

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE: **MCGEE EQUIPMENT RENTAL AND SALES, INC.**

CHAPTER 11

CASE NO. 15-51380

FIRST AMENDED PLAN AND DISCLOSURE STATEMENT

NOW INTO COURT, through undersigned counsel comes MCGEE EQUIPMENT RENTAL AND SALES, INC. , Debtor(s)-in- Possession, who presents the following Combined Plan and Disclosure Statement:

On the 23rd day of October, 2015, MCGEE EQUIPMENT RENTAL AND SALES, INC. (McGEE) filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division.

After the filing of the bankruptcy petition McGEE was authorized to continue in business under the protection of the Bankruptcy Code and to attempt to work out an arrangement with creditors on a plan for the repayment of their debts. This document explains how McGEE proposes to pay creditors. If the Bankruptcy Court approves this plan, the creditors' rights to collect their debt will be limited by federal law (the Bankruptcy Code). If the plan is approved, creditors will only be allowed to collect from McGEE as provided in this document.

1. Why did McGEE file this Bankruptcy Case?

Lewis McGee is the founder and owner of McGee. The company was incorporated November 15, 2004. The company is in the business of equipment rental and sales. The business grew quickly and had in excess of 5 locations through out Southwest Louisiana and West Texas. When the oil field took a down turn in 2014-2015 McGee's business suffered greatly. All locations have been closed except for the Eunice, Louisiana location. During the Debtor's growth there was a lot of equipment that was purchased, leased and financed. Mr. McGee spent most of his time in the field bringing business to the table. Management that was in place did a poor job of managing the equipment and location of all equipment.

DEBTOR'S COMBINED PLAN AND DISCLOSURE STATEMENT

Page 1 of 14

The bankruptcy was filed to attempt to get the poorly managed company back to where it needed to be and to remove the pressure of the taxing authorities. Much of the equipment that was leased and financed has been returned if it is not needed to restructure and move forward.

ASSETS OF THE DEBTOR (LIQUIDATION ANALYSIS)

A liquidation analysis is attached hereto as exhibit A.

2. What has happened since the Bankruptcy Case was filed?

The Debtor has filed schedules with the Bankruptcy Court that are believed to list all assets and Debts. These Schedules included an election by the Debtor to be treated as a Small Business. As a result of same, the Debtor is entitled to file this combined Plan and Disclosure Statement and set same for hearing on an abbreviated basis. The Bankruptcy Court approved the application of William Vidrine, with Vidrine & Vidrine, PLLC, as general counsel for the Debtors. The Debtor was authorized to continue paying Ally Financial and JP Morgan Chase for work vehicles. Insider compensation was approved for Lewis McGee. The Debtor was authorized to sell 2.9 acres of land in St. Landry parish and to apply the proceeds to the mortgage holder, Whitney Bank. The majority of the unneeded equipment has been surrendered or returned. The Debtor has received a Deep Water Horizon settlement. Net settlement proceeds to the Debtor is \$250,000.00.

There are two pending adversarial complaints that have been filed by Direct Capital Corporation and Western Equipment Finance, Inc. The issues involved the discharge of the debts due to these creditors as a result of the Debtor's misplacement of the equipment held as collateral.

The Debtor has filed monthly operating reports. Cash flow remains positive. A bar date was set as 05/30/2016.

How does McGEE propose to pay his debts?

a. The Creditors are divided into classes

The Bankruptcy Code requires McGEE to divide its creditors into classes. Creditors with the same legal rights must be put into the same class. In this case, each secured creditor (a creditor with a lien or mortgage on movable or immovable property) has different legal rights, so each secured creditor is put in a separate class. The Debtor's Bankruptcy Lawyer and Accountant are put in a separate category for administrative creditors, creditors who have assisted with this Bankruptcy Case. Priority tax creditors and other Claims of taxing authorities are also put in a

DEBTOR'S COMBINED PLAN AND DISCLOSURE STATEMENT

separate category. All other creditors, the “unsecured creditors,” are also placed into a separate class.

b. How much and when does MCGEE EQUIPMENT RENTAL AND SALES, INC. propose to pay creditors?

This disclosure statement and plan outlines MCGEE’S proposed payment schedule to creditors.

All of the Assets of the Reorganized Debtor, including all furniture, fixtures, equipment, intangibles, movable property and immovable property will remain in the possession of MCGEE free and clear of any mortgage, lien, judgment and/or other encumbrances, none of which will be recognized and maintained under this plan, unless provided for herein.

The United States Trustee’s fees do not require allowance by the Court. Both pre-confirmation and post-confirmation UST fees shall be paid in cash and in full pursuant to all applicable provisions of the Bankruptcy Code and other statutory provisions. The Debtor will be required to continue to file monthly operating reports and/or disbursement reports and shall pay quarterly fees to the UST until this case is closed, converted or dismissed. The reports shall be filed on the same frequency as operating reports were filed according to the Debtor In Possession Order.

Administrative Claims– Administrative claims, including claims of MCGEE’s lawyer, accountant and administrative tax claims, will be paid in full in cash on the effective date of the Plan. As of the date of filing of this plan there have been no administrative claims that have been approved by the court.

Priority Tax Claims– MCGEE does owe priority claims. In the event a priority claim is owed all priority tax creditors will be paid the full amount of their priority tax claims within five (5) years from the entry of the order for relief. Property taxes will be paid in full within the redemption period. The first payment will be thirty (30) days after the effective date of the plan and the following payments thereafter will occur on a quarterly basis. Quarterly basis is defined as a payment set to occur every three months. **The Effective date of the plan is defined as the date the Confirmation Order is entered.** Interest will continue to accrue on the federal priority

claims at the federal statutory rate.

Interest on the claims of the Louisiana Department of Revenue will be pursuant to La. Rev. State §47:1601(A)(2)(a)(v) which is currently 7%.

Interest will be paid on the claim of the Texas Comptroller for franchise taxes as per 11 U.S.C. §511(a). The current rate of interest is 4.5%.

The Debtor will use the proceeds from the Deep Water Horizon claim to apply directly to priority claims which payment will be made within 30 days of confirmation of the plan. The payment from the Deep Water Horizon settlement is not sufficient to pay the priority claims in full and the debtor will then pay priority claims as per the provisions outlined above.

If the reorganized debtor substantially defaults on the payments of a tax due to the IRS or the Louisiana Department of Revenue under the plan, the entire tax debt still owed to the IRS or the Louisiana Department of Revenue shall become due and payable immediately, and the IRS or the Louisiana Department of Revenue may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code.

Default:

If the reorganized Debtor substantially defaults, defined as failing to make payment as per the plan to the IRS or *Louisiana Department of Revenue* or any other claim, the outstanding balance is immediately due and payable. Payment shall be for the entire amount owed to the IRS, the Louisiana Department of Revenue or other claims under the plan. The IRS, the Louisiana Department of Revenue or any other claimant may motion the court to convert the case to a Chapter 7 or in the alternative, dismiss the case or request a lifting of the stay in order that it can collect these unpaid liabilities through the administrative collection provisions of the Internal Revenue Code, the State tax code of the Louisiana Department of Revenue and/or other collections laws of the State of Louisiana.

Notwithstanding anything in the Plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to the pre-petition tax claims except for (i) resolving the amount of any state tax claim arising prior to confirmation, and (ii) enforcing the discharge provision of the Plan.

A failure of the reorganized Debtor(s) (“Debtors”) to make a payment due under the confirmed plan or due on any tax for any post-confirmation tax period while making the installment payments due pursuant to the terms of the Plan to the Louisiana department of Revenue shall be an Event of Default. Failure to declare a default does not constitute a waiver by the Louisiana Department of Revenue’s rights to declare that the Debtors are in default.

The Louisiana Department of revenue will give the Debtors written notice of the Event of Default at the address listed on the Debtor’s Chapter 11 Petition or the Debtor’s most recent filed tax return, with a copy to the Debtor’s counsel. The Debtors may cure such default within fourteen

(14) days from the receipt of such notice. If the reorganized Debtor fails to cure the default with fourteen (14) days after receipt of written notice of default, then the Louisiana Department of Revenue may (a) enforce the entire amount of its claim; (b) exercise any and all rights and remedies allowed under state law or any other applicable non-bankruptcy law; and/or (c) seek such relief as may be available in the Court, meaning any Louisiana court of proper jurisdiction and venue or any other court of proper jurisdiction and venue. All unpaid priority tax claims remain non-dischargeable after confirmation pursuant to 11 U.S.C. §1141(d)(2), and the debtors and any property of the debtors remain liable for all unpaid priority tax claims after confirmation.

“A failure by the reorganized Debtors to make payment to the Texas Comptroller of Public Accounts pursuant to the terms of the Plan shall be an Event of Default. If the reorganized debtors fail to cure an Event of Default as to tax payments within ten (10) days after service of a written notice of default from the Texas Comptroller of Public Accounts, then the Texas Comptroller of Public Accounts may enforce the entire amount of its claim; (b) exercise any and all rights and remedies under applicable nonbankruptcy law, and (c) seek such relief as may be appropriate in this court. The reorganized debtor shall have the opportunity to cure two (2) times over the life of the plan. In the event of the third default, the Texas Comptroller of Public Accounts may proceed with the state law remedies for collection of all amounts due under state law.”

Tax Claims:

<u>Entity</u>	<u>Priority Claim</u>
Louisiana Department of Revenue	\$168,315.40
Internal Revenue Service	\$124,445.16
St. Landry Parish	\$143,786.21
Louisiana Department of Revenue	\$ 4,740.00
Internal Revenue Service	\$ 8,893.76
Texas Comptroller	<u>\$ 5,706.90</u>
 Total Priority Claims	 \$455,887.43

Class 1. Secured: Leaf Capital Funding, LLC:

Leaf Capital Funding, LLC is secured by 5 air compressors. The claim is for \$57,476.74. The Debtor will pay Leaf Capital Funding, LLC equal monthly installments of \$1,733.35 beginning February 5th, 2016 until the claim is paid in full.

Class 2: Claim of Whitney Bank:

Whitney filed a claim for \$173,022.54. The claim was secured by real estate. The real

estate, after proper motion, has been sold and the proceeds applied to the secured portion of Whitney's claim. Whitney will be allowed a deficiency claim which will be treated as a general unsecured claim. The deficiency claim shall be filed within 90 days of confirmation or it will disallowed.

Class 3: Claims, Property to be Surrendered:

The following claims are secured by various equipment loans and/or finance agreements. It is the debtors intent to surrender to these creditors the collateral securing the loan. The creditors will be allowed to file a deficiency claim once the collateral is liquidated and be treated as a general unsecured creditor. A deficiency claim must be filed within 90 days of confirmation of the plan or the deficiency claim will be disallowed.

- (a) The claim of H & E Equipment is secured in the amount of \$49,277.71
- (b) Kubota Credit Corporation. Three claims have been filed, claim 10, \$34,696.37, Claim 11, \$14,445.21 and Claim 16, \$14,503.43.
- (c) Whitney Bank, Claim 5 in the amount of \$173,022.54.
- (d) Uninvest Capital, Inc., claim 14, in the amount of \$33,180.93.
- (e) Bank of the West, claim 26. Filed as secured for \$40,000.00 and an allowed unsecured claim of \$31,587.82. Claim 27 filed as secured for \$38,000.00 and an allowed unsecured claim of \$4,043.90, claim 28 filed as secured for \$78,961.51.
- (f) Iberia Bank, claim 29. A secured claim for \$23,102.91.
- (g) Wells Fargo Commercial Distribution Finance, LLC, claim 36 for \$74,359.33.
- (h) Siemens Financial Services, Inc., claim 39 for \$70,330.64.
- (i) Claim 9 of Ally secured by a 2015 Dodge Ram 2500 VIN: 3c6UR5DL3FG547834

Class 4: Secured claim of Ally Bank (Claim 13) and JP Morgan Chase (claim 25)

These claims are secured by vehicles. The contracts will not be altered by this plan. The vehicles were purchased less then 910 days prior to the filing of the bankruptcy. The Debtor will

continue to pay the notes as per the contracts. The claims are unimpaired. The payment to All is \$1,055.81 per month and the payment to JP Morgan Chase is \$1,362.00

Claim 5 of Komatsu Financial Limited Partnership

Komatsu Financial Limited Partnership financed twenty-three (23) pieces of equipment for Debtor, as detailed in Komatsu's timely Proof of Claim [Claim # 44] totaling \$531,700.36. The Court entered an Order [Doc. No. 252] lifting the stay as to all 23 pieces of Komatsu equipment. Debtor has located and voluntarily surrendered to Komatsu for subsequent disposition 19 of the 23 pieces of equipment. Debtor continues to search for and investigate the whereabouts of the following 4 pieces of equipment collateral in which Komatsu holds a perfected purchase money security interest:

- a) 12006 JLG Boomlift, Model # 600S, Serial # 300090588, Contract # 777-40577-002, on which Debtor owes Komatsu \$22,442.00.
- b) 2005 Gehl Reachlift, Model # DL10H-55, Serial # 10H55JW0840626, Contract # 777-40577-006, on which Debtor owes Komatsu \$35,564.52.
- c) 2007 Genie Boomlift, Model # S40, Serial # S4007-11921, Contract # 777-40577-008, on which Debtor owes Komatsu \$18,304.92.
- d) 2005 Genie Boomlift, Model S60, Serial # S6005-12216, Contract # 777-40577-019, on which Debtor owes Komatsu \$27,208.44.

Upon the completion of Debtor's search and investigation for these remaining 4 pieces of equipment collateral, Debtor will voluntarily surrender any equipment collateral located through Debtor's search and investigation to Komatsu for further disposition by Komatsu. For all Komatsu equipment collateral voluntarily surrendered, Debtor agrees Komatsu shall be allowed deficiency claims upon disposition by Komatsu, which shall be paid to Komatsu by Debtor as general unsecured claims. For any Komatsu equipment collateral that Debtor is unable to locate and voluntarily surrender through its search and investigation, Debtor shall file an insurance claim, and Komatsu shall have a secured claim to all insurance proceeds, payable to Komatsu without further application to, or Order from, the Court. To the extent there remains any deficiency to Komatsu after payment of the insurance claim(s), Debtor agrees Komatsu shall be allowed deficiency claims, which shall be paid to Komatsu by Debtor as general unsecured claims. To the extent Komatsu is

oversecured, Debtor agrees Komatsu shall be entitled to pay its attorney's fees and costs, totaling \$21,223.51 as of July 31, 2016, pursuant to Bankruptcy Code section 506(b).

Class 5: Disputed Claims:

Claim of Western Equipment Finance, Inc. The claim filed by Western Equipment Finance, Inc., claim 33, is filed as secured for \$78,952.29. The Debtor's intent was to surrender the collateral which consist of welding machines. Several of the welding machines are missing, lost or misplaced. The claim filed is the amount due after the surrender of the collateral. An adversarial complaint has been filed, 16-05003, by Western Equipment Finance, Inc. The Debtor will treat the claim as a general unsecured claim regardless of the out come of the adversarial.

Claim of Can Capital, claim 37. Can Capital has filed a secured claim in the amount of \$114,965.09. Security is claimed to be based on a UCC filed the 9th day of June, 2014 under UCC File #49231148 of St. Landry Parish, Louisiana. The Debtor takes the position that the UCC filing is, one, deficient by not naming Can Capital as the Secured Parties name and secondly, that it is filed after other valid UCC filings. The claim will be treated as a general unsecured claim.

Claim of Direct Capital Corporation, claim 38. Filed as secured claim for \$59,000 and unsecured for \$23,112.93.

As to the equipment which the Debtor financed through E-Equipment Schedule #0576675, which is:

12009 Belshe GT-2EP Tandem Axel Trailer, VIN #16JF0162491045142, STK #00352260

2Ditch Witch RT45 Trencher with 64 inch backfill blade H314 Slide digging attachment with 6 ft. boom and 2 pitch cup tooth chain. RT45 S/N CMWRT45XJD0001826 STK #00383320, H314 S/N CMWH314XED0002821 STK #0038330

(the #0576675 Equipment") the Debtor shall pay regular monthly payments of \$507.27 each and every month commencing on January 15, 2016 until a total amount of \$26,718.10 plus 5.25% interest is paid in full. Thus, a total of 60 consecutive monthly payments of \$507.27 each (which includes interest) shall be paid. Direct Capital has a validly perfected first priority purchase money security interest in the 0576675 Equipment. The first priority purchase money security interest in the 0576675 Equipment continues in full force and effect. The Debtor shall maintain insurance as

DEBTOR'S COMBINED PLAN AND DISCLOSURE STATEMENT

required under the EFA, and the obligations of E-Equipment Schedule 0576675 shall remain in full force and effect except as specifically provided in the Plan.

Further, as set forth in the Consent Order Granting Motion for Relief from Automatic Stay as to Certain Equipment and Adequate Protection as to Certain Equipment [Dkt. 139], said Consent Order [Dkt. 139] is incorporated into the Plan.

As to the JLG Model TL943 Telehandler, Serial #OTBL01419 which is the subject of adversary case No. 15-51380 the adversarial claim will continue. The Debtor will treat this portion of the claim of Direct Capital Corporation as a general unsecured claim regardless of the outcome of the adversarial.

Claim of IPFS Corporation, claim 40, filed as secured in the amount of \$43,832.48. This claim was secured by insurance premiums. Since the filing of the case the Debtor has obtained a new policy of insurance and IPFS has been refunded unearned premiums which as paid IPFS in full. The claim will not be paid.

Claim of Caterpillar Financial Services, claim 43, filed as secured in the amount of \$1,245,900.00, priority in the amount of \$39,367.26 and unsecured in the amount of \$270.00. The Debtor will surrender all equipment in full satisfaction of the secured portion of the debt. The Debtor objects to the priority portion of the claim as there is no basis for a priority claim. The priority claim will be treated as a general unsecured claim.

Allowed Unsecured Claims:

Allowed unsecured claims will share on a pro rata basis distributions totaling \$60,000.00 which will be paid on a quarterly basis beginning the end of the first quarter after confirmation. Quarterly payments will be \$3,000.00 per quarter.

CLAIMS NOT FILED:

Claims not filed by the bar date will be disallowed and those creditors will not receive a distribution under the plan. The debt will be discharged at the completion of the plan. Any collateral held by a secured creditor, who does not file a claim, will be turned over to the debtor at

the completion of the plan by surrender of any and all titles and/or proof of ownership free and clear of any liens, encumbrances and/or mortgages.

c. Future Management and ownership

McGEE will continue to maintain ownership of all assets of the company. There will not be

an ownership change.

d. Creditors have the right to vote on the plan

After reading this plan and disclosure statement, creditors will have the right to Vote on whether the Bankruptcy Court should “confirm” this plan. Each creditor should read this combined plan and disclosure statement carefully, discuss it with a lawyer, and then fill out the ballot, when provided. McGEE’ lawyer will assemble the ballots and report to the Bankruptcy Judge. At that time, the court will conduct a confirmation hearing in this case and decide whether to confirm the plan.

e. Creditors also have the right to object to this Disclosure Statement and/or object to confirmation of the plan

If a creditor believes that the Combined Plan and Disclosure Statement does not contain sufficient information to decide whether to vote for (or against) the plan, the creditor may file a written objection with the Bankruptcy Court. If a creditor believes that the plan does not meet the requirements of the Bankruptcy Code, then the creditor may also file a written objection with the Bankruptcy Court. The deadline for filing objections will be provided at a latter date.

f. The Court may approve this plan and limit creditors’ legal rights

The Court will only consider ballots and written objections that are timely filed. If no objections are timely filed, or if the Court overrules all objections, and at least one class of creditors

accepts the plan, the Court may approve the plan. If the Court approves the plan, all creditors will be bound, even if a creditor did not vote or even if a creditor voted against the plan. This means that a creditor will not be allowed to collect its claim against McGEE except as provided for in the plan.

g. How does a class accept the plan?

Each class is considered separately. Only the creditors who vote are counted. The Court will conclude that a class “accepts” the plan only if two requirements are met: 1) More than 50% of the voting creditors in that class vote in favor of the plan; and 2) Those creditors voting in favor of the plan hold at least 2/3 of the total amount of the debt that is voted.

h. What if a creditor is not listed in This Plan

All unsecured creditors who have filed a valid claim are listed herein. The proof of claim deadline has been set by the court. If a creditor fails to timely file a claim with the Bankruptcy Court, McGEE will not pay any money to that creditor, but that creditor’s claim will nevertheless be discharged (that is, the creditor will not be allowed to collect any money from McGEE.) If a creditor believes this provision violates its legal rights, the creditor should contact a lawyer and file an objection with the Court.

i. What to do for more information?

Creditors should talk with a lawyer about their rights and responsibilities in this case. A creditor should have its lawyer call MCGEE EQUIPMENT RENTAL AND SALES, INC.’S lawyer, who may be contacted as follows:

William C. Vidrine
Vidrine & Vidrine, PLLC
711 W. Pinhook Road
Lafayette, LA 70503
337-233-5195
WilliamV@Vidrinelaw.com

If a creditor does not have a lawyer, he can call McGEE 's lawyer directly. REMEMBER THAT McGEE 's LAWYER CANNOT GIVE CREDITORS LEGAL OR FINANCIAL ADVICE BECAUSE THEY REPRESENT McGEE, NOT CREDITORS.

j. Preferences and Fraudulent Transfers.

After a review of its records, McGEE does not believe that any actionable claims exist for preferences or fraudulent transfers against any insiders or any other persons. Thus, McGEE does not intend to pursue any preference or fraudulent conveyance causes of action after confirmation.

4. Do MCGEE EQUIPMENT RENTAL AND SALES, INC. have enough money and earnings to make the payments called for in the plan?

McGEE believes there will be enough income in the future to pay claims as per this plan.

The Debtor attaches hereto a 6 month cash flow projection. Since the filing the Debtor has filed monthly operating reports. The reports are summarized below:

<u>Month</u>	<u>Net Income</u>
October/November 2015	\$15,223.23
December 2015	\$ -896.51
January 2016	\$-32,553.27
February 2016	\$39,051.81
March 2016	\$62,478.25
April 2016	\$ 8,7891.00.
May 2016	\$35,911.27
June 2016	\$47,586.39
July 2016	\$104,953.07

Average cash flow is positive.

Rejection of Executory Contracts and Unexpired Leases.

Any and all contracts that are not specifically accepted are rejected.

5. Are there any alternatives to the plan?

The only alternative is liquidation under Chapter 7 or dismissal of this case. In a liquidation scenario, unsecured creditors will receive less than they are under this plan. Liquidation under Chapter 7 would also incur additional administrative costs, including fees for a Chapter 7 trustee and his/his lawyers and accountants, which could substantially reduce the value of any distributions to creditors. Unsecured Creditors would receive at most the liquidation value of the non exempt and unencumbered assets which total \$25,000.00 which would be much less than they will receive under this plan.

6. Is there any risk that the plan might not succeed?

There is some risk that the Debtors may not be able to fulfill the provisions of this plan. But the risk are minimal. If the Debtor's business continues at its current rate then there should be minimal risk. The Debtor believes that the business will grow and become stronger.

7. Are there any tax effects?

Tax Effects for the Debtor: McGEE believes that they will suffer no unexpected tax effects from this plan or due to the fact that they have become insolvent.

Tax Effects to Creditors: McGEE also does not believe that Creditors will have any tax effects as a result of the filing of this Bankruptcy Proceeding or the confirmation of this plan. It is possible that some of the Creditors may be able to deduct some of McGEE debt as a bad debt expense but that would only be for certain creditors on an accrual accounting basis. However, each Creditor should consult with its own tax advisor to be sure.

8. Please vote for this plan

McGEE asks that creditors vote in favor of this plan.

RESPECTFULLY SUBMITTED

By: /s/ McGee Equipment Rental and Sales, Inc.

By: /s/ William Vidrine
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DEBTOR'S COMBINED PLAN AND DISCLOSURE STATEMENT

Page 14 of 14