

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

**IN RE:**

**ODYSSEY CONTRACTING CORP.,**

**Bankruptcy No. 15-22330-CMB**

**Debtor.**

**Chapter 11**

**DISCLOSURE STATEMENT ACCOMPANYING PLAN OF REORGANIZATION**  
**DATED DECEMBER 29, 2016**

Odyssey Contracting Corp. ("the Debtor") commenced a voluntary Chapter 11 Case on June 29, 2015. This Disclosure Statement involves the financial affairs of the Debtor. The Debtor is seeking to reorganize its financial affairs. The purpose of this Disclosure Statement is to enable holders of claims against the Debtor to make an informed judgment concerning acceptance or rejection of the Plan of Reorganization (Plan) filed concurrently herewith. A true and correct copy of the Plan is attached hereto and marked as **EXHIBIT A**.

Pursuant to 11 U.S.C. Section 1126(a), the holder of a claim or interest allowed under Section 502 of Title 11 may accept or reject a Plan. Under 11 U.S.C. Section 1126(c), a class of claims has accepted a Plan if such Plan has been accepted by creditors that hold at least two-thirds (2/3) of an amount, and more than one-half (1/2) in number, of the allowed claims of such class. Pursuant to 11 U.S.C. Section 1126(f), a class that is not impaired under a Plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the Plan, and solicitation of acceptances with respect of such class from the holders of claims or interests of such class is not required. Pursuant to 11 U.S.C. Section 1126(g), a class is deemed not to have accepted a Plan if such Plan provides that the claims or interests of such class do

not entitle the holders of such claims or interests to receive or retain any property under the Plan on account of such claims or interests.

Title 11 U.S.C. Section 1125(b) prohibits solicitation of votes on the Plan until a Disclosure Statement is approved by the Court as having adequate information.

The Debtor has attempted to set forth, in reasonable detail, all relevant information concerning the Debtor's assets and liabilities.

**NO INFORMATION CONCERNING THE DEBTOR IS AUTHORIZED OTHER THAN THE INFORMATION SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION.**

### **I. Background**

The Debtor is a Pennsylvania corporation which was formed in 1987 and which is based in Houston, Pennsylvania. The Debtor is engaged in the business of bridge painting and repair. The Debtor provides bridge painting and repair services throughout the United States.

The Debtor was involved in large projects as a subcontractor in New York, Massachusetts and Washington in which the Debtor was not properly paid for work performed. The lack of proper payment on these large projects deprived the Debtor of millions of dollars and, not surprisingly, negatively impacted Debtor's cash flow. The

Debtor is in the process of seeking collection of the money owed to it via litigation. Litigation, however, takes time.

The Debtor's primary creditor herein, i.e. PNC Bank, has filed a Proof of Claim herein asserting a secured claim in the amount of \$4,005,226.48. While Debtor, despite the cash flow problems resulting from non-payment for work performed on large projects, made all interest payments which came due on its obligations to PNC Bank, Debtor did not reduce the principal balance of said obligations in the amount and in the time period called for in the PNC Bank documents, which resulted in PNC Bank demanding full payment of the obligations which Debtor could not immediately do. As a result, PNC Bank confessed judgment against the Debtor which led to the commencement of the instant Chapter 11 Case.

The Debtor will continue to address its post-petition obligations via the ongoing operation of its business and will address the pre-petition claims in the Chapter 11 Case via a Plan of Reorganization to be funded primarily from anticipated recoveries in litigation which is pending in regard to the monies owed to Debtor for work performed which has not been paid.

## **II. ASSETS IN THIS ESTATE AND THEIR VALUATION**

### **A. REAL ESTATE**

The Debtor owns no real estate.

### **B. PERSONALTY**

The Debtor owns the following items of personal property:

1. The Debtor has bank accounts with fluctuating balances each month. The current balances are in the approximate amount of \$70,000.00.
2. The Debtor has accounts receivable in the approximate amount of \$150,000.00.
3. The Debtor owns vehicles with an approximate aggregate market value of \$150,000.
4. The Debtor owns tools and equipment with an approximate aggregate market value of \$20,000.00.
5. The Debtor owns office equipment, furniture and supplies with an approximate aggregate market value of \$10,000.00.
6. The Debtor holds a fifty percent (50%) interest in a joint venture known as Odyssey-Geronimo JV which interest is of an unknown value but which is believed to be nominal; said joint venture, however, is the actual Plaintiff in one of the pieces of litigation being pursued and thus Debtor's interest in said joint venture may well produce significant monies to fund Debtor's Plan of Reorganization if the joint venture is successful in said litigation (which Debtor expects).
7. The Debtor has interests in pending litigation as follows:
  - a) Debtor has claims against L&L Painting Co., Inc. and Federal Insurance Company (L&L's bonding company) in regards to work which Debtor performed on the Queensboro Bridge in New York. The Debtor believes it is entitled to damages in excess of \$12,000,000.00;

- b) The Debtor has claims against White, Shanska, Consigli JV in regard to work which Debtor performed on the Longfellow Bridge in Massachusetts. The Debtor believes it is entitled to damages of approximately \$10,000,000.00;
- c) The Debtor has claims against Walsh Construction in regard to work which Debtor performed on the University Bridge in Massachusetts. The Debtor believes it is entitled to damages of approximately \$1,000,000.00; and
- d) The joint venture, of which Debtor is a 50% owner, has claims against the Washington State Department of Transportation in regard to work performed on the Lewis & Clark Bridge in Washington state. The joint venture believes it is entitled to damages in the approximate amount of \$10,000,000.00 (half of which would go to the Debtor if said litigation is successful as Debtor anticipates).

The Debtor's personalty is subject to secured claims, including the secured claim of PNC Bank in an amount asserted to exceed \$4,000,000.00. Excluding the litigation claims in which Debtor holds an interest, the remaining personalty has value significantly less than the secured claims which said personalty collateralizes. As such, the Debtor possesses no equity in said personalty.

As to the claims/litigation owned by the Debtor, it is believed that same will generate monies which exceed the secured claims herein to an extent which would provide for full payment of any and all allowed claims herein. It is acknowledged,

however, that litigation can be both time consuming and unpredictable. Thus, while Debtor is confident in the merit of its claims, it is difficult to value said claims/litigation when considering the market value thereof.

### **III. FINANCIAL INFORMATION AND PROJECTION**

The Debtor has filed operating reports each month during the pendency of this Chapter 11 Case which operating reports detail the financial activities of the Debtor to date and which can be utilized to approximate Debtor's activities going forward so as to evaluate Debtor's ability to fund administrative matters going forward.

As noted above, however, ongoing business operations will not be the primary source of funding for Debtor's Plan of Reorganization. On the contrary, the primary source of funding for Debtor's Plan is the litigation set forth above in which Debtor is seeking damages in the approximate aggregate amount \$28,000,000.00.

### **IV. CLAIMS IN THIS ESTATE**

#### **Secured Claims**

**Secured Class 1:** This class includes the claim of PNC Bank, National Association in the asserted amount of \$4,005,226.48. Said claim is secured by a blanket lien upon all of Debtor's assets.

**Secured Class 2:** This class includes the claim of PNC Bank, National Association in the asserted amount of \$126,664.96, which is based upon Debtor's guaranty of money loaned to a third party. Said guaranty is secured by a blanket lien upon all of the Debtor's assets.

**Secured Class 3:** This class includes the claim of George and Maria Savakis and the claim of Hercules Painting Company, Inc. which claims are based upon said claimants' status as payees on a Promissory Note provided to the claimants by, inter alia, the Debtor. The amount asserted to be due under Promissory Note by the claimants is \$983,346.53. Said claims are secured by a blanket lien upon all of the Debtor's assets, however, the Debtor believes that said lien is junior to the liens of PNC Bank, National Association set forth above.

### **Administrative Claims**

**Administrative Class 4:** This class includes the claim of Counsel for the Debtor. The amount of this claim is not yet known.

**Administrative Class 5:** This class includes the claim of the Accountant for the Debtor. The amount of this claim is not yet known.

**Administrative Class 6:** This class includes the claims of professionals approved by the court to provide services to the Debtor in connection with its ongoing litigation, e.g. special counsel, appraisers, experts. The amount of these claims is not yet known.

**Administrative Class 7:** This class includes the claims of the Office of the United States Trustee for quarterly fees through the entry of a final decree in this Case. The amount of these claims is not yet known.

### **Priority Claims**

**Priority Class 8:** This class includes the claim of the Internal Revenue Service in the asserted amount of \$27,042.38. The claim is based upon estimates calculated by the claimant. The Debtor disagrees with this claim, believes that all tax payments due to this claimant have been made and will object to this claim.

**Priority Class 9:** This class includes the claim of the Franchise Tax Board in the asserted amount \$4,270.52. The Debtor does not know the basis of this claim and is unaware of any obligation to, or connection with, the claimant. As such, the Debtor will object to this claim.

### **Unsecured Claims**

**Unsecured Class 10:** This class includes the claim of PNC Equipment Finance, LLC in the asserted amount of \$223,777.38 which claim is based upon a guaranty by the Debtor of money loaned to a third party.

**Unsecured Class 11:** This class includes the claims of the Defendants in the litigation being pursued by the Debtor which have been raised as counterclaims in such litigation. Said claims are in the approximate aggregate amount of \$29,000,000.00 and are wholly disputed by the Debtor who will object to said claims.

**Unsecured Class 12:** This class includes the claims of the general unsecured creditors which assert claims in the approximate aggregate amount of \$2,750,000.00. The Debtor disputes some of the claims asserted by the claimants in this class and will object thereto.

## **V. LITIGATION IN THIS ESTATE**

There is, and will be, significant litigation involving the Estate herein. Set forth above in Section II(B) of this Disclosure Statement are various claims being pursued by the Debtor related to work performed by Debtor on large work projects for which Debtor has not been paid. The Debtor is claiming damages in the approximate aggregate



amount of \$28,000,000.00 in said litigation and the monies recovered therein will be the primary source of funding for the Debtor's Plan of Reorganization.

In addition, and as also noted above, the Debtor anticipates that it will file various objections to claims in the Chapter 11 Case which will likely result in additional litigation.

## **VI. LIQUIDATION ANALYSIS**

As set forth above, the Debtor owns no real estate. The Debtor does possess bank accounts, receivables, vehicles, tools, equipment and office furniture/supplies with an approximate aggregate market value of \$400,00.00. Said personalty, however, is subject to secured claims of nearly \$5,000,000.00 and thus Debtor possesses no equity in same for the benefit of creditors herein.

A liquidation of the aforementioned personalty would generate monies which would go only to the primary secured creditor herein and even that creditor would receive significantly less than it would under Debtor's Plan.

A liquidation of the aforementioned personalty would result in a cessation of Debtor's business operations and thus a cessation of Debtor's ability to fund the litigation of its substantial claims and thus the ability to recover the substantial damages it claims. A liquidation of the claims themselves would result in proceeds (if said claims are even marketable) far less than the amount which Debtor claims. Again, it is unlikely that anyone other than the primary secured creditor would receive any distribution in such a scenario and even that creditor would receive much less than it would under Debtor's Plan.

In light of the foregoing, the Debtor believes that creditors will receive more under Debtor's Plan than they would under a liquidation. Further, there are additional expenses to consider when a liquidation occurs. Factors to consider are as follows:

**A. TRUSTEE'S EXPENSES**

A Trustee appointed by the Bankruptcy Court would administer the liquidation, if any, of the Estate. The Trustee may hire legal counsel to pursue any claims it has against third parties, and said counsel's fees and expenses will be paid in a liquidation as an administrative claim. Pursuant to 11 U.S.C. Section 326, the Trustee's fees are based on a sliding scale calculated upon all monies collected, including amounts collected by the Trustee via a liquidation. Accordingly, the Trustee's compensation would be calculated against the gross assets of the Debtor. Compensation of the Trustee's legal counsel is established by the Court upon application of the Trustee's counsel and then, upon such approval, said fees would also be deducted from the gross assets of the Debtor. All such fees will be required to be deducted prior to distribution to any other creditors.

**B. OTHER EXPENSES**

Other expenses must also be considered in a liquidation. There are other variables to consider in estimating funds which would be available for distribution to unsecured creditors upon liquidation. It is likely that the fair market value assigned to individual assets by the Debtor may prove high in light of the "liquidation" type sale which is typical in a bankruptcy liquidation. The Debtor's Plan anticipates a successful conclusion of its pending litigation and thus full payment of all allowed claims herein. Even if Debtor receives less than anticipated via litigation, however, Debtor believes

that creditors would do no worse under Debtor's Plan than they would in a liquidation and that they likely would do better. All of these factors should be considered when voting for or against the Debtor's Plan of Reorganization.

**C. DISTRIBUTION ANALYSIS**

In a forced liquidation, and as a result of it, it is anticipated that creditors would receive far less than they will pursuant to the Debtor's Plan.

Respectfully Submitted,

Date: December 29, 2016

/s/ Robert O Lampl  
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**CERTIFICATE OF SERVICE**

I, Robert O Lampl, John P. Lacher and David L. Fuchs, hereby certify, that on the 29th day of December, 2016, a true and correct copy of the foregoing **DISCLOSURE STATEMENT** was served upon the following (*via electronic service*):

Norma Hildenbrand  
Office of the U.S. Trustee  
970 Liberty Center  
1001 Liberty Avenue  
Pittsburgh, PA 15222

Date: December 29, 2016

/s Robert O Lampl  
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