

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:

**GARRETSON'S MACHINE AND
FABRICATION, INC.,**

**Case No. 15-20233
Chapter 11**

Debtor.

**AMENDED
DISCLOSURE STATEMENT OF
GARRETSON'S MACHINE AND FABRICATION, INC.**

**ARTICLE I
INTRODUCTION**

This is the disclosure statement (the "Disclosure Statement") in the small business Chapter 11 case of Garretson's Machine And Fabrication, Inc. (the "Debtor"). This Disclosure Statement contains information about the Debtor and describes the Plan of Reorganization (the "Plan") filed by the Debtor. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

The proposed distributions under the Plan are discussed at pages 5, 6 and 7 of this Disclosure Statement.

A. Purpose of this Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case.
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed).
- Who can vote on or object to the Plan.
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan.
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim under the Plan compares to what you would receive on your claim in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan, as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to [Finally Approve This Disclosure Statement and] Confirm the Plan*

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in the United States Bankruptcy Court, Robert C. Byrd U.S. Courthouse, 300 Virginia Street, East, Room 3200, Charleston, West Virginia.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Joseph W. Caldwell, P.O. Box 4427, Charleston, West Virginia 25304.

Your ballot must be received by _____ or it will not be counted.

3. *Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Joseph W. Caldwell, P.O. Box 4427, Charleston, West Virginia 25304, by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Joseph W. Caldwell, Caldwell & Riffe, P.O. Box 4427, Charleston, West Virginia 25364.

C. Disclaimer

The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until _____.]

II. BACKGROUND

A. Description and History of the Debtor's Business

The Debtor is a corporation which began business in Logan County, West Virginia, in 2002. The Debtor operates out of an industrial building located along Route 10 at Stollings. The Debtor is owned by Keith Garretson and Kathy Garretson, his wife. The highest annual gross revenues achieved by the business were \$3,115,734 in 2012.

The Debtor has always provided welding services and fabrication needs for coal companies which operate in the Logan County area. As the coal economy began to decline after 2012, the Debtors's revenues also declined. The Debtor's largest customer in the past has been Patriot Coal Company. Patriot Coal Company has twice file a Chapter 11 bankruptcy case within the last four years and on each occasion that bankruptcy produced very negative consequences to the Debtor. The Debtor has also provided services for Alpha Natural Resources which filed a bankruptcy case in 2015. The combined effect of the bankruptcy cases of Patriot Coal Company and Alpha Natural Resources led to the filing of this Chapter 11 case.

The Debtor has machinery and equipment estimated to have a value of \$165,000. Although some of the machinery could be used by any machine shop, the cost of removal of the machinery and transportation expense would significantly affect its liquidation value. The Debtor does keep some scrap steel and other steel inventory on the premises. In the past, the Debtor has provided services for coal companies on site but some of the Debtor's employees actually go to the workplace of customers and provide repair services to heavy equipment such as bulldozers, end loaders, and rock trucks.

This Chapter 11 case was filed to preserve the Debtor's existing business operation and to provide a fair repayment plan for existing creditors. The Debtor's largest secured creditor is First Community Bank which is secured by not only the Debtor's accounts receivable and machinery and equipment, but also real property of the Debtors. Keith Garretson is the person responsible for obtaining work and overseeing completion of the work, and Kathy Garretson is the bookkeeper and billing clerk for the business. The Garretsons will continue to operate the business. Keith and Kathy Garretson, individually, are also parties to a separate Chapter 11 case.

The identity and fair market value of the estate's assets are listed on an exhibit attached to this Disclosure Statement and to the Plan. The Debtor has prepared Monthly Operating Reports which have been filed with the U.S. Bankruptcy Clerk for the Southern District of West Virginia. The Debtor's operations have been stable. Additionally, some of the Debtor's competitors have been forced to close their business and it is the Debtor's belief that it may be able to capture some of that residual business.

III. SIGNIFICANT EVENTS

Two of the Debtor's three largest customers have filed Chapter 11 bankruptcy cases in the U.S. Bankruptcy Court for the Eastern District of Virginia. Patriot Coal Company filed its second Chapter 11 case within three years and Alpha Natural Resources filed on August 3, 2015. Also, Arch Coal, a third large customer of the Debtor, recently filed a Chapter 11 bankruptcy case in the U.S. Bankruptcy Court for the Eastern District of Missouri. Even though it is disappointing when customers file a bankruptcy reorganization case, ironically, since the filing of those separate cases, the collection of accounts receivable from Patriot (now Blackhawk); Alpha Natural Resources and Arch Coal have been more regular than prior to the filing of the bankruptcy cases. The distressed status of the coal industry has been well publicized. Even so, the Debtor believes there will be coal mined from Southern West Virginia, if on a reduced annual tonnage. The Debtor enjoys a very good reputation with coal producers and is hopeful of gaining future business with those entities who control the assets of the other Chapter 11 Debtors. The Debtor is not in the position to relocate or to acquire other lines of work sufficient to sustain its business. The Debtor intends to trudge the road toward reorganization and continue with its quality work

In recent months, the Debtor has begun performing services for the Virginia Conservation Legacy Fund. This Fund was involved in the Patriot Coal Company bankruptcy Plan and will be responsible for completing reclamation responsibilities of several of the Patriot Coal Company operations. The Virginia Conservation Legacy Fund treats selenium at former Patriot Coal properties, and conducts reforestation of surface mine sites.

The Virginia Conservation Legacy Fund is running a 499 Shovel and Dragline, for which parts are not always readily available. Garretson's Machine And Fabrication, Inc. makes certain specified parts and provides maintenance on the equipment. Garretson's Machine And Fabrication, Inc. is on call 24 hours a day, seven days a week. The Supervisors at Virginia Conservation Legacy Fund are persons with whom Garretson's Machine And Fabrication, Inc. has had a long standing relationship and if this work continues, it will be a future source of revenue.

It is possible that Garretson's Machine And Fabrication, Inc. may be able to enter into a fixed relationship with the Virginia Conservation Legacy Fund which would provide a steady source of business. Ongoing reclamation activities will continue. If Garretson's Machine And Fabrication, Inc. is able to capture this reclamation business, this work can offset the old lost business. The Debtor also continues to provide services to Alpha Natural Resources.

IV. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims

or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor’s chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$5,000	Paid in full within 90 days after the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$ 0	Paid in full within 90 days after the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court	\$5,000	To be paid in installments over six months after confirmation
Clerk’s Office Fees	\$ 0	Paid in full on the effective date of the Plan
Office of the U.S. Trustee Fees	\$	Paid in full within 30 days after confirmation
TOTAL		

2. *Priority Tax Claims*

The Debtor did incur priority tax claims prior to the filing of this case. Those claims are as follows:

<u>Class</u>	<u>Impairment</u>	<u>Treatment</u>
<u>Class 1 - Priority Claims</u> Pre-petition claim of the Internal Revenue Service	Yes	Secured claim - \$1,500 per month for 60 months at 3% per annum - \$85,012 Priority claim - \$1,226 per month for 60 months at 3% per annum - \$67,072
West Virginia State Tax Department	Yes	\$56,707 - \$1,019 per month for 60 months at 3% per annum
Work Force West Virginia	Yes	\$11,075 - \$200 per month for 60 months at 3% per annum

Class 2 - Secured Claims - Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate to the extent allowed as secured under Section 506 of the Code. Any secured creditor may object to the Debtor's valuation and if an objection is filed, then the Debtor will request the U.S. Bankruptcy Court for the Southern District of West Virginia to conduct a claim hearing. The following lists all classes containing Debtor's secured pre-petition claims and their proposed treatment under the Plan.

2.1 First Community Bank
Impaired

Treatment - The secured claim of First Community Bank. The Bank is secured by real property owned by the Debtor and the Bank holds a lien on the Debtor's accounts receivable, machinery and equipment. The Bank also holds a lien on the personal residence owned by Keith Garretson and Kathy Garretson, his wife. Through May 19, 2015, the Debtor owed to First Community the principal sum of \$157,924 plus accrued interest of \$5,557.54. The Debtor's note to First Community matured on January 24, 2016. The Debtor will execute a new note with First Community in the principal amount of \$180,648.70 (which is the principal and interest payoff under the old note through April 29, 2016). Debtor and the individual Debtors will make payments to First

Community Bank under the new note of \$1,250 per month. The new note will carry interest at five percent per annum, will be amortized over 18 and one half years, and will have a balloon payment of all unpaid principal and interest five years after confirmation of the Plan. The Debtor's principals will remain obligated as guarantors. The other terms and conditions of repayment as set forth in the old note will continue to be in effect. In the event of default, the Bank shall be entitled to exercise the same remedies it holds under the existing security documents. This claim is impaired.

2.2 Logan Bank & Trust
Impaired

Treatment - The claim of Logan Bank and Trust totals the sum of \$6,494. This claim is secured by a boat and boat trailer and a 2008 Toyota Tundra. The claim was based upon a non purchase money advance. The Debtors will make payments on this claim at the rate of \$200 per month with interest at five per cent per annum over a period of 36 months. This claim shall be paid in full, but it is impaired because of a change in the pre-petition contractual amount.

2.3 Springleaf Financial
Impaired

Treatment - The pre-petition claim of Springleaf Financial. This claim is in the approximate sum of \$13,000. This claim is secured by a 2006 Jeep Commander and a 2000 Gooseneck Trailer. The Debtors shall make payments on this claim at the rate of \$215 per month for six years with interest at five percent per annum. This class is impaired.

3. *Unsecured Creditors*

Class U consists of the claims of non-insider unsecured creditors. Claims in this class total the sum of \$36,042, including the unsecured claim of the IRS in the amount of \$10,698. Creditors in this class shall receive a dividend of 100 percent based upon 20 quarterly payments, without interest, of \$1,802 per quarter. This class is impaired because of the delay in payment.

Class I. Lydia Coleman, Vada Crum, Jennifer Ellis made loans to the corporation totaling \$68,000. These individuals are insiders within the definition of the U.S. Bankruptcy Code. Payments on the insider obligations shall be paid at the rate of \$500 per month beginning 40 months after confirmation for 20 months and thereafter shall be paid at the rate of \$1,000 per month for an additional 48 months. This class is impaired.

4. *Class of Equity Interest Holders*

Class O Keith Garretson and Kathy Garretson, the current owners of the business, will continue to hold the ownership interest and to operate the business.

D. Means of Implementing the Plan

This Chapter 11 Plan is based upon the Debtor's belief that payments to creditors as provided herein will return more to the creditor body than they would receive under a

liquidation by a Chapter 7 Trustee. The Plan will be funded by cash flow generated from the Debtor's business based upon a going concern.

Upon the effective date, all property of the estate, wherever situated, shall be vested in the Debtor, free and clear of all liens, claims and interests except as may otherwise be provided by the Plan. Management of the Debtor's business shall continue with the same officers, Keith Garretson and Kathy Garretson, with compensation to total the sum of \$10,000.00 monthly.

E. Risk Factors

The primary risk is that the Debtor will not generate sufficient business to make Plan payments. There could be continued decline in coal production which would result in a decline in the welding service business and fabrication business and the Debtor's ability to attract other kinds of work is uncertain.

G. Executory Contracts

The Debtor owns the real property and commercial building upon which the business is located. The Debtor leases a 2011 Toyota Forerunner from Keith Garretson and Kathy Garretson, individually. That payment totals \$375 per month and that lease will be assumed.

H. Tax Consequences of the Plan

The Debtor may be able to capture pre-petition net operating loss carry overs and other tax attributes. However, the Plan is not premised upon tax considerations.

Pursuant to the provisions of 11 U.S.C. § 1125, the Debtor states that the Plan will not have any material federal tax consequences upon the Debtor. Payments received by secured creditors will have the same tax effect as if the Debtor were not a party to a Chapter 11 case. Payments received by unsecured creditors are impaired to the extent that a claim is not paid in full.

V. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. All creditors are entitled to vote on the Plan.

In this case, the Plan Proponent believes that all classes are impaired other than the holders of administrative expense claims. Holders of impaired claims have the right to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court.
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

B Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [B.2].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half ($\frac{1}{2}$) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds ($\frac{2}{3}$) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

C. **Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim would receive in a Chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit 3. Garretsons Machine And Fabrication, Inc. is a specialty service business primarily based upon the expertise of Keith Garretson and his son. The business is not the kind of operation that would be easily sold to a third party. Additionally, because of the severe contraction of coal production in southern West Virginia, the need for this type of business is not growing. Some of the remaining coal companies conducting operations in southern West Virginia utilize their own in house welding and machine shops. It is only upon a going concern business that sufficient funds can be generated to pay creditors. The Monthly Operating Reports over the last six months suggests feasibility for the Plan based upon current revenues. Further, even though coal production has declined significantly, reclamation activities will continue in Boone, Logan, Mingo and Wyoming Counties. Former operations of large coal companies who have filed bankruptcy within the last two years are required to be reclaimed under West Virginia law subject to inspection by the West Virginia Department of Environmental Protection. Reclamation work requires the use of heavy equipment which results in the need for repairs and maintenance work currently being done by Garretsons. If Garretsons can capture a sufficient share of the reclamation market, then the going concern business will exist.

D. **Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand within 60 days after the effective date of the Plan to pay all the claims and expenses that are entitled to be paid.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. The Debtors' cash flow has improved over the past five months.

The Plan Proponent has provided financial projections which are listed as Exhibit _____. The Debtor's financial projections shows that the Debtor will have an aggregate cash flow to support the Plan.

VI. EFFECT OF CONFIRMATION OF PLAN

A. Discharge of Debtor

On the effective date the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in §1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt imposed by Plan, of a kind specified in §1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in §1141(d)(6)(B). After the effective date of the Plan, claims against the Debtor will be limited to the debts described above.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation but the Court may require a new Disclosure Statement if the modifications are significant.

VII. DEFAULT

In the event that the Debtor would default under the terms of the Plan, then the secured creditors would have the option to take collection action upon their secured claims. First Community Bank could initiate foreclosure on the equipment, machinery and accounts receivable and the real estate and to the extent that any equity or proceeds existed after foreclosure, then the Internal Revenue Service would be second in line to receive those funds. Unsecured creditors would have the right to petition the U.S. Bankruptcy Court to convert or dismiss this case in the event of a default. However, it might be difficult for unsecured creditors to recover any part of a claim because of senior lien positions and tax debt. Alternatively, in the event of a default, the Office of the U.S. Trustee or the Debtor itself could move to have this case converted to a Chapter 7 liquidation case.

VIII. FINAL DECREE

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

VIX. OTHER PLAN PROVISIONS

Miscellaneous

1. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforce in accordance with the laws of the State of West Virginia.

2. Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

GARRETSON' MACHINE AND
FABRICATION, INC.

By Counsel

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