

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

IN RE: Bankruptcy Case No. 16-24726 GLT

C&D COAL COMPANY, LLC
Debtor

Chapter 11

COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF REVENUE
Movant

Hearing Date: August 31, 2017
Hearing Time: 10:00am

vs.

C&D COAL COMPANY, LLC
Respondent

Related to Document No. 99
Document No.

**OBJECTION BY THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF REVENUE TO THE APPROVAL OF THE DEBTOR'S
DISCLOSURE STATEMENT DATED JULY 19, 2017**

AND NOW, comes the Commonwealth of Pennsylvania, Pennsylvania Department of Revenue (hereinafter PA DOR) by its Counsel, Senior Deputy Attorney General, Robert C. Edmundson, Office of Attorney General, and makes the following statement in support of its *Objection to the Approval of the Debtor's Disclosure Statement Dated July 19, 2017*.

1. The PA DOR is a party in interest having filed a Proof of Claim in the amount of \$71,129.23 consisting of a secured claim of \$63,453.45, a priority claim of \$6,984.50 and an unsecured claim of \$691.28.¹
2. The Disclosure Statement provides that the sole funding source for the Plan is through the sale of the Debtor's assets (Disclosure Statement Section 1, question 6).

¹ If there are insufficient assets to secure Revenue's secured claim, \$40,339.32 must be treated as a priority claim pursuant to 11 U.S.C. 1129 (a)(9)(D).

3. The Debtor has not filed a *Motion to Retain a Broker* nor a *Motion to Sell Assets* and the Disclosure Statement does not provide any information regarding when a sale may occur or the anticipated proceeds from such a sale.
4. The failure to provide any information regarding the anticipated sale date and the amount of the anticipated sale proceeds makes the Plan illusory and therefore the Disclosure Statement does not contain adequate information as required by 11 U.S.C. 1125.
5. The Debtor acknowledges that the sale proceeds may be insufficient to pay all creditors in full (Disclosure Statement, Section 1, question 7).
6. The failure to pay priority taxes in full makes the Plan non-confirmable as a matter of law pursuant to 11 U.S.C. 1129. See *In Re Holmes*, 301 B.R. 911 (Bankr., M.D. Georgia, 2003) [Even a liquidating Plan must be feasible to be confirmed. A liquidating Plan that did not provide for full payment of an IRS priority claim is not feasible]. See also *In Re Preferred Door Company*, 990 F.2d 547 (10th Cir., 1993) [Chapter 11 Plan which did not pay post petition tax liability did not meet the feasibility requirement for confirmation. Bankruptcy Courts equitable authority does not extend to altering the Code's comprehensive scheme of priorities]. *Norwest Bank Worthington, et al v. James R. Ahlers, et ux.* 485 U.S. 197 (1988) [... Bankruptcy Court may only exercise its equitable powers within the confines of the Bankruptcy Code. Although Court of Appeals may have believed that petitioners would have been better off if Plan was confirmed, that determination is for the creditors to make].
7. The Disclosure Statement further represents that all of the Debtor's assets will be sold post-confirmation and that the transactions will be exempt from Pennsylvania Realty Transfer Tax pursuant to 11 U.S.C. 1146 (Disclosure Statement Section 1, question 13).

8. In addition to not receiving its priority taxes as required by the Code, Confirmation of the Plan will result in an additional tax loss to the Commonwealth representing non collected Realty Transfer Taxes. *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.* 128 S. Ct. 2326 (2008) [The Federalism Canon articulated in *Sierra Summit* and elsewhere obligates the Courts to construe the 1146(a) exemption narrowly].

9. As the proposed Plan is not capable of Confirmation, the Disclosure Statement should not be approved. *In Re Market Square Inn* 163 B.R. 64 (Bankr. W.D. PA., 1994).

WHEREFORE, the Commonwealth of Pennsylvania, Pennsylvania Department of Revenue respectfully requests that the Disclosure Statement Dated July 19, 2017 not be approved.

July 26, 2017

Respectfully submitted,

JOSH SHAPIRO
ATTORNEY GENERAL

By: /s/Robert C. Edmundson
Robert C. Edmundson
Senior Deputy Attorney General
Office of Attorney General
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-2575
PA Attorney I.D. # 23533