

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

IN RE:

BILLYS ROADHOUSE, INC.

Bankruptcy No. 16-21969-CMB

Debtor.

Chapter 11

**DISCLOSURE STATEMENT TO ACCOMPANY
PLAN OF REORGANIZATION DATED MARCH 6, 2017**

Billys Roadhouse, Inc. (“the Debtor”), commenced a voluntary Chapter 11 Case on May 25, 2016. 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 Dated February 7, 2014 (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 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 the 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, liabilities and business operations.

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 operates a bar/restaurant in Wexford, Pennsylvania. The debt obligations owed by the Debtor are overwhelmingly tax related. The Debtor's arrears in regard to Commonwealth sales and withholding tax obligations created the danger that debtor would be unable to renew its liquor license. The loss of said license would likely have caused the debtor to cease operations. The instant Chapter 11 Case was commenced for the primary purpose of keeping the Debtor's liquor license active while it reorganized its affairs to address creditor claims herein.

The Debtor has changed its pricing structure, adjusted its alcohol/food sales ratio and reduced certain expenses, primarily related to entertainment which it provides at its premises. As a result of said changes, the Debtor has been able to remain current in paying its post-petition obligations throughout this case and, in fact, has generated profits post-petition. The Debtor has filed operating reports with the Bankruptcy Court each month during which the Debtor's Chapter 11 Case has been pending. Said monthly

operating reports demonstrate the Debtor's post-petition profitability which the Debtor believes will continue going forward.

The Debtor will fund its Plan out of ongoing business operations and the profits generated therefrom.

II. ASSETS IN THE ESTATE AND THEIR VALUATION

A. REAL ESTATE

The Debtor owns no real estate. Its business premises are leased. As such, there is no equity in real estate for the benefit of creditors herein.

B. PERSONALTY

The Debtor owns the following items of personal property:

- 1) The Debtor maintains a bank account with a current balance of approximately \$6,500.00;
- 2) The Debtor owns a liquor license with an approximate fair market value of \$70,000.00;
- 3) The Debtor owns inventory (food/liquor) with an approximate fair market value of \$3,000.00;
- 4) The Debtor owns office furniture, restaurant furniture, kitchen equipment and wall hangings with an approximate fair market value of \$7,500.00

All of the Debtor's personalty is subject to the secured claims of both federal and Commonwealth taxing bodies, however, which secured claims encumber all, or almost, of the value of said personalty. As such, there is, at best, nominal equity in the Debtor's personalty for the benefit of the Estate herein.

III. FINANCIAL INFORMATION AND PROJECTION

The Debtor has filed operating reports each month throughout its Chapter 11 Case which detail the Debtor's post-petition financial activities. Said reports are available for review on the Court's docket and demonstrate the Debtor's profitability.

Attached hereto as **Exhibit B** is a projection of Debtor's income and expenses covering the period from March 2017 through February 2018. The Debtor's financial performance during the Chapter 11 Case and as projected demonstrates the Debtor's ability to fund its contemplated Plan.

IV. CLAIMS IN THIS ESTATE

A. Unimpaired Claims

Secured Claims

Secured Class 1: This class includes the claim of the Internal Revenue Service in the amount of \$57,077.48 which is secured by a tax lien upon the Debtor's assets.

Secured Class 2: This class includes the claims of the Pennsylvania Department of Revenue in the amount of \$2,419.94 which is secured by a tax lien upon the Debtor's assets.

Secured Class 3: This class includes the claims of the Pennsylvania Department of Labor and Industry in the amount of \$17,260.37 which is secured by a tax lien upon the Debtor's assets.

Administrative Claims

Administrative Class 4: This class includes the claims for ongoing fees and expenses of Counsel for the Debtor which are in the approximate amount of \$20,000.00. This amount does not include claims for ongoing fees and expenses incurred by this claimant through the finalization of this case.

Administrative Class 5: This class includes the claim of the United States Trustee for quarterly fees through the entry of a final decree in this case.

Administrative Class 6: This class includes the claim of the Pennsylvania Department of Labor and Industry in the amount of \$843.30.

Priority Claims

Priority Class 7: This class includes the claims of the Internal Revenue Service in the amount of \$26,161.92.

Priority Class 8: This class includes the claim of the Pennsylvania Department of Revenue in the amount of \$35,335.03.

Priority Class 9: This class includes the claim of the Pennsylvania Department of Labor and Industry in the amount of \$2,805.39.

Priority Class 10: This class includes the claim of US Foods, Inc. in the amount of \$1,928.52.

Unsecured Claims

Unsecured Class 11: This class includes the claims of the general unsecured creditors which claims are in the aggregate amount of \$48,654.16.

V. LITIGATION IN THESE ESTATES

There is no pending litigation in this Estate and none is anticipated.

VI. LIQUIDATION ANALYSIS

As set forth more specifically herein, the Debtor owns no real estate and owns personalty which is fully encumbered. If these cases were converted to a Chapter 7 Case and the property of the Estate liquidated, said liquidation would result in nominal or no distribution to the majority of creditors in this Estate. The secured creditors would almost certainly receive less than they will pursuant to the Debtor's Plan and certainly would not

receive more. Priority and unsecured creditors would not to receive anything at all.

Factors to consider in a Chapter 7 liquidation are as follows:

A. TRUSTEE'S EXPENSES

If this Case were to be converted to a Chapter 7 Case, a Trustee would be appointed by the Bankruptcy Court to administer the liquidation, if any, of the Estate. In all probability, the Trustee would treat this Case as a no asset cases since all personalty is fully encumbered and there is no real estate. If in fact the Trustee did treat this case as an asset Case, the Trustee would, in all likelihood, engage legal counsel that would be paid as a Chapter 7 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. Accordingly, the Trustee's compensation would be calculated against the gross assets of the Debtor. Compensation of the Trustee's legal counsel would also be 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.

B. OTHER EXPENSES

Other expenses must also be considered in a Chapter 7 liquidation. A Trustee would have to sell the property of the Estate in order to realize the funds discussed earlier so that the various creditors in this Estate could be paid. The Trustee typically would hire an auctioneer and the auctioneer's fee would be paid as an administrative expense before any distribution to unsecured creditors. There would also be advertising and other expenses of the sale. It is conservatively estimated that at least ten (10%) of the value of the property would be lost just to pay the administration of a sale. In addition, there are other variables to consider in estimating funds which would be available for distribution to 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 Chapter 7 case. Consideration must also be given to the time it would take to liquidate these assets and create a fund for distribution. It typically takes a long time to liquidate an estate. The costs associated with the preservation of the assets while awaiting sale are considered administrative expenses and require priority over unsecured claims. These costs would further reduce any potential funds available for unsecured claimants. 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 no funds would remain to pay claimants in this these Estates other than the secured creditors herein and even they would likely receive less than they would pursuant to the Debtor’s Plan. Priority and unsecured claimants would receive no payment in a Chapter 7 liquidation.

DATE: March 6, 2017

Respectfully Submitted,

/s/ Robert O Lampl
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CERTIFICATE OF SERVICE

Robert O Lampl, John P. Lacher and David L. Fuchs, hereby certify, that on the 6th day of March, 2017, a true and correct copy of the foregoing **DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF REORGANIZATION DATED MARCH 6, 2017** was served upon the following (*via electronic service*):

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

DATE: March 6, 2017

/s/Robert O Lampl
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JOHN P. LACHER
PA I.D. #62297
DAVID L. FUCHS
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