not have to be accepted by all classes. The Court may confirm a plan pursuant to its "cramdown" powers as provided in §1129(b) of the Code provided the Plan does not discriminate unfairly and is fair and equitable with regard to each impaired, dissenting Class of Claims.

As more fully discussed later in this Disclosure Statement, most holders of Claims in this Case are "impaired", so cramdown may be required to confirm the Plan over the objection of any dissenting Class. The Proponent believes the Claims of those in the Secured and Unsecured Classes are impaired. Under §1129(a)(8)(B) of the Bankruptcy Code, if a Class is not impaired under the Plan, each holder of a Claim in that Class is conclusively presumed to have accepted the Plan. Solicitation of acceptances to members of such Classes is not required. Section 1121(e) of the Code provides that only the Debtor can file a Plan before 120 days after the Filing Date. The Plan in this case was filed within that 120 day window.

IV. FILING PROOFS OF CLAIM

The Court set December 26, 2013 as the deadline for all holders of Claims – including governmental units – to file proofs of Claims. The Plan provides Claims will be recognized only if evidenced by a timely-filed proof of claim. A Claim is "allowed" if it appears in the Debtor's schedules filed with the Bankruptcy Court and is not listed as disputed, contingent, or unliquidated, if it is not disputed as part of the Chapter 11 Plan, if it is not otherwise objected to by the Debtor pursuant to Bankruptcy Rule 3307, or is not otherwise allowed by the Court. The Debtor's schedules can be viewed during regular business hours at the office of the Bankruptcy Court clerk in Decatur, Alabama.

V. VOTING ON THE PLAN

Creditors holding Allowed Claims are entitled to vote to either accept or reject the Debtor's Plan. **THE COURT WILL FIX A DATE BY WHICH ALL BALLOTS CONCERNING THE PROPOSED PLAN MUST BE FILED WITH THE COURT. ALL BALLOTS MUST BE**

RECEIVED BY THE COURT BY THAT DATE WITH A COPY OF THE BALLOT SENT TO THE OFFICES OF LEDLOW LAW P.C. at 104D Melbourne Park Circle, Charlottesville, Virginia 22901. No ballots received by the court after that date will be counted in determining whether the Plan should be confirmed. Even though a creditor may not vote or may vote against the Plan, the creditor will be bound by the terms and treatment set forth in the Plan if it is accepted by the requisite majorities of each Class of creditors and/or the Plan is confirmed by the Court.

Creditors who fail to vote in a timely fashion will not be counted in determining the acceptance or rejection of the Plan. Allowance of a Claim for voting purposes does not necessarily mean that Claim will be allowed or disallowed for purposes of distribution under the Plan. Any Claim to which an objection has or will be made will be allowed for the purposes of distribution after a determination by the Bankruptcy Court. Such a determination may be made after the Plan is confirmed.

For the plan to be accepted by a Class of Creditors holding Unsecured Claims, creditors that hold at least $\frac{1}{2}$ in number and $\frac{2}{3}$ in total dollar amount of the Allowed Claims of creditors voting on the Plan must accept the Plan. Pursuant to §1129(b) of the Code, under certain limited circumstances, the Court may confirm the rejection of the plan even if these voting requirements are not met. Debtor intends to seek confirmation of the Plan pursuant to §1129(b) in the event a Class of holders of Claims rejects the Plan.

VI. CONFIRMATION OF THE PLAN

Pursuant to the Bankruptcy Code, the following steps must be taken to confirm the Plan.

A. Confirmation Hearing. Section 1128(a) of the Code requires the court, after notice, to hold a hearing on the confirmation of the Plan (the “Confirmation Hearing”). Any party in interest may object to the confirmation of the Plan, regardless of whether it is entitled to vote on the Plan.

B. Objections to Confirmation. The court will direct that any objections to the Plan be made in writing and in advance of the Confirmation Hearing. The hearing may be adjourned from time to time without further notice except for an announcement made at the hearing. While the Proponent expects any hearing to consider objections to the confirmation of the Plan to be held in connection with the Confirmation Hearing, there is no assurance this will be the case. Objections to the Plan are governed by Bankruptcy Rule 9014. **UNLESS AN OBJECTION IS TIMELY MADE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

C. Requirements for Confirmation. At the Confirmation Hearing, the Court will determine whether the requirements for confirmation set forth in §1129 of the Code have been satisfied. If they have, the Court will enter an order confirming the Plan. The requirements in §1129 include:

- (1) **Feasibility of the Plan.** For the Plan to be confirmed, the Court must determine that a further reorganization or subsequent liquidation of the Debtor is not likely to result after

confirmation of the Plan. The Debtor believes the Plan is feasible in that it pays money to satisfy holders of existing Administrative, Priority, Secured, and Unsecured Claims.

- (2) **Fair and Equitable Requirement.** For the Plan to be confirmed, the Court must find no junior Class will receive any distribution unless each senior Class consents or is paid in full or unless such junior class contributes substantial new value to fund the Plan. The Plan Proponent believes the Plan satisfies this requirement.

VII. AVAILABLE ASSETS AND THEIR VALUES

All the Debtor's assets are either subject to consensual liens, a state tax lien filed by the Alabama Department of Revenue, or a federal tax lien filed by the Internal Revenue Service. Consequently, liquidation of the Debtor would result only in the payment (and likely only the partial payment) of all Allowed Secured Claims. There would be no assets available for distribution to Unsecured Claims. An analysis of the possible liquidation of the Debtor is attached to this disclosure statement. [\(See Exhibit 1\)](#)

VIII. ADMINISTRATIVE EXPENSES; CLAIMS ANALYSIS

As of the date of this Disclosure Statement, the Debtor has incurred approximately \$36,000.00 in legal fees since the date of the filing of the Reorganization Case. The Debtor will continue to incur professional fees in this case until a final decree is entered in this case. The Debtor cannot calculate the total amount of professional fees that will be incurred in the future with any sort of certainty. All fees sought from the Debtor, however, must be approved by the Court prior to payment.

IX. FINANCIAL CONDITION AND FEASIBILITY

When this Reorganization Case was filed, the Debtor had assets of \$1,008,126.50 and liabilities of \$1,489,491.00. Consequently, the Debtor was insolvent when this Case was filed.

X. SUMMARY OF THE PLAN; TREATMENT OF CERTAIN CLAIMS; CLASSIFICATION AND TREATMENT OF SECURED AND UNSECURED CLAIMS

A. Treatment of Administrative Expense Claims.

- (1) **Ledlow Law P.C.** - This Administrative Expense Claim is not impaired and shall be paid in full no later than the Effective Date of the Plan.
- (2) **Larsen Law P.C.** - This Administrative Expense Claim is not impaired and shall be paid in full no later than the Effective Date of the Plan.

B. Treatment of Priority Claims.

- (1) **Internal Revenue Service** - This is the Allowed Priority Claim of the Internal Revenue Service for federal income and withholding taxes. This Claim is impaired. A portion of this also an Allowed Secured Claim. Treatment of Allowed Secured Claims is discussed below in §X, B, (4) and (5). The Debtor anticipates that amount of this Claim

that remains after payment of the Allowed Secured Claims of the IRS will be approximately \$200,000.00. The amount of this Claim will be amortized over a period of ten years (one hundred twenty months) at the Internal Revenue Code rate of 3% *per annum*. These payments will be in the approximate amount of \$1,931.21/month. The Debtor reserves the right to prepay all or any portion of this Claim prior to maturity. Until this Claim is paid in full, the Internal Revenue Service will retain its lien against the Debtor.

(2) Alabama Department of Revenue – This is the Allowed Priority Claim of the Alabama Department of Revenue for state income and withholding taxes. This Claim is impaired. This amount of this Claim is \$39,594.00. At the close of the hearing at which the Plan is confirmed, On the Effective Date, the Debtor shall remit to counsel for the will pay the Department the sum of \$20,000.00 in certified funds. The balance of this Claim will be amortized over a period of five years (sixty months) at the rate of 34% per annum. The balance of the Claim shall be paid in forty-eight (48) consecutive monthly installments, the first of which will be paid on or before the Effective Date. The monthly installment amount will be \$360.87; provided, however, that the final installment will be a balloon payment in the amount of \$4,598.92. These payments will be in the approximate amount of \$352.08/month. The Debtor reserves the right to pay all or any portion of this Claim prior to maturity. Until this Claim is paid in full, the State of Alabama will retain its lien against the Debtor.

In the event the debtor fails to timely remit any payment due the Department under the confirmed Plan, the automatic stay will terminate with regard to the Department, and the Department may proceed with its legal and/or administrative remedies to collect any balance due for income withholding taxes for the reporting periods included in the claim without the need for notice or an opportunity to cure.

(2) During the term of the Plan, the Debtor shall timely file an and all post-petition state income tax returns beginning with ta year 2015 (if this return has not been filed as of the date of confirmation) by the due date for each respective tax year. Upon the filing of the applicable state income tax return, to the extent there is a balance due the Department, the debtor shall remit the balance due at the time the return is filed with the Department. In the event the Debtor fails during the term of the plan to timely file returns and remit and pay all post-confirmation tax debts to the Department, the automatic stay will be considered terminated with regard to the Department, and the Department may proceed with its legal and/or administrative remedies to collect any and

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[all such delinquent post-confirmation taxes without the need for notice or an opportunity to cure.](#)

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C. Classification and Treatment of Secured Claims.

(1) **PNC Bank** – This Class consists of the Secured Claim of PNC Bank in the amount of \$81,300.00 and is impaired. PNC is secured by a properly-filed first mortgage on the real property located at 1862 Matterhorn Road, Orlando, Florida. The Debtor will surrender the real property to PNC Bank in full satisfaction of this Secured Claim.

(2) **PNC Mortgage** – This Class consists of the Secured Claim of PNC Mortgage in the amount of \$179,178.00 and is not impaired. PNC Mortgage is secured by a properly-filed first mortgage on Debtor's principal residence located at 2715 Downing Street SE, Huntsville, Alabama. The Debtor will continue to pay this claim in accordance with the promissory note and mortgage executed by the Debtor in favor of PNC when the home was purchased. [A summary of the note and mortgage are attached to this disclosure statement as an exhibit. \(See Exhibit 2\)](#)

(3) **PNC Mortgage** – This Class consists of the Secured Claim of PNC Mortgage in the amount of \$39,405.00 and is impaired. PNC Mortgage is secured by a properly-filed first mortgage on the real property located at 2616 Dry Creek Drive NW, Huntsville, Alabama. The real property securing this Claim will be surrendered to PNC Mortgage in full satisfaction of its Secured Claim.

(4) **Internal Revenue Service** – This Class consists of the Secured Claim of the Service secured by a properly-filed federal tax lien on or against the Debtor's 2000 Plymouth Prowler. This Claim is also a Priority Claim. This claim is impaired. This Secured Claim of the Service will be paid by selling the automobile in question and paying the net sales proceeds to the Service in full satisfaction of this Secured Claim and in partial satisfaction of the Priority Claim of the Service.

(5) **Internal Revenue Service** - This Class consists of the Secured Claim of the Internal Revenue Service secured by a properly-filed tax lien on or against the Debtor's equity in his personal residence. This is also a Priority Claim. This claim is impaired. This Claim shall be treated and paid as a Priority Claim as set forth in Section III, B, (1) above. Until it has been paid in accordance with Section III, B, (1) above, the Service shall retain its federal tax lien securing this claim.

(6) **Internal Revenue Service** – This Class consists of the Secured Claim of the Internal Revenue Service secured by a lien on the Debtor's individual retirement accounts. This Claim is also a Priority Claim. This claim is impaired. This Secured

Claim of the Service shall be paid by allowing the Service to levy against the Debtor's individual retirement accounts, the approximate value of which is currently \$700,000.00. These proceeds will be paid to the Service in full satisfaction of this Secured Claim and in partial satisfaction of the Priority Claim of the Service.

D. Classification and Treatment of Unsecured Claims. This Class consists of all Allowed Unsecured Claims. The total amount of Unsecured Claims exceeds \$70,000.00. The Claims are of every kind and nature, including Claims arising from personal guaranties of business debts, the rejection of executory contracts, deficiencies on Secured Claims, credit cards, and open accounts. It also includes any Claim filed as a Priority Claim or a Secured Claim but which the Bankruptcy Court does not allow as filed. Pursuant to §1129(a)(15), holders of Unsecured Claims that are Allowed Claims shall be paid a *pro rata* distribution from a monthly payment of \$3,000.00 or the then disposable income of the Debtor, whichever is greater, beginning in September, 2024. Between the confirmation of the Plan and the commencement of payments, the Unsecured Claims shall accrue interest at the rate of 3% *per annum* and, during the repayment period, shall also receive interest on their claims of 3% *per annum*. These payments will continue until all Allowed Unsecured Claims are paid in full. The Debtor anticipates it will take approximately 60 months to pay all unsecured claims in full.

E. Classification and Treatment of Interests. This Class consists of the interest of the Debtor, Hugh W.A. Bailey. Dr. Bailey will not receive a distribution based on his Claim until all allowed claims in all other classes have been paid in full.

XI. FILING OF THE REORGANIZATION CASE; SUBSEQUENT MATERIAL EVENTS

The Reorganization Case was commenced on August 28, 2013, by the filing of a voluntary petition, schedules, statement of financial affairs, list of 20 largest unsecured creditors, and a mailing matrix. The filing was precipitated by the I.R.S.'s levy on all the Debtor's bank accounts to pay pre-petition priority Claims due the Service. Subsequent to the filing and on motion of the bankruptcy administrator, the court set December 26, 2013, as the deadline for filing proofs of claim in this Case. Since the filing of the Case, the Debtor has continued to practice medicine to earn a living for him and his family and to provide an income stream from which this Plan can be funded. [A summary of the Debtor's monthly income and expenditures is attached to this disclosure statement.](#) The debtor has filed his periodic operating reports with the Court and the bankruptcy administrator and has paid all fees to the court and the bankruptcy administrator that are associated with this case. [\(See Exhibit 3\)](#)

During the pendency of the case, there have been three significant sales of property free and clear of liens and other interests. The Debtor's interest in certain property located at 1211 Jordan Lane NW was sold, and the creditors holding liens against that property were paid in full, thereby extinguishing

their claims. There was also a sale of the Debtor's interest in a partnership that owned a business known as "Edible Arrangements". Again, the proceeds realized from that sale were distributed to the creditors holding liens against that property, thereby paying their claims secured in full. Finally, there was a sale of the Debtor's interest in an Alabama limited liability company known as Peak Vision, LLC. As was the case with the preceding two sales, the proceeds realized from that sale will be distributed to the creditor holding a lien against that property, thereby reducing the amount of that claim.

XII. AVOIDABLE TRANSFERS

An analysis of the Debtor's financial transactions with others during the relevant period has not revealed any payments that might be avoidable as preferences.

XIII. EXECUTORY CONTRACTS AND LEASES

The Debtor is aware of no executory contracts to which Debtor is a party. To the extent there are any such executory contracts, they will be rejected upon confirmation of the Plan. Any party to an executory contract will have thirty (30) days from the confirmation date to file a Claim for damages, if any, arising from the rejection of such contract. If proof of such a Claim is not filed within the requisite time period, such claim will not be allowed to participate in distributions under the Plan.

XIV. EXECUTION OF THE PLAN

The debtor will execute documents necessary to transfer and sell real and personal property pursuant to the Plan. Debtor will continue to be employed as a physician to provide the income necessary for him to fund the payments called for by the Plan.

The exact details regarding the Debtor's income and expenditures since the filing of this Chapter 11 case are reflected in the monthly operating reports he has filed with the Office of the Bankruptcy Administrator for the Northern District of Alabama. The Debtor invites any interested party to review those reports and accompanying records as they are matters of public record. [Further, a summary of the operating reports are attached to this Disclosure Statement as an exhibit.](#) Utilizing the information contained in those documents and the projections and estimates made in this Disclosure Statement and the Plan filed with it, the Debtor offers the following statements in support of what he believes is the feasibility of the plan he has proposed. [\(See Exhibit 4\)](#)

For the first ten years of the Plan, the Debtor will be called on to make payments of approximately \$1,931.00/month to pay the Priority Claim of the Internal Revenue Service. In addition, for the first five years of the Plan, the Debtor will be called on to make payments of approximately \$352.08/month to pay the Priority Claim of the Alabama Department of Revenue. Thus, for the first five years of the Plan, the Debtor will need disposable income of \$2,283.08 to fund the payments called for by the Plan he has proposed.

The Debtor is an employee of a medical practice owned by his daughter who is also a physician. As the Debtor's operating reports reflect, the Debtor draws a salary of \$11,800.00 each month from his employment as a physician. The Debtor reasonably anticipates that his income will remain at this level or will increase slightly over the course of the Chapter 11 plan. In addition, the Debtor believes his regular and ordinary expenses (*i.e.*, his ordinary living expenses not including the current costs of being a Chapter 11 Debtor) will be approximately \$9,100.00 monthly. This leaves the debtor \$2,700.00 in excess income from which he could make the proposed plan payment. Based on the Debtor's current income and expenditures, the Debtor should be able to afford his plan payment. For these reasons, the Debtor alleges the plan is feasible.

XV. RETENTION, ENFORCEMENT, AND WAIVER OF CLAIMS

Pursuant to §1123 of the Code, the Debtor will retain – and may enforce – any and all Claims held at the commencement of the Reorganization Case except those that are waived, relinquished, or released in accordance with the terms of the Plan.

XVI. FEDERAL INCOME TAX CONSEQUENCES

The tax consequences of the Plan to any party in interest will depend on the financial circumstances of that particular party. The Debtor makes no representations with regard to the federal, state, municipal, or other tax consequences on holders of Claims with regard to their treatment under the Plan, and no representations concerning such matters have been authorized by the Debtor or his attorneys. Any tax information contained in this Disclosure Statement or the Plan is for informational purposes only. Parties in interest are urged to seek the advice of legal and financial professional advisors if they have any questions regarding tax issues.

The tax consequences to the Debtor of the filing of the Reorganization Case are not yet known. Such tax consequences may include income from the discharge of indebtedness. The Debtor's treatment of all allowed pre-petition tax claims shall be as set forth in the Plan and Disclosure Statement. All tax liability incurred by the debtor after the filing of this Case shall be paid by the reorganized Debtor in the ordinary course of the Debtor's financial affairs.

XVII. POST-CONFIRMATION LITIGATION; MISCELLANEOUS

The Debtor does not anticipate being involved in any litigation related to any matter that arose Pre-Petition once confirmation of this Plan has been achieved.

Respectfully submitted this 16th day of September, 2016.

/s/ Hugh W.A. Bailey

Debtor

/s/ Vincent R. Ledlow
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