

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

**IN RE:**

**RICCO, INC.**

**a/k/a**

**AMICO PARTNERS**

**a/k/a**

**AMBIZIOSO PARTNERS**

**a/k/a**

**LUPO TANA PARTNERS**

**a/k/a**

**TRE MANICHINOS PARTNERS,**

**CASE NO. 3:10-bk-00023**

**DEBTOR.**

**DISCLOSURE STATEMENT  
FOR  
DEBTOR'S PLAN OF REORGANIZATION**

Dated: May 6th, 2010

Prepared by:

BKR Counsel for Debtor

Todd B. Johnson

P.O. Box 519

Morgantown, WV 26507

(304) 292-7933

and

John F. Wiley

180 Chancery Row

Morgantown, WV 26505

## **I. PLAN, PROCEDURE AND VOTING**

### **a. Introduction**

Todd B. Johnson and John F. Wiley, Bankruptcy Counsel (“BKR Counsel”) of the Debtor, Ricco Enterprises, Inc. (“Ricco” or “Debtor”) have filed a proposed Plan of Reorganization (the “Plan”) and it is attached to this document under **Exhibit A** to this DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION (the "Disclosure Statement"). This Disclosure Statement is submitted by BKR Counsel in connection with solicitation of acceptances of the Plan, which is attached to this Disclosure Statement. **Exhibit B** is the latest operating report of Debtor, with check advice redacted, and **Exhibit C** is a listing of Feasibility, Real Estate and Partnerships. The Liquidating Trust described in the Plan is also attached as a separate **Exhibit D**.

The purpose of this Disclosure Statement is to provide known creditors with adequate information of a kind, and in such detail, as is reasonable and practical in light of the nature of the history of Ricco, upon which to base and inform decision regarding other to vote to accept or reject the Plan. In an order dated contemporaneously with this filing, the Bankruptcy Court may direct BKR Counsel to distribute this Disclosure Statement to certain parties in interest regarding its approval although the Court may not yet have approved this Disclosure Statement as containing adequate information or found that it satisfied the requirements in Section 1125 of the Bankruptcy Code. The Bankruptcy Court's approval or order for a hearing on the subject of this Disclosure Statement also does not constitute the guarantee of the accuracy or completeness of the information contained in the Disclosure Statement nor is it an endorsement of the Plan itself. Such a hearing will take place is set forth in the Court's order once approved, the Plan will be submitted for all interested parties and creditors for a vote.

The Plan itself contains a Liquidating Trust, also attached, which readers are urged to examine in detail. The Bankruptcy Court by separate notice or Order (“NOTICE”) shall schedule a hearing on the adequacy of this Disclosure Statement, and on the confirmation of the Plan, and order that it is to be dispersed to all creditors.

The Court's NOTICE shall inform all creditors and parties in interest of the time and date of all such hearings. All hearings in this case shall take place at:

**U.S. Federal Courthouse  
MultiPurpose Courtroom – 1<sup>st</sup> Floor  
217 West King Street  
Martinsburg, West Virginia 25402**

Your vote is important. BKR Counsel believe that the Plan, allowing for the creation of a Liquidating Trust for the marketing and sale of all real estate interests of Ricco, with distributions thereafter to creditors in accordance with the distribution similar to that of Chapter

7 liquidating proceeding best serves the interest of the bankruptcy estate as a whole and accordingly they urge you to accept the Plan in the manner described herein.

BKR Counsel have also sought the approval of the Committee of Unsecured Creditors for their Plan, and have incorporated many changes suggested by Counsel for the Committee, including their continuing input to the Liquidating Trustee in the marketing and sale of all real estate interests of Ricco.

The Unsecured Creditors Committee, made up of those of the largest twenty unsecured creditors desiring to serve and represented by David Thomas, Esquire, has not yet approved the Plan as presented at this time, but has ratified the concept and general form of the Liquidating Trust, the Debtor-proposed Trustee and Realtor named below, and generally believes a private Liquidating Trust best serves the economic interests of creditors of the bankruptcy estate as a whole.

**b. Voting Instructions**

Ballots are enclosed for creditors to use and vote on the Plan. To vote on the Plan, indicate on the enclosed ballot to accept or reject the Plan, print and sign your name, and mail or hand deliver it as follows:

All ballots should be mailed to:

**Todd B. Johnson, Esquire  
P.O. Box 519  
Morgantown, WV 26507-0519**

Or if by express or hand delivery to:

**Todd B. Johnson, Esquire  
Wes Mon Center 2  
11 Commerce Drive, Suite 212  
Westover, West Virginia 26501**

TO BE COUNTED, BALLOTS MUST BE TIMELY SENT SO THEY ARE ACTUALLY RECEIVED AT THE ABOVE ADDRESS NO LATER THAN 5:00 P.M. EASTERN STANDARD TIME ON THE DATE SET FORTH IN THE COURT'S NOTICE. FORWARDING BY EMAIL OR FACSIMILE TRANSMISSION WILL NOT BE ACCEPTED. IF THE BALLOT IS NOT PROPERLY COMPLETED, SIGNED AND RETURNED AS DESCRIBED, IT CANNOT BE COUNTED. IF A BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST REPLACEMENT BY SENDING A WRITTEN REQUEST TO THE ABOVE ADDRESS.

Each holder of an Allowed Claim in an Impaired Class may vote to accept or reject the Plan. That Class is impaired if legal, equitable, or contractual rights attached to the Claim are

modified, other than by (i) curing defaults and reinstating maturities, or (ii) payment in full in cash on the effective date of the Plan. For more detailed discussion of the classification claims and interest see the sections that follow in this Disclosure Statement.

All Classes of Claims which are impaired under the Plan are entitled to vote on the Plan. The provisions of Section 1126 (g) of the Bankruptcy Code provide that the claims and interests in Classes receiving no distribution are deemed not to have accepted the Plan without having to vote.

Creditors in an impaired Class entitled to vote will be deemed to have accepted the Plan, if the Plan has been accepted by timely and valid ballots cast by holders of Allowed Claims in such an impaired Class, if they hold at least two thirds in dollar amount and more than one half in number of Allowed Claims in such Class that actually vote on the Plan.

For purposes of voting, the amount of the claim used in counting votes will be either (a) the claim amount which the Debtor schedules, unless such claim is listed in the schedules with no amounts stated or a contention and liquidated or disputed amount; (b) the liquidated amount specified in a proof of claim timely filed with the Bankruptcy Court and not subject to an unresolved objection of the claim; or (c) such amount as the Bankruptcy Court has previously determined by Order as the amount of any contingent, any unliquidated or disputed claim for purposes of voting on the Plan. If a creditor submits a ballot and that creditor has not timely filed a proof of claim and the creditor's claim is not listed on schedules or is listed on schedules as contingent, unliquidated or disputed, but the creditor's claim is the subject of an objection without court order for purposes of voting, that creditor's ballot will not be counted in accordance with Bankruptcy Rule 3018.

**c. Information Concerning The Plan**

No person or entity has been authorized to give information to make representations regarding the Plan other than contained in this Disclosure Statement or documentation of the Exhibits. Any unauthorized information or any representations provided by anyone, at any time, not reflected in this Document and Exhibits may not be relied on voting.

ALL CREDITORS AND EQUITY SECURITY HOLDERS ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THE ENTIRE DISCLOSURE STATEMENT, INCLUDING THE ATTACHED PLAN, AND MATTERS DESCRIBED IN THE DISCLOSURE STATEMENT, PRIOR TO SUBMITTING BALLOTS PURSUANT TO THE SOLICITATION. THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT BUT ALL SUMMARIES OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF AND EXHIBITS DESCRIBING THE PLAN ARE GUIDELINES ONLY. IN THE EVENT OF INCONSISTENCIES BETWEEN INFORMATION PROVIDED IN THE DISCLOSURE AND

THE PLAN AND RELATED EXHIBITS, THE TERMS AND CONDITIONS OF THE PLAN SHALL CONTROL.

Factual information contained in this Disclosure Statement is supplemented in part by BKR Counsel investigation into some assets and financial data, and it also includes third party information as well as information provided by Ricco's manager, some creditors, and other interested parties. BKR Counsel on behalf of Debtor do not represent or warrant that the information contained in this Disclosure Statement is free from inaccuracy or omission, but only that Debtor's counsel and other professionals consulted in the preparation of this document have made a reasonable effort to review the information to determine if the information is substantially accurate.

## **II. HISTORY OF OPERATIONS**

Ricco Enterprises, Inc. was incorporated by Ralph Calandrella as a West Virginia corporation. Since then, the company has become the holder of real estate for future sale, including its partnerships with others in purchasing real estate for sale, and the borrowing of monies on an unsecured basis.

### **a. Real Estate Operations**

Ricco has participated in the purchase of real estate for resale, and interim management until sale. The purchase of and the sale of real estate as a business is driven by a variety of market forces affecting real estate development, and resale values. The sale of real estate has historically done well in the areas of land owned by Ricco. However, market changes since the market crash of 2008 have all but eliminated sale alternatives and made other liquidation options more difficult. Under the services originally performed by Ricco, an economically feasible land purchase and sale alternative was presented. Land was purchased for management, division and sale and monies paid to creditors and partners therefrom.

Ricco was and is currently the owner and/or manager of a variety of lands, including mineral, surface and timber lands. The company has sold land, some on owner financing, and under current contracts and income therefrom, Ricco has generated some monthly income, which is used to pay operating expenses, taxes, insurance, secured creditors and otherwise. A listing of a recent Monthly Operating Report of current operational income and expenses is set forth in **Exhibit B**. Ricco's listed initial estimate of the total value of remaining real estate is \$14 Million. A listing of the real estate still held (and some prior sales information) is set forth in **Exhibit C**.

The current structure of the real estate market makes it unlikely that Ricco will receive future sales in line with those formerly received. Land sale contracts for real estate have decayed in 2008 to the point where a market for individual sales adequate to hold out as a long-term

business are unlikely to succeed and will likely exceed short-term operational expenses within a few years.

The partnerships of Debtor have not been actively traded, and since the advent of suits by certain partners, the filings and tax records have not been kept up to date. A listing of the partnerships and short description of the suits is set forth in Exhibit C and Debtor's schedules.

**b. Operating Requirements**

Real estate operations require significant money to be paid in real estate taxes, insurance, upkeep and marketing for Ricco to retain and utilize its assets for its benefits. Ricco's revenue from current operations and current expenses are set forth in Ricco's schedules, as amended, and in Exhibit B. Financing and real estate taxes take a large portion of Ricco's current revenues. Additional payments to professionals are expected to take the remainder of Ricco's revenues and, if no further sales are received, Ricco shall reach an insolvent estate requiring a forced liquidation to creditors within a few years.

Real estate sales have historically provided sufficient revenues to Ricco but the real estate market is cyclical in nature. The real estate market is not currently such as to warrant Ricco's holding and management of land for long-term future sale at this time. In the past, Ricco has sold real estate to other speculators at handsome prices. These speculators have build up now significant inventories and are currently competing with Ricco on sales. Despite this competition, Ricco's real estate is well situated and is still attractive in the changing market due to location and pricing. Ricco's ability to compete in the market will be strengthened by the implementation of a Plan with a Liquidating Trust, a Trustee authorized to sell and take all other actions, and a Realtor instituting processes for sale procedures much more efficient than those currently engaged in and more efficient than those of competition, set forth in this Disclosure, Liquidating Trust and the Plan.

**c. Operational Changes**

The location of Ricco real estate interests in the Potomac Highlands in West Virginia and Maryland has not been cost effective although it has spread some of the risk from localized market forces. The current circumstances have led Ricco's BKR Counsel, with significant creditor input, to devise a private Liquidating Trust which shall not only make a variety of modifications to Ricco operations, but which, by saving the cost of a formal trustee (percentage of sale) fee, is designed to substantially reduce the operating and overhead expenses of a "normal" liquidation plan.

Over the last few years, Ricco sold real estate in order to eliminate negative claims and suits related to certain of the real estate partnerships. With the remaining real estate, consolidation of efforts to a single Liquidating Trust, with a single Realtor acting as sales and marketing agent, and a single CPA to prepare final tax returns and filings with the Court (as

reviewed by the Trustee and with the advice of Secured Creditor Counsel, Creditor Committee Counsel and BKR Counsel) sales shall all be made and operations performed with the principal of Ricco, Ralph Calandrella, no longer manager and with all excess funds of sale to be passed through into a liquidating trust for the benefit of future operational expenses and distributions under the Plan.

Decreasing sales values and increasing costs have proved too extensive to allow the company's survival. Over the last 12 months, Ricco has therefore consulted with bankruptcy counsel listed herein and with other experts about the Plan's allowance of the sale of assets, and current operations reductions to operate more efficiently with less expense during that time.

### **III. BANKRUPTCY PROCEEDINGS**

Ricco filed its bankruptcy proceeding in early 2010, at a time of increased operating costs, reduced asset values, and creditor dissatisfaction with Ricco's management and inability to service its obligations, including various suits detailed in Exhibit C. After bankruptcy filing, Ricco has continued to operate its business as a Debtor-In-Possession, subject to an additional order of record in all counties where real estate is held, prohibiting sales without Court Order. All operational changes engendered by the Trust and its activities have been calculated to result in insufficient cash flow to satisfy post-bankruptcy operating costs for more than a limited time, and such costs shall be borne for no more time than is necessary to liquidate real estate holdings. As a result, many post- and pre-petition real estate taxes and operating expenses can be paid on an ongoing basis during these efforts to explore the sale of real estate when liquidation of creditor claims would be attempted through the below-described Liquidating Trust Agreement of Exhibit D, with a Realtor engaging in the marketing of property, Trustee for the Liquidating Trust closing the sales, and a forensic accountant ("CPA"), with Mr. Calandrella's help, reconstructing records to file the five (5) years, more or less, of taxes unfiled as of the petition date.

#### **a. Liquidating Trust Operations**

This Plan of Reorganization's Liquidating Trust is the centerpiece of Debtor's Chapter 11 Plan.

In recent years, the liquidating trust has become a popular vehicle for administering the liquidation of a Debtor's assets in Chapter 11 cases. Depending on the facts of the case and the position of the creditor, using a liquidating trust can maximize returns for creditors while minimizing the costs of administering the Debtor's assets. Unlike a Chapter 7 case, in which a trustee is automatically appointed to administer a Debtor's estate, the presumption in Chapter 11 cases is that the Debtor will remain in possession of property of the bankruptcy estate and will administer its business as a debtor-in-possession. As a debtor-in-possession, a Debtor may continue to engage in transactions in the "ordinary course" of its business without obtaining



bankruptcy court approval. Bankruptcy Court approval is required, however, for transactions outside the ordinary course of the Debtor's business. For example, a Debtor in the business of selling land may continue to sell land without obtaining Court approval for these transactions. That same Debtor, however, would need Court approval to conduct non-traditional business.

Any party-in-interest, including creditors of the Debtor, may move for the appointment of a trustee to administer the Debtor's estate. Here in Ricco, the Office of the United States Trustee has so moved. A trustee may only be appointed "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the Debtor by current management, either before or after the commencement of the case" or "if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate."

Nevertheless, Chapter 11 trustees are appointed only in rare cases because in the absence of misconduct, and also because allowing the Debtor to continue to conduct its business is often more cost-effective for creditors than replacing the Debtor's management with a bunch of high-priced consultants who may not be familiar with the day-to-day decisions needed to be made in business. Even when appointed, a Chapter 11 trustee appointed from the Trustee Panel receives a statutory commission on sales and income. To avoid this, many times large creditors or a Creditors' Committee will engage with Debtor's counsel in fashioning a private Liquidating Trust to reduce or eliminate such commissions.

Shortly after a Debtor files a Chapter 11 petition, the Office of the United States Trustee, which oversees bankruptcy cases, will typically appoint an Official Committee of Unsecured Creditors. The Creditors' Committee is comprised of representatives from the Debtor's 20 largest creditors who are willing to serve on the committee. The Creditors' Committee may hire counsel, and counsel's job is to ensure that the Debtor satisfies its duty to act in the best interests of creditors. As such, the Creditors' Committee is usually involved in the process of negotiating and confirming the debtor's plan of reorganization or liquidation. The Creditors' Committee therefore often (as here) plays a large role in deciding whether or not to create a liquidating trust and how that liquidating trust should be administered.

The continuing crisis in Ricco's operations and management and suits and disagreements with and by key creditors and the Office of the Assistant U.S. Trustee has resulted in Ricco's Plan proposal for a Liquidating Trust, and current (pre-Plan) efforts to hire an independent sales agent to assist bankruptcy counseling, marketing, negotiating and selling assets (the "Realtor"). The Liquidating Trust, once approved by the Court, will operate with a Liquidating Trustee, with input from BKR Counsel and Unsecured Creditor Committee Counsel (and other) input, and the Realtor obtained, with his firm and his employees, will assume the duties of sale from management and as sales agent while management's original job as sales agent has been discontinued. The CPA shall continue forensic accounting and all Federal filings associated with running a Liquidating Trust. This Liquidating Trust shall result in the CPA filing of returns, and Realtor proceeding to make real estate sales. Sales shall be with the advice of Creditor Committee Counsel, BKR Counsel, and other professionals hired or parties in interest. These



changes should lead to satisfaction of existing operating expenses incurred during liquidation process, and the payment of claims and partners.

For Trustee the Debtor nominates Stephen K. Shuman, P.O. Box 842, 256 High Street, Morgantown, WV 26507, (304) 292-8488. He is senior member of Reeder & Shuman, a Morgantown Law Firm practicing in the area for over 100 years. He is a business administration graduate of Fairmont State Corp. and of WVU Law School, and has practiced real estate and mineral law in West Virginia for over 39 years. He has taught the law of coal, oil and gas at WVU Law School in the early 1970s, and has represented a variety of mineral owners in sales, purchases, leases and operations, including Consolidation Coal Company, Phillips Petroleum Company, Tygart East, Tygart West, The McClellan Entities, Mepco, Inc., and Dana Mining Company. Financial institutions represented by Mr. Shuman include a variety of roles including commercial loans, foreclosures and workouts, and the clientele included First Federal of Greene County Savings and Loan Association, BBNT, NA, and its predecessors in the Northern West Virginia area, and Westover Bank, which is family originally incorporated. Mr. Shuman has acted as development and sales attorney for the first time shared condominium in West Virginia, and as a development and sales representative for a majority of all post-36B developments in the Monongalia County area, including Lakeview Country Club, University Town Center, Morgantown Mall, Gateway Lifestyle Center, Mon-View, LLC, and most 36B Suncrest property developments. His cost at the current time, \$300.00 per hour, will be limited to his preparation and closing of individual transactions of sales in this matter, as well as the signing of and review, with other counsel and professionals, of marketing, real estate, distribution of sales, tax returns, and filings of reports and information for creditors, parties and interests, the Court and the United States Trustees Office. He has been approved by the Creditor Committee Counsel, and is known and approved by Secured Creditor attorney Don Epperly.

**b. Realtor Sales**

Debtor nominates Jim Shumaker, Route 220 South at Bayberry, Route 4, Box 79A, Keyser, WV 26726, (304) 788-3322, as Realtor. He is a realtor who is a lifelong resident of Mineral County, serving three years in the US Army from 1962 to 1965, and 10 years in the National Guard 19<sup>th</sup> Special Forces. He graduated from Keyser High School in 1962 and Potomac State College in 1975. He provided 40 years of service for New Page Fine Papers as an electrician and electronics expert, and is a full-time real estate agent in West Virginia and is licensed in Maryland. He also is a certified appraiser in West Virginia and Maryland. His firm, Coldwell Banker Home Town, has a local firm specializing in real estate in the Potomac Highlands area, which includes both the area near Cumberland, Maryland and Mineral County, West Virginia where he makes his home. He is the realtor and appraiser for the Historic Highlands Association of realtors as a part of the real estate industry from 2000 to the present (10 years) and has a variety of listings active, both commercial and individual, in the Potomac Highlands area at this time. He has reviewed most of the properties set forth in the petition, and is familiar with them,

residing as he does within a few miles of one of the properties. He is in the Million Dollar Sales Club for the past five years, and is respected by the industry and throughout the area. He comes recommended, with his firm, by the attorney for The Unsecured Creditors Committee, David M. Thomas, and is known to and is approved by the Secured Creditor attorney, Don Epperly. His cost is set forth on his application to be filed contemporaneously herewith and is consistent with the percentages and fees charged by other real estate agents in the area. He was chosen because he has extensive knowledge of the real estate market and potential buyers involved in the Potomac Highlands area for commercial sales and individual values. Current duties proposed for Realtor include marketing, auction, contracts of sale, advice on valuation, advertisement and sale of real estate, subject to BKR Counsel and Creditor Counsel guidance, the provisions of the Plan, of the Liquidating Trust, and Court approval of the Plan and (as necessary) individual sales.

Based on the circumstances, the Realtor has proposed several recommendations to BKR Counsel and Creditor Committee Counsel, who have been active in the restructuring leading of the bankruptcy case. The recommendation that the Realtor believed to be the most responsible alternative presented to creditors and other affected parties and interest was to reorganize the company and continue operations *in a limited way*, allowing the Realtor to help Trustee, with the advice of BKR Counsel, Creditor Committee Counsel and Secured counsel, to negotiate and sell real estate for the benefit of creditors and parties in interest.

**c. Tax Return Preparations**

CPA Andrew Smith of Smith & Associates CPAs & Consultants, PLLC, has acted in a variety of forensic accounting matters and has been hired by the Court in these bankruptcy proceedings. In addition to help with monthly operating statements, he will be (primarily) tasked with reconstruction of and filing of tax returns for various partnership entities of Debtor. His firm started in December of 2003 with around 50 clients, and has grown to over 300 clients, many of whom were small business owners. The Smith Firm handles clients located in Morgantown, Washington DC Beltway area, and in Naples, Florida. The main focus of the firm is on auditing federal government contractors, year in income tax preparation services for individuals and small businesses, audits, reviews and financial statements for federal government contractors and forensic accounting, especially with regard to real estate acquisition development and tax. Smith & Associates is located at 511 Burroughs Street, Suite 105, Morgantown, WV 26505, (304) 599-1142. Mr. Smith has already been hired by Order of the Court in order to assume the duties of the reconstruction of five years worth of returns and tax and other information necessary to the sale and liquidation of real estate, and is intended to be continued in that matter by the Court, the Trust, and by Debtor through and after at the beginning of the Plan. Mr. Smith enjoys a respected relationship with counsel for creditors within the case, and no objection was filed to his prior hiring in this matter. Mr. Smith expects to have the first results of returns for Tre Manichinos, in late May or early June.

**d. Other Trust Advisors**

The initial two year process of selling real estate which has been proposed to be set in place with a Liquidating Trust shall be liquidating excess real estate during this period in order to reduce debt. Excess property is proposed to be sold through Trustee (or if objected to, Court approved sales) including any of Ricco's property, as well as any oil and gas and timber rights which may be sold for profit. Proceeds shall be utilized to provide payments to any lenders having liens on the real estate sold, and thereafter in accordance with the liquidation provisions of the Plan, which attempts to closely mirror a liquidation under Chapter 7 of Title 11 of the United States Code. Decisions of the Trustee, while final, will be the result of regular meetings with the professionals above, and those hereafter listed.

Debtor has already hired the Law Firm of Glenn J. Robinette, LLC, 127 Greene Street, Cumberland, MD 21502, (301) 777-8822 as initial title real estate attorney. He is located in the Cumberland, Maryland area, but also provides services and titles in Mineral County, West Virginia area. He has already been hired by Order of the Court, and is invited to work through and after confirmation and during the liquidating plan as necessary to finalize title to real estate and determine the actual ownership of mineral and surface states herein. His cost is similar to that otherwise provided, and Mr. Robinette has already identified most properties and a few 100 transactions in Mineral County, West Virginia, concentrating now on Maryland properties. He hopes to have a final view of title on all estates within a month or two. The cost is set forth in his prior application approved by the Court is similar to that otherwise provided in the area, and he is a local attorney familiar with transactions of this type. As approved by the Court, there has been no objection by Creditor Committee Counsel nor by the Secured Creditor Attorney, Don Epperly.

David M. Thomas, of Dinsmore & Shohl, LLP, is a partner with a JD from Western University College of Law in 1996 and a DS in accounting from West Virginia University, in 1993. As a partner in the litigation department, his primary practice has been banking law, bankruptcy, commercial transactions and commercial litigation. He has assisted corporate clients and financial institutions in a variety of commercial matters including loan structuring, workouts, collections, bankruptcy, and regulatory compliance. He has significant experience representing creditors and bankruptcy, including Chapter 7, Chapter 11 and Chapter 13 cases. He speaks regularly on bankruptcy and banking topics for education seminars. David is a member of the firm's professional development committee and here acts as counsel for the Unsecured Creditors Committee.

Donald J. Epperly is a member of the Law Firm of Steptoe & Johnson, Chase Tower-64, 229 West Main Street, Clarksburg, WV 26301, (304) 624-8199 and is a member since 1996 of that firm as well as the Bankruptcy Committee of the West Virginia State Bar, the Executive Committee of the West Virginia State Bar, and an awards winner of Best Lawyers in America. His experience and lending in commercial transactions, litigation of commercial collections, commercial workouts representing creditors and in all aspects of bankruptcy has allowed

extensive focus on creditor's rights and remedies. He is in this case as the attorney for the primary judgment creditor owed over \$1 Million.

John Wiley and Todd Johnson, BKR Counsel, and with advice by Creditor Committee and Secured Counsel, shall be engaged in duties post-confirmation to include review of the marketing, planning, sales promotion, facilitating sales contracts, and capital to be held in trust for distributions as well as an overview of financial reporting of operations to creditors and the Court, including accounts receivables, cash, financial forecasting and sales inventory, pricing and closings.

In order to engage in this extensive work, Ricco proposes to emerge from bankruptcy with a Plan that real estate be sold as necessary to pay debts, with any remaining debts limited to fixed liabilities and with the ability to attract new working and venture capital at that time. Liquidating Trustee, Stephen K. Shuman, upon monthly meetings with BKR Counsel, and Creditor Committee Counsel, and other counsel, and the advice of the Realtor and CPA, shall be engaged in duties post-confirmation to include the sale of assets with net capital to be held in trust for distributions, as well as an overview of financial reporting of operations to creditors and the Court, including accounts receivables, cash, financial forecasting and sales inventory, pricing and closings.

The proposal with related elements of the reorganization Plan that is the subject of this Disclosure Statement was informally presented by the Realtor and Bankruptcy Counsel to Counsel for the Creditors' Committee, representing the large creditors of Ricco. The Creditors' Committee has agreed either to support Plan or not to oppose confirmation.

#### **IV. PAST MANAGEMENT**

Ricco was founded and initially operated by management with innovative ideas based upon the purchase of raw land and the recovering of value from the division and from resale to others in land development industry. This management consisted largely of attempting to garner sales by informal marketing efforts by Ricco's principal while maintaining properties pending any real estate sales or contracts.

Until bankruptcy, the president, chief operating officer and sole director of Ricco was Ralph Calandrella. His wife served on the filed corporate papers as a corporate secretary.

Most of Ricco's stock is held by Mr. Calandrella with his spouse holding the remainder thereof. It is BKR Counsel's view with hindsight that management committed unintentional errors in financial management, marketing analysis and operational logistics. Some of these errors have been addressed by Ricco's current Plan to limit his future management and to engage in aggressive sales provisions and personnel through the Liquidating Trust. It is proposed the Realtor, with the assistance of BKR Counsel and advice of Creditor Committee Counsel, shall

play an instrumental role in stabilizing operations and in proposing to the Trustee sales upon and after confirmation of a Plan of reorganization.

Ralph Calandrella has been employed with Ricco since its foundation. He shall provide past knowledge of the structure of the original purchases, past income and operational expense issues only. His duties shall include the reconstruction of records and identification of sales leads.

## V. CLAIMS

### a. Ricco and Partnerships

After it is confirmed by the Court, on the effective date of the Plan, the Liquidating Trust Agreement shall be deemed in effect and the Liquidating Trustee shall by Court Order obtain title to all real estate assets of the Debtor and the Partnerships (as to the position of Ricco in said Partnerships.) Reconstruction of past yearly tax returns shall be continued by the CPA and Realtor shall immediately market and sell all real estate with deeds executed by the Liquidating Trustee. BKR Counsel Todd B. Johnson and John F. Wiley with Creditor Counsel, Realtor and CPA shall provide input but all decisions shall be by the Trustee through the Liquidating Trust.

Any secured loan will be paid interest only and to sell the assets with interest only commencing monthly on the effective date of the Plan. No other administrative secured or unsecured claim shall be paid from security of the primary loan until the primary loan is paid in full.

Distributions to pre-bankruptcy creditors on real estate taxes under the Plan will commence 60 days after the effective date.

The real estate related to Ricco's former partnership and other operations shall be retained by the Liquidating Trust and the property sold. The value of these assets at sale is estimated by Ricco to be \$14 Million. The sale proceeds of the real estate, less expenses of sale, taxes or tax escrows, and secured mortgage creditor claims, will be first escrowed until a Motion is filed on remaining amounts, if any, determined to be paid, including professional and other fees.

Once professional and operating fees are paid, the balance shall thereafter be paid in accordance with 11 USC § 507, which controls distributions of the parties and interest and to creditors as set forth in the Plan.

The assets will be sold in a manner consistent with standard commercial sale practices, and each sale may be confirmed by Order of the Court upon notice to the creditors if objection is received.

All of Ricco's assets sold by the Liquidating Trust by deeds and assignments executed by its Trustee shall be sold free and clear of all liens and encumbrances with encumbrances attaching to net proceeds. The sales as proposed in each sale motion are put on notice to all creditors and the Court.

After payment of all creditors in the amounts set forth under the Plan (if any), the remaining unsold property will be conveyed to the Calandrella Bankruptcy Estate or retained for its use. (Under the Calandrella Plan these assets will be sold free and clear of all liens, claims and encumbrances as provided for under that Plan by this or a successor Liquidating Trust as to creditors of Calandrella after payment of all Ricco creditors.)

Ricco will cease its operations after confirmation of Plan. Ralph Calandrella shall continue to aid in tax reconstruction and records retrieval.

Under the Plan common stock held by Ralph Calandrella shall be held FBO creditors in his personal bankruptcy, the same running parallel with an administratively conjoined with this bankruptcy. Said personal bankruptcy provides with the net value of said stock may be liquidated thereafter and subject to the claims of his creditors to the extent not exempted by him.

**b. Major Claims Distributions**

11 USC § 507 Priorities for final distribution after all sales, operating and professional costs:

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental



unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503 (b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503 (b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502 (f) of this title.

(4) Fourth, allowed unsecured claims, but only to the extent of \$10,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by \$10,000; less

(ii)

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.



(6) Sixth, allowed unsecured claims of persons—

(A) engaged in the production or raising of grain, as defined in section 557 (b) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557 (b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of \$4,000 for each such individual.

(7) Seventh, allowed unsecured claims of individuals, to the extent of \$1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

- (i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;
- (ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.[1] (iii) other than a tax of a kind specified in section 523 (a)(1)(B) or 523 (a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not

actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

- (i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or
- (ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable non-bankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.

(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364 (d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

## **VI. LITIGATION**

Ricco has been joined as a party in several actions pending in different states arising out of contract and creditor claims. One of these actions arise out of pre-bankruptcy sales and are therefore stayed from further action until dismissal by virtue of 11 USC Section 362 of the Bankruptcy Code. BKR Counsel believe that such action shall not be continued and should be satisfied by distributions of bankruptcy to the extent of receipts from sales. Such actions are described in **Exhibit C** and Debtor's schedules.

## **VII. GENERAL SUMMARY OF KEY PLAN TERMS AND EFFECTS OF PROVISIONS**

### **a. Plan Terms**

The following is a general summary of certain significant provisions of the Plan, which are discussed in more detail in the Plan and other portions of the Disclosure Statement.

#### **ALL PROPERTY MARKETED**

After it is confirmed by the Court, on the effective date of the Plan, the Liquidating Trust Agreement shall be deemed in effect and the Liquidating Trustee shall by Court Order obtain to title to all real estate assets of the Debtor. Reconstruction of past yearly tax returns shall be continued by the CPA and Realtor shall conduct a limited appraisal of the real estate properties

in which Ricco has an interest in order to immediately market and sell the same through BKR Counsel Todd B. Johnson and John F. Wiley with Creditor Counsel and CPA input, as conveyed thereafter by the Trustee through the Liquidating Trust.

### SECURED LOANS

Any secured loan will be paid interest only and to sell the assets with interest only commencing monthly on the effective date of the Plan. No other administrative secured or unsecured claim shall be paid from security of the primary loan until the primary loan is paid in full.

### CONFIRMATION PAYMENTS

Distributions to pre-bankruptcy creditors on real estate taxes under the Plan will commence 60 days after the effective date.

### SALE OF ASSETS

The real estate related to Ricco's former partnership and other operations shall be retained by the Liquidating Trust and the property sold. The value of these assets at sale is estimated by Ricco to be \$14 Million. The sale proceeds of the real estate will be first escrowed until taxes are determined and paid. Once taxes are paid, the balance shall be utilized to pay the balance of the primary loan to the extent secured and thereafter paid in accordance with 11 USC which controls distributions of the parties and interest and to creditors as set forth in the Plan. The assets will be sold in a manner consistent with standard commercial sale practices, and each sale may be confirmed by Order of the Court upon notice to the creditors if objection is received.

### CASH PAID TO TAX AND MORTGAGE CLAIMS

Ricco's cash and collected accounts receivable will be distributed on a regular basis on the confirmation date to real estate tax creditors consisting of the Sheriffs of West Virginia, and the Sheriffs of Maryland, and the primary liens of any Bank with a mortgage lien to the extent of interest only.

### ASSETS SOLD FREE OF LIENS FOR OTHER CREDITORS

All of Ricco's remaining assets will be sold by the Liquidating Trust by deeds and assignments executed by its Trustee and net proceeds will be paid to creditors from sales as proposed in each sale motion put on notice to all creditors and the Court. After payment of all creditors in the amounts set forth under the Plan (if any), the remaining unsold property will be conveyed to the Calandrella Bankruptcy Estate or retained for its use. Under the Calandrella Plan these assets will be sold free and clear of all liens, claims and encumbrances as provided for under that Plan by this or a successor Liquidating Trust as to creditors of Calandrella after payment of all Ricco creditors.

## CONTINUED OPERATIONS

Ricco will cease its operations after confirmation of Plan. Ralph Calandrella shall continue to aid in tax reconstruction and records retrieval.

## EQUITY OWNERSHIP

Under the Plan common stocks shall be held by the former owner Ralph Calandrella, but shall be held FBO creditors in his personal bankruptcy, the same running parallel with an administratively conjoined with this bankruptcy. Said personal bankruptcy provides with the net value of said stock may be liquidated thereafter and subject to the claims of his creditors to the extent not exempted by him.

## **VIII. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN**

The Plan uses certain defined terms which are identified as such by capitalization. In the Plan, the defined terms of the Plan control, and are incorporated by reference.

## **IX. SIGNING OF THE PLAN**

Vesting of property of the estate. Except as otherwise provided by the Plan, all property of the estate existing as of the confirmation date will vest in the Liquidating Trust, under the power and authority of the Liquidating Trustee on the effective date. Ricco shall not thereafter continue its business operations in Maryland and West Virginia except through the Trust and Trustee as provided in the Plan, and property of the estate will remain under control of the Trust and Trustee until the same is sold or disposed of for the benefit of the secured creditors, tax claimants and thereafter all other unsecured creditors.

Sale of partnership assets. The Trustee, realtor, Counsel, Creditor Counsel and primary loan and other claims in the real property of the debtor's partnerships situated in Maryland and West Virginia, together with any equipment or other personality identified in the Plan or the petition. The net proceeds in the sale of such properties will be subject to;

- 1) Expenses of sale.
- 2) Taxes.
- 3) Liens.
- 4) One half to creditors.
- 5) One half to partners on a 50-50 basis.

They may be either;

- (a) Paid in cash to the holder of the claim.
- (b) The principle amount.

## **X. PLAN PERFORMANCE**

All other necessary documentation performed on the Plan will be filed with the court on or before 10 days prior to a hearing to consider confirmation of the Plan and any creditor or party of interest entitled to inspect such documentation shall do so at the office of the clerk of the court or request the same from counsel for Ricco and raise objection to the terms of the same and consider the same upon confirmation of the Plan.

## **XI – EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Assumption. All executory contracts not specifically rejected by Ricco prior to the effective date of the Plan will be deemed to have been assumed as of the effective date. All monetary defaults and any assumed executory contract will be cured within 60 days. Leases assumed by the organization include the following;

Rejection. The following agreements have been previously rejected by debtor or if not previously rejected are deemed rejected upon confirmation:

All contracts and leases listed on Schedule G.

Satisfaction. All past performance of Ricco under any assumed executory contract will not be advised any duty of additional or future performance of Ricco as a basis for claim for performance as past performance has been;

- a. Accepted by the other party or parties to the contract prior to the confirmation.
- b. Not been the subject to a written notice of default or similar notice of non-performance prior to filing.

## **ARTICLE XII - ORGANIZATION MANAGEMENT OF REORGANIZED DEBTOR**

Organization. Upon and after confirmation, Ricco will not continue in existence as an active company organized under the Laws of West Virginia and after the effective date Ricco by the Trustee will amend its governing documents, public filings to allow for the organization in the holding of stock in trust for the benefit of creditors of Ricco as provided by the Plan.

Management. The management of the reorganized debtor will be in the Liquidating Trustee, subject to meetings with the Realtor, Counsel and such creditors counsel as are named, and will serve in such positions for two years, and at the will and pleasure of the court.

Governance. Corporate management of Ricco will be determined by the Plan and the duties of the Trustee and the Trust set forth therein.

### **XIII - EFFECTS OF THE PLAN**

Vesting. The property of the estate vests in the Ricco Liquidating Trust as confirmed in the Plan subject to payment of all claims interests, liens, security interests encumbrance charges of other rights of holders of claims except as provided for the Plan. The Trust will operate its business under restrictions imposed by the internal revenue code or the Court in the sale and distribution of its assets.

No Discharge. Confirmation of the Plan will not constitute a discharge of claims under Section 1141(d) of the code. Distributions and rights provided under and during the Plan will be in complete settlement, satisfaction, release and discharge of and upon completion shall extinguish all claims and causes of action against liens on and interest in Ricco and property of the estate anytime prior to confirmation date.

Injunction. From and after the confirmation date all holders of claims against Ricco are permanently restrained and enjoined from commencing any action or other proceeding with respect to claims against Ricco the estate or its trustee or enforcing, attaching collecting or recovering from Ricco any manner or means, any judgment, award, decree or other order against debtor, creating, perfecting or enforcing any encumbrance of any kind against Ricco or its assets provided or not by the Plan, asserting any setoff, right of subrogation or recoupment against any obligation due to Ricco or the estate acceptance provided by the Plan, and performing any act in any manner in any place whatsoever not conforming to or complying with the provisions of the Plan or hindering their performance of the Plan. No provision of the Plan will be deemed to prevent a holder of a claim from prosecuting before this Court its claim against the estate.

Exemption from Taxes. To the extent allowed under Section 1146(c) of the bankruptcy code, none of the sales of assets contemplated by the Plan nor any of the integral transactions referred to in the Plan will subject Ricco, the liquidating trust, or any of its creditors to state, local, sales, transfer, documentary, recording, or gains tax.

### **XIV - PLAN ADMINISTRATION AND TERMS**

Extension of Performance. Any performance due under the Plan may be extended for such periods as necessary to resolve disputed claims or expenses of administration or whose resolution may affect ability to pay other classes.



Bar Date of Expenses of Administration. If the court has not fixed a deadline for filing applications and motions for expenses of administration prior to confirmation the deadline for filing claims will be 30 days thereafter.

Objection to Claims. Unless a different date be set by the court all objections to claims will be filed and served no later than 45 days after confirmation.

Disputed Claim Reserve. If a disputed claim exists in any class on the effective date in excess of \$25,000.00, Ricco may by reason of any objection defer payment until claims are decided or obtained from the court a final order estimating a disputed claim under Section 502 of the code or escrow cash or other consideration with the amount of a disputed claim and make payment to the extent allowed by final order. All disputed claims will be resolved by the court unless referenced to the court or determination of a particular disputed claim is withdrawn under 28 USC Section 157(d).

The term of the Plan will be for the period of 24 months after confirmation date or until such time as the Court may extend or terminate the Plan at the request of Ricco Liquidating Trust, the Trustee or any party of interest or any claimant holding an allowed claim after notice and hearing the creditors and parties in interest.

Jurisdiction Retention. The bankruptcy code will retain jurisdiction over Ricco and the Trust under Section 1127(b) of the bankruptcy code to ensure the intent and purposes of the Plan are carried out and given effect, including matters relating to the Plan and Trust and to hear and determine any matter or issue relating to claims and Plan and Trust enforcement.

Conditions Precedent. The Liquidating Trust will not be effective unless the bankruptcy Court enters an order approving the Plan and the order becomes a final order within 30 days of the effective date.

## **XV - RISK FACTORS AND FEASIBILITY**

See **Exhibit C** for an analysis of feasibility and risk factors in the Plan and the Trust.

### **XIII - CONCLUSION**

The vote of all creditors and interests holding under the Plan is important. After carefully reviewing the disclosure of the Plan and Exhibits please fill out and return any Ballot provided in the Disclosure Statement. The Debtor recommends you favor the Plan with a YES vote.

Dated: The 6<sup>th</sup> day of May 2010.

Debtor

By: /s/ Ralph Calandrella

Its President

Prepared by:  
**BKR Counsel for Debtor**

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