

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:

*

BMW PARTNERSHIP, LLP,

*

Case No. 12-02056

Debtor.

*

**DISCLOSURE STATEMENT ACCOMPANYING TRUSTEE'S
AMENDED PLAN OF LIQUIDATION**

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Dated: September 15, 2017

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**ARTICLE 1
INTRODUCTION**

On June 13, 2012, three creditors filed an involuntary petition against BMW Partnership, LLP ("Debtor") for relief under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Alabama. On June 19, 2012, the Debtor consented to the involuntary petition and an order for relief was entered. The case was later converted to Chapter 11 on September 5, 2012.

D. Parker Sweet ("Sweet") is the Chapter 11 Trustee. The Trustee has filed an Amended Plan of Liquidation ("the Plan"). The Plan specifies various classes of the Debtor's creditors and the proposed treatment of claims and interests of such creditors.

Pursuant to §1125 of the Bankruptcy Code, the Trustee is soliciting acceptance of the Plan by the classes of creditors entitled to vote. The Trustee submits this Disclosure Statement to provide its creditors with adequate information about the Debtor and the Plan in order to enable the creditors to arrive at a reasonable, informed decision in exercising their rights to vote for acceptance or rejection of the Plan.

Ballots for the acceptance or rejection of the Plan are required to be submitted in writing by the holders of all classes of claims and interests which are impaired under the Plan. Claimants whose legal, contractual or equitable rights are altered, modified or changed by the proposed treatment under the Plan are considered "impaired." Claimants in impaired classes may vote on the Plan by completing and mailing, faxing, or e-mailing the ballot to counsel for the Trustee as follows:

Lawrence B. Voit
Silver, Voit & Thompson,
Attorneys at Law, P.C.
4317-A Midmost Drive
Mobile, Alabama 36609-5589
Phone: (251) 343-0800
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To be counted, your ballot must be received by the date and time stated in the Court's order approving this Disclosure Statement.

As a claimant, your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a plan of reorganization that each class of claimants that is impaired under the plan accepts the plan. The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of two-thirds in dollar amount and more than one-half in number of the claims of that class that cast ballots for acceptance or rejection of the plan.

If a class or classes of claimants do not accept the Plan, the Trustee has the right to request confirmation of the plan pursuant to §1129(b) of the Bankruptcy Code, the “cram down” provision. Section 1129(b) permits confirmation of a plan of reorganization notwithstanding the non-acceptance of the plan by one or more impaired classes or interests.

Under Section 1129(b), a plan of reorganization may be confirmed by the Bankruptcy Court if it does not discriminate unfairly and is “fair and equitable” with respect to the non-accepting class. The fair and equitable rule requires absolute priority in the payment of claims and interests with respect to the descending class or classes.

This Disclosure Statement has been approved by the Bankruptcy Court as containing information of a kind and of sufficient detail to enable a hypothetical reasonable investor typical of the claimants to make an informed judgment as to acceptance or rejection of the Plan. Approval of this Disclosure Statement is not, however, a ruling by the Bankruptcy Court as to the fairness or merits of the Plan.

Confirmation of the Plan by the Bankruptcy Court in accordance with the provisions of the Bankruptcy Code will be considered at the scheduled hearing on the Plan. The hearing on the Plan may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing. Any objection to confirmation of the Plan must be in writing, state all grounds, and served and filed with the Court.

ARTICLE 2

DISCLAIMER

This is a solicitation of the Trustee only, and is not a solicitation of the Trustee’s or the Debtor’s officers, directors, trustees, attorneys, accountants, agents, servants, or employees. The financial information contained herein has not been the subject of an audit. The Trustee has not made any attempts to investigate or independently verify the accuracy or completeness of any information in this document. The Trustee makes no representation as to the accuracy or completeness of any statement or data contained herein.

ARTICLE 3

BACKGROUND, ASSETS AND LIABILITIES

A. HISTORY/BACKGROUND OF DEBTOR.

The Debtor is an Alabama limited liability partnership. The Debtor was in the business of owning convenience stores mostly in South Alabama. Its three partners are Richard Blow (“Blow”), Fred Walding (“Walding”), and Richard Merritt (“Merritt”). Blow, Merritt, and Walding are each in their own personal bankruptcy cases.

B. DEBTOR'S ASSETS AND LIABILITIES.

At the time of the involuntary petition, the Debtor was not actively operating any of the convenience store locations. Some were closed and others were leased to other operators. None of the properties had any apparent equity, and there were environmental issues. The properties had been poorly managed by the Debtor.

During this Chapter 11 case, the Trustee has marketed the various properties and negotiated agreements with secured creditors holding mortgages and other liens on the properties to carve out a portion of the sale proceeds for the benefit of the Trustee in exchange for the Trustee's marketing efforts.

At this time, the properties that were able to be marketed and that produced a net benefit to the bankruptcy estate have been sold. Conversely, the Trustee has permitted foreclosure of some of the properties which offered no benefit to the bankruptcy estate. The estate's remaining properties are of no value to the bankruptcy estate, and the Trustee does not seek to retain them.

In taking the above actions, the Trustee has litigated certain creditors' stay relief motions, resulting in agreements for sale of the particular creditor's collateral and carve out agreements for sales proceeds for the benefit of the bankruptcy estate. The Trustee also succeeded in obtaining an order invalidating a judgment lien against the property of the bankruptcy estate held by Blow's Chapter 7 bankruptcy trustee.

As it stands, the Trustee is currently holding \$163,792.51 in cash in a checking account maintained at Union Bank. The Debtor's only other asset is a loan to Ms. Sherie Frei under which she purchased the property at 850 Blackburn Drive Mobile, Alabama 36608 and secured it with a vendor's lien in favor of the Debtor.

C. ADMINISTRATIVE EXPENSES.

On September 5, 2012, Lonnie L. Mixon ("Mixon") was appointed by the Court as Interim Trustee in this matter. On December 17, 2012, Mixon resigned and, on the following day, the Court appointed Sweet as the successor Trustee in this matter.

Bankruptcy Code § 326(a) provides for Trustee compensation as follows:

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

11 U.S.C. § 326(a)

To date, the net compensable receipts in this matter total \$1,854,958.05. Of this total, Mixon's receipts equal \$209,144.25 (i.e. 11.2478%) and Sweet's receipts equal \$1,645,813.80 (i.e.

88.7251%). Applying Bankruptcy Code § 326(a), the aggregate compensation due to the Trustee in this matter totals \$78,898.74. A breakdown of the individual compensation due to Mixon and Sweet is shown in the following tables.

Mixon		
Percentage:	Receipts:	Compensation:
25%	First \$5,000.00	\$1,250.00
10%	Next \$45,000.00	\$4,500.00
5%	Remaining \$159,144.25	\$7,957.21
Total:	\$209,144.25	\$13,707.21

Sweet		
Percentage:	Receipts:	Compensation:
5%	\$790,855.75 up to \$1MM	\$39,542.79
3%	\$854,958.05 in excess \$1MM	\$25,648.74
Total:	\$1,645,813.80	\$65,191.53

Upon his appointment as Trustee, Mixon engaged Silver, Voit & Thompson (“Silver Voit”) as his bankruptcy counsel. Silver Voit continued representing Sweet as successor Trustee following Mixon’s resignation.

The Trustee has incurred administrative expenses with his bankruptcy counsel, Silver Voit, and to Russell, Thompson, Butler & Houston (“RTBH”), his accounting firm. Some administrative expense claims have been paid on an interim basis. The Trustee estimates that the total additional administrative expenses owed to Silver Voit will be approximately \$11,881.96. No additional fees for accounting services are anticipated.

Any unpaid ad valorem taxes which have accrued during the Chapter 11 case will be paid in full. Most were paid in connection with property sales

ARTICLE 4 **SUMMARY OF THE PLAN**

This summary is provided only for convenience, and does not include all the provisions or details of the Plan, and should not be relied upon to explain the Plan or how it treats creditors. The Plan itself controls in the event of any ambiguity or inconsistency, and it should be carefully reviewed.

Under the Plan, the Trustee shall abandon his interests in the properties that are subject to a first mortgage in favor of Wells Fargo Bank. The Trustee shall assign his interest in the Sherie Frei loan to Federated Mutual Insurance Company, holder of an unavoidable judgment lien, in addition to payment of \$15,000 to Federated, which will have no unsecured claim.

The Trustee shall pay allowed administrative expense claims, including the commissions and expenses of the Trustee and the fees and expenses of Silver Voit and RTBH. The Trustee will use the remaining funds to first pay all allowed priority claims, which consist of ad valorem taxes, and then to make a single pro rata distribution to the holders of allowed unsecured claims with any remaining funds.

The partners' interests in the Debtor will be terminated, and once the above actions are complete, the Trustee will dissolve the Debtor entity.

ARTICLE 5

UNCLASSIFIED, ADMINISTRATIVE, AND PRIORITY CLAIMS

Unclassified Claims - Administrative

A. **General.** Subject to the bar date provisions herein, each holder of a claim for administrative costs and expenses of the kind specified in Sections 507(a)(1) and 503(b) of the Bankruptcy Code shall receive, on account of and in full satisfaction of such claim, cash equal to the amount of such Allowed Claim, unless the holder agrees to less favorable treatment of such claim.

B. **Bar Date for Administrative Claims.** All applications for final compensation of Professionals for services rendered and for reimbursement of expenses incurred on or before the Effective Date (including, without limitation, any compensation requested by any Professional) and all other requests for payment of administrative costs and expenses incurred before the Effective Date under Section 507(a)(1) or 507(b) of the Bankruptcy Code (except only for claims for trade debt incurred in the ordinary course of business and claims under 28 U.S.C. § 1930) shall be filed no later than the Effective Date, unless such date is extended by the Bankruptcy Court on notice to the Debtor and other interested parties. Any such claim that is not filed within the deadline shall be forever barred; and any holders of administrative expense claims who are required to file a request for payment of such claims and who do not file such requests by the applicable bar date shall be forever barred from asserting such claims against the Debtor, the Debtor-in-Possession, or any of their respective property. Any professional fees or reimbursement of expenses incurred subsequent to the Effective Date by the Debtor may be paid by such Debtor without application to the Bankruptcy Court.

C. **Treatment of Administrative Claims of Professionals.** The administrative claims of the Trustee for commissions and expenses, and of Trustee's bankruptcy attorneys, accountants, and any other Professional holding an allowed administrative expense claim shall be paid in full on the Effective Date, on such other terms as the parties may agree, or within 30 days after the allowance of said claim in the event said claim is allowed after the Effective Date.

ARTICLE 6

TREATMENT OF CLASSES

Class 1 (Trustmark National Bank). Class 1 is impaired. Trustmark National Bank ("TNB") shall retain its blanket mortgage on any of the Debtor's real property not already sold or foreclosed. Trustmark shall be permitted to foreclose on all such properties, if any, in full satisfaction of its secured claim. The Trustee's interests in all such properties shall be deemed terminated. Any deficiency claim shall be treated as a Class 4 claim.

Class 2 (Wells Fargo Bank). Class 2 is impaired. Wells Fargo shall retain its first priority mortgage on the properties of the Debtor, and shall be entitled to foreclose upon and otherwise exercise its rights as to the said properties in full satisfaction of Wells Fargo's secured claim. The Trustee's interests in said properties shall be deemed terminated. Any deficiency claim shall be treated as an Class 4 claim.

Class 3 (Federated Mutual Insurance Company). Class 3 is impaired. Class 3 claimant Federated Mutual Insurance Company ("Federated") holds a judgment for \$219,683.72 plus interest and costs against the Debtor. Federated's judgment was entered on August 2, 2011, and recorded in the Probate Court of Mobile County, Alabama, on November 4, 2011, in Book 6829, Page 174. Federated's judgment became a lien on all property of the Debtor located in Mobile County under Alabama Code §6-9-211, including the Debtor's interest in a note and receivable due from Sheri Frei. The indebtedness from Frei to the Debtor is associated with those parties' Deed with Vendors Lien Retained recorded in the Office of the Judge of Probate for Mobile County, Alabama, at Book 5442, Page 0074. During the course of the Debtor's case, Frei has paid the Trustee \$46,304.88. Federated asserts that its lien entitles it to the Frei proceeds, and the Trustee disputes this assertion. In lieu of a contested matter to determine the extent and validity of Federated's lien interest in the proceeds, the Trustee shall pay Federated \$15,000. The Trustee shall assign to Federated without recourse the Trustee's interest in the Sheri Frei loan indebtedness and receivable in full satisfaction of Federated's remaining secured claim. Federated shall not have any Class 4 claim.

Class 4 (Unsecured Claims). Class 4 is impaired. The holders of all allowed unsecured claims, including the deficiency claims of secured creditors, shall receive a single pro rata dividend from the Trustee. The dividend shall be calculated by using a fraction with the numerator as the funds remaining in the possession of the Trustee after final payment to claimants in all other classes and final payment of all administrative expense claims, and the denominator shall be the total of all allowed unsecured claims. The fraction as so calculated shall be used to calculate the single pro rata dividend to be distributed by the Trustee to each allowed Class 4 claimant. Payment of the said dividend shall be made in full and final satisfaction of all claims in this class, and the Trustee shall have no further liability or responsibility for making any further payment to any claimant in this class.

Class 5 (Holders of partnership interests). All partnership interests in the Debtor shall be deemed terminated. No dividends or distributions of any property shall be made to any holder of a partnership interest in the Debtor.

Class 6 (Priority Claims). Class 6 is not impaired. All allowed Class 6 priority claims shall be paid in full.

ARTICLE 7

TRUSTEE'S RECOMMENDATIONS

Please vote to accept the Plan.

Dated: September 15, 2017

/s/ D. Parker Sweet

D. Parker Sweet, as duly appointed and
acting Trustee of the Chapter 11
Bankruptcy Case of BMW Partnership, LLP

/s/ Lawrence B. Voit

Lawrence B. Voit

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