

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : Case No. 1:17-bk-02370-HWV
PORTABELLA’S, INC., :
d/b/a RIVER HOUSE BAR AND GRILL, :
d/b/a PORTABELLA’S SPORTS BAR AND :
GRILLE, :
Debtor in Possession : Chapter 11

DEBTOR IN POSSESSION’S PLAN OF REORGANIZATION

ARTICLE I

CLASSIFICATION OF CLAIMS

The claims in the above captioned proceeding are divided into classes as follows:

CLASS I

The secured claim of Mid Penn Bank with respect to its lien on all assets of the Debtor including the liquor license, machinery, fixtures, equipment, furnishings and supplies.

CLASS II

The secured claim of the United States of America, Department of Treasury, Internal Revenue Service with respect to its lien on all assets of the Debtor including the liquor license, machinery, fixtures, equipment, furnishings and supplies.

CLASS III

The priority claim of the United States of America, Department of Treasury, Internal Revenue Service.

CLASS IV

The priority claim of the Commonwealth of Pennsylvania, Department of Revenue.

CLASS V

The priority claim of the Commonwealth of Pennsylvania, Department of Labor and Industry.

CLASS VI

The priority claim of Keystone Collections Group.

CLASS VII

The claims of pre-petition general unsecured creditors.

CLASS VIII

The claim of Thomas H. Dacheux and Justin L. Nicholson, a General Partnership as Lessor of the real estate at 2495 E. Harrisburg Pike, Middletown, Pennsylvania, and party to a lease of non-residential real estate with the Debtor.

CLASS IX

Stock ownership interest of Justin Nicholson, 100% stockholder.

CLASS X

Professional and administrative claims.

ARTICLE II

CLAIMS UNIMPAIRED UNDER THE PLAN

There are no claims that are unimpaired under the plan.

ARTICLE III

TREATMENT OF CLAIMS THAT ARE IMPAIRED UNDER THE PLAN

1. Class I – The secured claim of Mid Penn Bank

The first secured creditor is Mid Penn Bank with a guarantee by the Small Business Administration. At the time of filing, Mid Penn Bank was owed \$24,832.22 on one loan and \$31,776.53 on the second. It has a lien on assets of the Debtor including the liquor license, machinery, fixtures, equipment and supplies.

The parties entered into a June 20, 2017 stipulation for use of cash collateral which was approved by this court on July 26, 2017 (Interim Order) and September 5, 2017 (Final Order).

Monthly payments are in the amount of \$1,752.81 and are being made on a current basis by the Debtor. These payments will continue to be made in the above amount until the claims are paid in full. Mid Penn's liens on the above property will remain until the loans are paid in full.

2. Class II – The secured claim of the United States of America, Department of Treasury, Internal Revenue Service

The second secured creditor is the United States Treasury Department, Internal Revenue Service. It has a secured claim in the amount of \$158,002.00 on account of liens filed on March 27, 2012, May 30, 2012 and July 23, 2012.

The parties entered into a December 27, 2017 Stipulation for Use of Cash Collateral which was approved by the Court on December 28, 2017 (Interim Order) and January 18, 2018 (Final Order).

Monthly payments are in the amount of \$3,000.00 and are being made on a current basis by the Debtor. These payments will continue to be made in the above amount until the secured claim is paid in full. The liens will remain on the Debtor's property until the secured claim is paid in full.

3. Class III – The priority claim of the United States of America, Department of Treasury, Internal Revenue Service

The Internal Revenue Service has filed a Proof of Claim in the amount of \$536,985.55 for unpaid trust fund taxes and unpaid FUTA taxes, of which \$158,002.02 is secured as stated above, \$329,142.32 is priority, and \$49,841.23 as an unsecured general claim.

The priority portion will be paid in full with statutory interest as allowed by law within forty-eight (48) months of the order confirming plan in equal monthly payments beginning thirty (30) days of the order confirming plan, but no longer than sixty (60) months from June 6, 2017.

4. Class IV – The priority claim of the Commonwealth of Pennsylvania, Department of Revenue

The Pennsylvania Department of Revenue has filed a Proof of Claim in the amount of \$74,519.07 for unpaid employee withholding taxes and unpaid sales taxes. The secured portion is \$187.87, the priority portion is \$50,847.99, and the unsecured non-priority portion is \$23,483.21.

As stated above, the secured portion will be treated as priority, bringing the total priority portion to \$51,035.86. The priority portion will be paid in full with statutory interest as allowed by law in forty-eight (48) equal monthly payments beginning thirty (30) days subsequent to the date of the order confirming plan, but no longer than sixty (60) months from June 6, 2017.

5. Class V – The priority claim of the Commonwealth of Pennsylvania, Department of Labor and Industry

The Pennsylvania Department of Labor and Industry has filed a Proof of Claim in

the amount of \$75,557.59 for unpaid unemployment compensation tax. The secured portion is \$58,934.36 and the priority portion is \$16,623.23. As stated above, the secured portion will be treated as priority, thus treating the entire claim as priority. This will be paid in full with statutory interest as allowed by law in forty-eight (48) equal monthly payments beginning thirty (30) days subsequent to the date of the order confirming plan but no longer than sixty (60) months from June 6, 2017.

6. Class VI – The priority claim of Keystone Collections Group

The Keystone Collections Group is listed as a creditor on Schedule E in the amount of \$23,802.20 for unpaid LST/EIT local taxes. This amount will be paid in full with statutory interest as allowed by law in forty-eight (48) equal monthly payments beginning thirty (30) days subsequent to the date of the order confirming plan, but no longer than sixty (60) months from June 6, 2017.

7. Class VII – The claims of pre-petition general unsecured creditors

<u>NAME & ADDRESS</u>	<u>DOLLAR AMOUNT</u>
ALS Environmental ALS Group	\$80.80
American Society of Composers	\$1,769.59
Arrow Consulting Inc.	\$47.44
Artell Law Group	\$2,184.45
AT&T Mobility II, LLC	\$45.60
BMI	\$1,608.48
Direct TV	\$108.21
Eco-Lab	\$166.83
Ehrlich	\$36.45
Erin E. Klauer	\$1,493.53
Hibbu, Inc.	\$356.25
Internal Revenue Service	\$49,841.23
Joseph, Mann & Creed	\$848.92

Justin L. Nicholson	\$59,750.00
LFD Inc.	\$44.00
Masterclean	\$81.44
MetEd	\$1,603.00
NuCo2	\$2,744.81
Open Table Inc.	\$127.80
Patriot National Insurance Group	\$216.80
Pennsylvania Department of Revenue	\$23,483.21
Royers Flowers	\$13.88
Sage Checks and Forms	\$51.57
Scaringi & Scaringi P.C.	\$144.12
Singer Equipment Company Inc.	\$3,445.01
Skarlatos and Zonarich LLC	\$871.39
South Jersey Energy Company (Disputed)	\$11,962.78
Standard Concrete	\$3,098.86
State Workers Insurance Fund	\$6,223.66
Superior Plus Energy Services	\$654.76
Sysco Central Pennsylvania LLC	\$3,540.11
Thomas H. Dacheux	\$10,410.00
Thomas H. Dacheux & Justin L. Nicholson, A Pennsylvania General Partnership	Unknown
University Directories	\$448.00
US Foods	\$4,743.12
Verizon	\$470.34

York Waste Disposal	\$142.42
---------------------	----------

Unsecured creditors with the exception of Justin L. Nicholson, and Thomas J. Dacheux and Justin L. Nicholson, A Pennsylvania General Partnership (will receive 0) will receive 20% of the amounts of their claims to be made in quarterly payments beginning three (3) years subsequent from the date of the order confirming plan and continuing an additional three (3) years.

8. Class VIII – The claim of Thomas H. Dacheux and Justin L. Nicholson, a General Partnership.

The Debtor listed as the only unexpired lease the lease of non-residential real estate at 2495 East Harrisburg Pike, Middletown, PA 17057, with Thomas H. Dacheux and Justin L. Nicholson, a Pennsylvania Partnership.

This lease is for the place of business of the Debtor and is being assumed as part of the plan of reorganization, since it is necessary for continued operations. The Debtor in Possession has been making regular monthly payments and will continue to do so in the future.

9. Class IX – The ownership interest of Justin Nicholson, 100% stockholder

Justin Nicholson is 100% stockholder of the Debtor. The plan proposes for him to keep his stock ownership interest in exchange for forgiveness of unpaid salary in the amount of \$59,750.00. This forgiveness is tantamount to a capital contribution and is necessary to insure a successful reorganization.

10. Class X – Professional and administrative claims

All professional and administrative claims as allowed by this court shall be paid in cash on or before the effective date of the plan, or in this case at the time of the order confirming plan or otherwise agreed in writing between the Claimants and the Debtor. Funds otherwise owed to professionals which the court has not yet approved and are required by the Bankruptcy Code to be approved by this court shall be paid after necessary approvals have been obtained.

ARTICLE IV

MEANS FOR EXECUTION OF THE PLAN

With respect to all payments to be made pursuant to this plan, to secured creditors on account of regular monthly payments and to the taxing agencies and unsecured creditors as set forth above, payment will be made through income derived from the business operations of the Debtor in Possession.

ARTICLE V

MISCELLANEOUS PROVISIONS

No formal unsecured creditors committee has been formed and therefore no fees to any accountant or attorney for the unsecured creditors are due. Payment of all United States Trustee's quarterly fees, pursuant to 28 U.S.C. §1930(a)(6) will be paid on or before the date of confirmation.

ARTICLE VI

MODIFICATION OF PLAN

The Debtor in Possession may propose amendments or modifications to this plan at any time prior to confirmation, with leave of court, and upon notice to creditors. After confirmation, the Debtor in Possession may, with court approval, and so long as it does not materially adversely affect the interest of creditors, remedy any defect or omission, or reconcile any inconsistency in the plan, or any order of confirmation, or in such manner as may be necessary to carry out the purposes and effect of this plan.

ARTICLE VII

JURISDICTION OF THE COURT

The Court will retain jurisdiction until this Plan has been fully consummated, including, but not limited to, the following purposes:

1. The classification of the claim of any creditor and the re-examination of claims which have been allowed in this case and the determination of such objections as may be filed to creditors' claims, the failure by the debtor to object to, or to examine any claim for the purposes of voting on any plan, shall not be deemed to be a waiver of the debtor-in-possession's right to object to or re-examine the claim in whole or in part.
2. Determination of all questions and disputes regarding title to the assets of the debtor's estate and determination of all causes of action, controversies, disputes, conflicts whether or not subject to action, pending as of the date of confirmation, between the debtor and any other party, including but not limited to, any right of the debtor to recover assets, including all real estate pursuant to the provisions of the Bankruptcy Code.
3. The correction of any defect, the curing of any omission, or the reconciliation of any inconsistency in this plan, or the order of confirmation as may be necessary to carry out the purposes and intent of this plan.

4. The modification of this plan after confirmation pursuant to the Bankruptcy Rules and Bankruptcy Code.
5. To enforce and interpret the terms and conditions of this plan.
6. Entry of an Order including injunctions necessary to enforce the title rights and powers of the debtor-in-possession and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary.
7. Entry of an Order concluding and terminating this case.

By: /s/ Justin L. Nicholson
JUSTIN L. NICHOLSON, PRESIDENT
Debtor in Possession

RESPECTFULLY SUBMITTED BY:

/s/ Lawrence G. Frank, Esquire

Lawrence G. Frank, Esquire
Attorney ID No.: 15619
100 Aspen Drive
Dillsburg, PA 17019
PH: (717) 234-7455
Fax: (717) 432-9065
lawrencegfrank@gmail.com

Attorney for Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : Case No. 1:17-bk-02370-HWV
PORTABELLA’S, INC., :
d/b/a RIVER HOUSE BAR AND GRILL, :
d/b/a PORTABELLA’S SPORTS BAR AND :
GRILLE, :
Debtor in Possession : Chapter 11

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2018, I electronically filed *Debtor in Possession’s Plan of Reorganization* with the Clerk of the Bankruptcy Court by using the CM/ECF system which sent notification of such filing to the following email address:

U.S. Trustee – ustpregion03.ha.ecf@usdoj.gov

LAW OFFICE OF LAWRENCE G. FRANK

/s/ Lawrence G. Frank, Esquire

Lawrence G. Frank, Esquire
Attorney ID No.: 15619
100 Aspen Drive
Dillsburg, PA 17019
PH: (717) 234-7455
Fax: (717) 432-9065
lawrencegfrank@gmail.com

Attorney for Debtor in Possession