

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

In re:	:	Case No. 16-70309-JAD
Xtreme Machining, LLC	:	
d/b/a Xtreme Machining,	:	
	:	Chapter 11
Debtor	:	
*****		
Xtreme Machining, LLC,	:	
	:	Doc. No. ____
Movant	:	Related to Doc. No. ____
	:	
v.	:	Hearing Date & Time:
	:	
No Respondents	:	
*****		

**DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION OF THE  
DEBTOR-IN-POSSESSION DATED AUGUST 15, 2017**

COMES NOW the Debtor-In-Possession, Xtreme Machining, LLC d/b/a Xtreme Machining (hereinafter the “Debtor” or “Plan Proponent”), by and through its undersigned counsel, and does file the within Disclosure Statement in Support of the Plan of Reorganization of the Debtor-In-Possession Dated August 15, 2017, upon a cause whereof, the following is a statement, to wit:

**I. INTRODUCTION**

The above-captioned case was commenced by the filing of a voluntary petition for relief pursuant to the provisions of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq., on April 22, 2016. Upon the filing of the case, the Debtor became a Debtor-In-Possession, having all of the rights, powers, duties and obligations of such an entity pursuant to 11 U.S.C. § 1107.

As a Debtor-In-Possession, the Debtor has remained in control of its assets, subject to court approval for transactions deemed out of the ordinary course of their business and affairs, as well as the oversight provided by the Office of United States trustee. An Official Committee of Unsecured Creditors has not been formed in this case.

The goal of this bankruptcy filing was to develop, formulate and, ultimately propose a Plan of Reorganization capable of being confirmed under 11 U.S.C. § 1129.

The Debtor is proposing a Plan of Reorganization dated August 15, 2017 (the “Plan”). This Disclosure Statement is being filed in conjunction with the Plan pursuant to 11 U.S.C. § 1125. **The purpose of this Disclosure Statement is to provide creditors with sufficient detail and information which would allow hypothetical creditor or investor, typical of the holders of claims and interests in this case, to make an educated, informed decision as to whether to vote for or against the plan. If you have questions about the contents or meaning of the Plan and/or this Disclosure Statement, you are encouraged to seek the guidance of an attorney.**

## II. VOTING

Only the holders of allowed claims or interests are entitled to vote on the Plan pursuant to 11 U.S.C. § 1126(a). Under this plan, all claims or interests are considered temporarily allowed for voting purposes (without prejudice to the Debtor's right to subsequently object thereto) UNLESS a claim objection has been filed by the Debtor or other party in interest and the same remains pending. Holders of allow claims or interests may vote to accept or reject the plan, but are not required to do so. **ONLY THOSE VOTES WHICH ARE ACTUALLY CAST WILL BE CONSIDERED IN DETERMINING WHETHER THE PLAN IS ACCEPTED OR REJECTED.**

A class of claim-holders or interest-holders is considered to have accepted the plan if, in good faith, two-thirds (2/3) in amount and more than one-half (1/2) the number of the voting members of the class vote to accept the Plan. The Plan shall be confirmed if each impaired class class to accept the Plan.

In the event that an "impaired" class does not vote to accept the Plan, the Court may nevertheless confirm the Plan if the Court finds that the Plan meets the "cramdown" requirements of 11 U. S. C. § 1129 (except for voting requirements).

## III. PRE-PETITION HISTORY

The Debtor operates a firearm design and manufacturing facility. The Debtor's customer base includes various firearm manufacturers who sell the Debtor's end product to the general public. Rarely does the Debtor sell directly to the public.

The Debtor's business started to gradually decline due to changes in the firearms industry which were a direct result of various laws and regulations implemented by the government restricting the sale of firearms. As a result of the changes in the firearm industry due to the shift in regulation, the Debtor suffered a period of time where it produced parts and accessories for customers only to ship the product and not get paid due to the financial inability of its customers. Similarly, purchase orders that the Debtor had booked were cancelled due to the financial position of its customers. This trickle down affect effected the Debtor's bottom line.

A dispute arose between the Debtor and its landlord which ultimately resulted in the Debtor being locked out of the business premises. This forced lock out dramatically impacted the Debtor's business as production stopped and work orders were lost.

Out of options related to the dispute with the landlord and the Debtor's inability to operation all the while its debt obligations continued to accrue and, with a cash crunch looming, the Debtor's management consulted with the undersigned firm regarding a possible bankruptcy filing. After considering its alternatives, the Debtor concluded that it would be in its best interests, and in the best interests of its creditors as a whole, to seek Chapter 11 protection. Accordingly, the Debtor reluctantly commenced the above-captioned case on April 22, 2016.

## IV. POST-PETITION HISTORY

Debtor's management took this opportunity to evaluate its capacity, its needs and the needs of its core customers. In doing so, the Debtor's management make the conscious decision to utilize the tools available to it in the Chapter 11 process and shed the lease to its former business location allowing it to move to a new location which is better suited for its

needs. As a result in changes to the firearms industry, the Debtor is attempting to diversify its skilled machining capabilities to expand its customer base beyond the firearms industry. The Debtor's management, with the assistance of counsel, have revised its internal processes in an effort to ensure the prompt payment by its customers.

Upon the commencement of the case, the Debtor immediately took aggressive action to implement its bankruptcy strategy. To prevent a mass exodus of employees and stabilize relations therewith, the Debtor sought and obtained authority from the Court to pay pre-petition payroll obligations on an expedited basis. Similarly, to continue operations uninterrupted, the Debtor obtained Court approval to use its pre-petition bank accounts to facilitate pre-petition electronic payment arrangements. Finally, the Debtor sought and obtained the permission of the Bankruptcy Court to retain the law firm of Spence, Custer, Saylor, Wolfe & Rose, L. L. C., as its bankruptcy counsel.

The Meeting of Creditors pursuant to 11 U. S. C. § 341 was held on July 22, 2016. Additionally, the Court set the following key deadlines in this Chapter 11 case:

Description	Due Date
Claims Bar Date - non-governmental entities	10/20/2016
Claims Bar Date - governmental entities	10/19/2016
Filing of Chapter 11 Plan and Disclosure Statement	08/15/2017 - by Court approved extension

In connection with the formation of the Plan and Disclosure Statement, the Debtor has undertaken the claims review process in order to ascertain which, if any, claims it feels are objectionable. At this time, the Debtor intends to object to, the following asserted claims.

Creditor	Type Asserted	Asserted Amount of Claim
PNC Bank, National Association	unsecured	\$5,062.51
Seth Davidson	unsecured priority wage claim	\$2,530.50

**IV. SUMMARY OF ASSETS AND LIABILITIES AS OF COMMENCEMENT OF CASE**

**A. Assets**

The Debtor's assets, as of the commencement of the case, or itemized on the schedules filed and of record in this bankruptcy case. A summary of the assets is as follows:

Description	Value	Basis for Valuation (if other than Debtor's estimate)	Net Value after deduction for liens
Northwest Savings Bank Payroll Account	\$415.42	Bank Statement	\$0.00
Northwest Savings Bank Materials Account	\$399.61	Bank Statement	\$0.00
Accounts Receivable	\$137,023.52		\$137,023.52
Prepayment with Troy Industries	\$12,000.00		\$0.00
Pre-payment for various jobs that are to be completed	\$128,125.00		\$0.00
Inventory	\$127,510.64		\$16,112.00
Office Furniture and computer equipment	\$3,790.00		\$0.00
Doosan HP 5100 CNC Mill	\$80,000.00		\$0.00
Doosan HP 5100 CNC Mill	\$100,000.00		\$0.00
Doosan 2500 XLY Lathe	\$90,000.00		\$0.00
Jonford SL 300 CNC Lathe	\$20,000.00		\$0.00
Jonford SC48 CNC Mill	\$157,000.00		\$0.00
Jonford SV48 CNC Mill	\$60,000.00		\$0.00
CHMER CW640 HS Wire EDM	\$60,000.00		\$0.00
CHMER CW640 HS Wire EDM	\$60,000.00		\$0.00
Quincy QGD-25 25hp Screw air compressor	\$60,000.00		\$60,000.00
Quincy QGV-25hp Screw air compressor	\$60,000.00		\$60,000.00
Grizzly Model G9744Z2 10"x18" band saw	\$3,000.00		\$3,000.00

Clausing/Covel 10"x15" surface grinder	\$8,000.00		\$8,000.00
Grizzly Model G3621 16"x40" lathe	\$10,995.00		\$10,995.00
Grizzly Model G3617 Horiz/Vert Mill	\$3,100.00		\$3,100.00
Grizzly Model G8145 14" band saw	\$2,500.00		\$2,500.00
MHR Rockwell Tester	\$1,275.00		\$1,275.00
Grizzly Model G7948 20" drill press	\$500.00		\$500.00
Hobart Tigmate welder	\$1,500.00		\$1,500.00
Campbell/Hausfeld 80 gal air compressor	\$950.00		\$950.00
Campbell/Hausfeld 60 gal air compressor	\$550.00		\$550.00
MSC Arbor press	\$325.00		\$325.00
Cabinet sand blaster	\$200.00		\$200.00
Grizzly G0708 cabinet sand blaster	\$835.00		\$835.00
MM491D belt sander	\$175.00		\$175.00
3 1/2 ton lift crane	\$325.00		\$325.00
(2) hand trucks	\$225.00		\$225.00
Precision indexing head	\$900.00		\$900.00
20 gallon parts washer	\$150.00		\$150.00
3 1/2 gallon parts washer	\$50.00		\$50.00
Radius head set	\$1,200.00		\$1,200.00
20 ton press	\$600.00		\$600.00
Various mechanics tools	\$7,000.00		\$7,000.00
Various machinist tools	\$15,500.00		\$15,500.00
Yale 8000lb Forklift	\$10,000.00		\$10000.00

.338 Xtreme tactical rifle design intellectual property	unknown		\$0.00
XM-15 rifle design intellectual property	unknown		\$0.00
XM-10 rifle design intellectual property	unknown		\$0.00
M-38 rifle design intellectual property	unknown		\$0.00
Miscellaneous tools used in business	\$8,000.00		\$0.00
<b>Total</b>	<b>\$1,371,143.71</b>		<b>\$350,990.52</b>

**B. Debts**

As of the commencement of the case, the debts against the Debtor were:

1. Secured Claims

According to the books and records of the Debtor, as of the commencement of the above-captioned case, the secured claims against the Debtor were:

<u>Creditor</u>	<u>Security Interest</u>	<u>Collateral</u>	<u>Amount</u>
Absolute Machine Tools, Inc.	UCC-1 Financing Statements	Jonfors SV-48 Super vertical	\$85,000.00
Clearfield County Industrial Development	UCC-1 Financing Statement(s)	1 CHMER CW640HS Wire EDM Machine with Standard Accessories, Serial No. M07040264	\$42,009.25
United States of America, Internal Revenue Service	Federal tax liens	all assets of the Debtor	\$67,050.64
North Central Pennsylvania Regional Planning and Development Commission	UCC-1 Financing Statement	1 CNC Wire EDM Machine and 1 CNC Turning Center	\$121,188.00
Northwest Savings Bank	UCC-1 Financing Statements	all assets of the Debtor	(multiple obligations) \$710,958.51

Commonwealth of Pennsylvania, Department of Revenue	tax liens	all assets of the Debtor	(multiple tax liens) \$25,875.24
US Small Business Administration	UCC-1 Financing Statement	all assets of the Debtor	0.00
Vision Financial Group, Inc.	UCC-1 Financing Statement	Jonford SV48 CNC Mill	0.00
Wells Fargo Capital Finance, LLC	UCC-1 Financing Statement	all assets of the Debtor	0.00

**2. Unsecured Claims Entitled to Priority**

As of the commencement of the case, the Debtor's books and records reflect that unsecured claims entitled to priority under 11 U.S.C. § 507(a) (priority wage claims) totaled \$5,017.01, with \$5,017.01 due and owing pursuant to 11 U.S.C. § 507(a)(8) (priority tax obligations).

The priority wage claims are itemized on the Debtor's Schedule E, which is of record.

The Debtor sought and obtained the Court's approval to pay pre-petition wages totaling approximately \$5,017.01. As of the filing of the within Disclosure Statement, the Debtor avers that all priority wage claims pursuant to 11 U.S.C. § 507(a) have been paid in full pursuant to a prior Order of Court.

The books and records of the Debtor evidenced that no amounts were due and owing to the United States of America, Internal Revenue Service ("IRS"); the Commonwealth of Pennsylvania, Department of Revenue ("Revenue"); and the Commonwealth of Pennsylvania, Department of Labor and Industry ("L&I"). The IRS, Revenue and L&I all filed proofs of claim asserting that their respective claim consisted of either secured, priority or general unsecured portions.

**3. Unsecured Claims Not Entitled to Priority, Including Undersecured Claims**

The unsecured claims which are not entitled to priority against the Debtor, as evidenced by the books and records of the Debtor, are itemized on Schedule F, which is of record. The total scheduled amount of all such claims was \$205,236.10. This amount includes any claims the Debtor avers are not secured pursuant to 11 U.S.C. § 506 and any claims bi-furcated pursuant to 11 U.S.C. § 506. An addition \$118,637.80 in general unsecured claims not entitled to priority filed claims in the case bringing the pool of general unsecured claims not entitled to priority to approximately \$328,936.41 before any claim objections by the Debtor. The Debtor believes that at a minimum, approximately \$5,062.51 in this class of claims is objectionable.

**C. Executory Contracts and Unexpired Leases**

As of the commencement of the case, the Debtor was party to various unexpired leases and executory contracts pertaining to the operation of its business, as follows:

Other Party to Lease/Contract	Description
Allegheny Financial	lease of a horizontal machining center
Robert Zelenky	lease of former business location

\* every effort was made to ensure a complete and accurate list of executory contracts/leases. To the extent a counter party was omitted, the same is deemed included.

\*\* Absolute Machine Tools, Inc. filed a proof of claim indicating that the obligation owed by the Debtor for a Johnford SV-48 machining center was a lease. After reviewing the lease, the Debtor takes the position that the “lease agreement” is in fact a sales agreement and is treating it as such in the Plan.

**V. SIGNIFICANT POST-PETITION EVENTS**

The purpose of this section of the Disclosure Statement is to apprise creditors of significant post-petition events that affect the present status of the case potentially could affect the vote of a creditor on the Plan.

Exclusive of the matters discussed above, the most significant events occurred as a result of the lease with Robert and Tress Ann Eminhizer and the unilateral actions taken by the Eminhizers related to the same. Subsequent to the filing of the voluntary petition for relief, the Eminhizers willfully and intentionally violated the automatic stay in padlocking and otherwise preventing the Debtor from utilizing the manufacturing facility located on property owned by the Eminhizers. As a direct result of the Debtor not being able to access the business property, business operations came to a complete stop for nearly two (2) months, if not more. During this two (2) month period, the Debtor was required to expend substantial amounts in legal fees and costs in an effort to regain access to both the business location and its machinery and equipment ultimately prevailing over the Eminhizers.

Due to the length of time business operations were suspended as a direct result of the actions of the Eminhizers in preventing the Debtor access to its manufacturing facility and its equipment and machines, the Debtor lost a substantial amount of revenue as customers terminated and withdrew various purchase orders. With the loss of this income and profit, the Debtor struggled at the beginning of the case to “gain its footing” and fell behind on various post-petition obligations including but not limited to tax obligations. The Debtor has since recovered and obtained new business and future purchase orders which have allowed the Debtor to cure most, but not all post-petition defaults.



With the actions of the Eminhizers, the Debtor was required to relocate its operations to its current facility. Production is picking up with the Debtor seeking to diversify its manufacturing capabilities.

Through the efforts of counsel, the Debtor successfully brought suit against the Eminhizers resulting in a judgment in favor of the Debtor/Bankruptcy Estate in excess of \$350,000.00. The Eminhizers sought relief from the judgment resulting in a settlement agreement approved by the Court. As a result of the settlement agreement, the Debtor/Bankruptcy Estate realized a lump sum cash payment of \$215,000 which is being held in escrow to be disbursed to creditors in accordance with the Chapter 11 Plan.

Finally, the Debtor has also fell victim to the economy as several of its customers have refused to pay outstanding obligations owed to the Debtor. Management is of the position that the collectability of the accounts receivable of these entities is little to none and, in light of this, has changed its billing/invoicing structure in an effort to reduce similar situations in the future.

**VI. STATUS OF ASSETS AND LIABILITIES AS OF THE DRAFTING DATE OF PLAN**

**A. Assets**

Since the commencement of above-captioned case, the Debtor's accounts receivable has fluctuated throughout the case based on customer demand and payments by customers. Additionally, cash on hand, bank account balances, and the accounts receivable have fluctuated as the case has progressed.

**The Debtor's net cash flow as of May 31, 2017, was \$215,983.70.**

**YOU ARE ADVISED THAT, UNLESS SPECIFICALLY SET FORTH OTHERWISE, THE VALUATIONS PLACED ON THE ASSETS IDENTIFIED ABOVE ARE THE VALUES OF THE ASSETS AS OF THE COMMENCEMENT OF THE CASE IN THE OPINION OF THE DEBTOR, BASED ON ITS FAMILIARITY THEREWITH.**

**TO THE EXTENT ANY CREDITOR BELIEVES THAT KNOWLEDGE OF THE FAIR MARKET VALUE OF THE ASSETS AS OF THE COMMENCEMENT OF THE CASE IS REQUIRED FOR HIS/HER/ITS EVALUATION OF THE PLAN, AND HIS/HER/ITS VOTING THEREON, HE/SHE/IT SHOULD AND MAY OBTAIN AN INDEPENDENT APPRAISAL OF ALL OR ANY ASSETS AT ISSUE AT HIS/HER/ITS COST.**

Description	Value	Basis for Valuation (if other than Debtor's estimate)	Value Minus Liens
Northwest Savings Bank Payroll Account	\$686.20	Bank Statement	\$0.00
Northwest Savings Bank Materials Account	\$102.11	Bank Statement	\$0.00
Accounts receivable	\$32,851.75		\$32,851.75

Prepayment with Troy Industries	\$12,000.00		\$0.00
Pre-payment for various jobs that are to be completed	\$128,125.00		\$0.00
Inventory	\$127,510.64		\$16,112.00
Office Furniture and computer equipment	\$3,790.00		\$0.00
Doosan HP 5100 CNC Mill	\$80,000.00		\$0.00
Doosan HP 5100 CNC Mill	\$100,000.00		\$0.00
Doosan 2500 XLY Lathe	\$90,000.00		\$0.00
Jonford SL 300 CNC Lathe	\$20,000.00		\$0.00
Jonford SC48 CNC Mill	\$157,000.00		\$0.00
Jonford SV48 CNC Mill	\$60,000.00		\$0.00
CHMER CW640 HS Wire EDM	\$60,000.00		\$0.00
CHMER CW640 HS Wire EDM	\$60,000.00		\$0.00
Quincy QGD-25 25hp Screw air compressor	\$60,000.00		\$60,000.00
Quincy QGV-25hp Screw air compressor	\$60,000.00		\$60,000.00
Grizzly Model G9744Z2 10"x18" band saw	\$3,000.00		\$3,000.00
Clausing/Covel 10"x15" surface grinder	\$8,000.00		\$8,000.00
Grizzly Model G3621 16"x40" lathe	\$10,995.00		\$10,995.00
Grizzly Model G3617 Horiz/Vert Mill	\$3,100.00		\$3,100.00
Grizzly Model G8145 14" band saw	\$2,500.00		\$2,500.00
MHR Rockwell Tester	\$1,275.00		\$1,275.00
Grizzly Model G7948 20" drill press	\$500.00		\$500.00

Hobart Tigmate welder	\$1,500.00		\$1,500.00
Campbell/Hausfeld 80 gal air compressor	\$950.00		\$950.00
Campbell/Hausfeld 60 gal air compressor	\$550.00		\$550.00
MSC Arbor press	\$325.00		\$325.00
Cabinet sand blaster	\$200.00		\$200.00
Grizzly G0708 cabinet sand blaster	\$835.00		\$835.00
MM491D belt sander	\$175.00		\$175.00
3 1/2 ton lift crane	\$325.00		\$325.00
(2) hand trucks	\$225.00		\$225.00
Precision indexing head	\$900.00		\$900.00
20 gallon parts washer	\$150.00		\$150.00
3 1/2 gallon parts washer	\$50.00		\$50.00
Radius head set	\$1,200.00		\$1,200.00
20 ton press	\$600.00		\$600.00
Various mechanics tools	\$7,000.00		\$7,000.00
Various machinist tools	\$15,500.00		\$15,500.00
Yale 8000lb Forklift	\$10,000.00		\$10000.00
.338 Xtreme tactical rifle design intellectual property	unknown		\$0.00
XM-15 rifle design intellectual property	unknown		\$0.00
XM-10 rifle design intellectual property	unknown		\$0.00
M-38 rifle design intellectual property	unknown		\$0.00
Miscellaneous tools used in business	\$8,000.00		\$0.00
<b>Total</b>	<b>\$1,267,140.61</b>		<b>\$246,987.42</b>

\*\* assumes a 100% liquidation value of the Debtor's assets (computer equipment, office furniture, computer software, machinery, etc.) without taking consideration the costs of sale.

**B. Debts**

1. Secured Claims

The secured claims set forth above have not changed, except as follows:

A. The Commonwealth of Pennsylvania, Department of Labor and Industry filed a secured claim arising out of various tax liens in the amount of \$27,681.27.

B. Notwithstanding tax liens remaining of record in the Office of the Prothonotary for Clearfield County, Pennsylvania, no secured tax obligations were due and owing the Commonwealth of Pennsylvania, Department of Revenue according to its duly filed proof of claim.

2. Unsecured Claims Entitled to Priority

This is an area of significant change since the commencement of the case.

Since the case was commenced, the Debtor has, with the approval of the Court, retained legal counsel. The claims of any professionals retained by the Bankruptcy Estate are entitled to administrative priority pursuant to 11 U.S.C. § 507(a)(2) and did not exist at the commencement of the case. The projected amount of these claims are set forth in the summary of the Plan of Reorganization, below.

Entity	Estimated amount of administrative claim
Spence, Custer, Saylor, Wolfe & Rose, LLC (Debtor's Counsel)	\$85,000.00
<b>Total</b>	<b>\$85,000.00</b>

Additionally, to the extent the Debtor seeks Court approval for the retention of an accountant, any fees due and owing, subject to Court approval of the same after notice and hearing would be deemed an administrative priority claim. As of the filing of the Disclosure Statement, no accountant has been retained.

The majority of the scheduled priority claims constituted employee wage claims entitled to priority under 11 U.S.C. § 507(a)(4). The Bankruptcy Court previously authorized the Debtor

to pay these claims. As of the date of the filing of the Disclosure Statement, no employee wages, benefits, etc. remain outstanding.

The Debtor owes approximately \$94,731.91 in various taxes to various governmental units. The tax liabilities are entitled to priority payment status pursuant to Section 507(a)(8) of the Bankruptcy Code. The Debtor has not remained current on its post-petition tax obligations due to the aforementioned temporary cessation of business. According to the administrative claims filed by the United States of America, Internal Revenue Service and, the Commonwealth of Pennsylvania, Department of Labor and Industry, the Debtor owes approximately \$27,474.87 in post-petition administrative claims. It is the intention of the Debtor/Reorganized Debtor to remit payment in full as soon as practicable from the Effective Date of the Plan.

### **C. Executory Contracts and Unexpired Leases**

Since the filing of the case, the Debtor not sought Court authority to reject specific executory contracts/leases. The Debtor proposed to do so through the Chapter 11 plan which, unfortunately will more likely than not result in claims for rejection damages.

## **VII. COMPARISON WITH CHAPTER 7 CONVERSION/LIQUIDATION**

It is submitted that the Chapter 11 Plan of Reorganization Dated August 15, 2017, produces a substantially greater return to creditors than a Chapter 7 or other liquidation. In short, in a Chapter 7 or other forced liquidation, it is projected that the only creditors to receive any payment whatsoever would be counsel for the Debtor, with those taxing bodies asserting administrative claims receiving payment as well as a portion of those claimants asserting priority status (various taxes) then receiving payment. It is submitted that while it is more likely than not that Debtor's counsel would receive payment in full, after the payment of Chapter 7 trustee commission, trustee counsel fees, and any administrative costs of the estate, including but not limited to income tax liability and auctioneer fees and costs of sale should a trustee decide to liquidate secured assets, that the priority tax creditors would not receive payment in full, candidly, it is not even believed that the taxing bodies would receive a 1/2 payment on their respective claims. In a Chapter 7 liquidation, the Debtor avers that unsecured creditors would receive little to no distribution whatsoever.

More specifically, in a typical liquidation, a trustee would be appointed to liquidate the assets of the estate. In theory, a trustee could continue to operate the Debtor's business during the pendency of the Chapter 7 case. However, it is virtually unheard of in the Western District of Pennsylvania for a trustee to operate a business, particularly a business such as this, a specialized firearm and accessory manufacturing business. Thus, the business would almost certainly cease operations.

In this case, more likely than not, in light of the substantial amount of secured claims asserting a security interest in all of the Debtor's assets, a trustee would merely abandon those assets back to the secured creditors leaving, as the only source of funds available for creditors, the proceeds of \$215,000 received as a result of the Court approved settlement with the Eminhizers. Should a trustee attempt to sell the secured assets, whether consensually by negotiating a carve-out with the secured lenders guaranteeing funds for creditors or, an auction type sale with the hopes of generating enough sale proceeds to cover all costs of sale as well as pay all secured creditors in full it is asserted that any recovery would not be as substantial as the repayment the Debtor is proposing to creditors, including general unsecured creditors.

With the type of assets owned by the Debtor, it is averred that a trustee would seek to retain an auctioneer to market and assist in a sale of the assets. If history is any indication, forced sales almost always generate sale prices far below market value; an auction of these types of assets would never bring the values/dollar amounts listed by the Debtor. A trustee would be lucky to realize 20-25%, if not less, of the total value of the assets. With many pieces of equipment being specialized, it is averred that the market for these machines is relatively small. With an auction sale, costs of sale need to be accounted for including but not limited to auctioneer commission and costs, advertising costs, trustee and trustee counsel fees associated with bringing forth such a motion as well as the resulting tax liability to the Bankruptcy Estate. In addition, the trustee/Bankruptcy Estate would incur costs related to the storage of these items pending any type of sale. This is especially true since the Debtor does not own the real estate from which it operates. It is averred that until such time as a sale were to occur, the trustee would be required to continue to remit monthly rental payments on the business location and, if no payments were made, the landlord would have a Chapter 7 administrative expense that would be paid prior to distributions to creditors. The associated lease payments/expense would result in an administrative claim further diminishing the return to creditors as its payment would occur before both priority and non-priority unsecured claims.

Candidly, in light of the "book value" of the Debtor's assets, it is foreseeable that a trustee, in all likelihood, would conduct a liquidation of available assets to achieve some type, albeit minimal, recovery for the benefit of the administrative and priority creditors.

In any scenario in which the trustee sells any Estate assets, the Bankruptcy Estate itself will incur tax liability which will require the retention and payment of an accountant for the Bankruptcy Estate and, more likely than not, require the payment of Federal income tax liability all of which further reduce the funds that would be available for distribution to creditors.

If past experience is any indication, the trustee will have a difficult time collecting the then outstanding accounts receivable. If the trustee is lucky, he or she more likely than not will see a 15-20% recovery on accounts receivable.

Even if the Trustee were to have the ability to collect on accounts receivable, Northwest Bank holds an "all asset" security interest in the Debtor's assets which results in the accounts receivable being collateral for the various obligations held by Northwest Bank which total approximately \$710,958.51. Theoretically, after the claim of Northwest Bank, both the IRS and the Pennsylvania Department of Labor and Industry hold secured claims against all assets of the Debtor further diminishing the ability of the trustee to recover sufficient funds to allow for a distribution to unsecured creditors.

As such, the Debtor believes that, in a liquidation, the following scenario would unfold. First, the trustee would more likely than abandon the assets back to the secured creditors resulting in the only funds available for distribution being the settlement proceeds of \$215,000.00. In the event the trustee decides to attempt to liquidate the assets, either through a "carve out" with the secured creditors assuring some funds for creditors or, in the hopes that sale proceeds are sufficient to pay off the secured lenders, it is averred that there will be insufficient funds to provide any distribution to general unsecured creditors in light of the administrative and priority claims in the case. Assuming the trustee sells or auctions off the Debtor's assets, the first entity to be paid would be the auctioneer for his/her/its commission and costs. Second, out of any liquidation proceeds, if any, the trustee's compensation would be paid, then, any fees and costs of the trustee's counsel. Then, due to a sale of assets, the Bankruptcy Estate would be required to retain the services of an accountant which inherently

brings additional costs as well as potential tax liabilities. In the event that any proceeds remain, those funds would first be paid to those entities holding administrative claims. The Debtor does not believe that there would be sufficient proceeds remaining from an auction/liquidation that would result in a payment in full to priority creditors (i.e. government entities for taxes) let alone any distribution to general unsecured creditors.

Based on the foregoing, the Debtor believes that the Chapter 7 administrative claims as well as Chapter 11 administrative claims (i.e Debtor's counsel fees) would receive payment in full. The Debtor believes that administrative claims may receive payment in full in light of being owed approximately \$27, 474.87. It is further averred that priority unsecured creditors would not receive payment in full; receiving less than one fourth (1/4) of what is due and owing. The Chapter 7 trustee would receive payment in full on his/her statutorily allowed trustee's compensation/commission as well as payment in full for the trustee's counsel fees and costs as these costs are typically paid first in a Chapter 7 distribution. In the event of a liquidation, the auctioneer would be paid in full for his/her/its commission and costs as these costs are deducted directly from the sale proceeds. The Debtor further avers that it is possible, based on the total amount of tax liability of the Bankruptcy Estate that the Federal income tax liability of the Bankruptcy Estate will receive payment in full however, this is uncertain depending on how much that tax liability ends up being after the liquidation of assets. If there are sufficient funds available after the payment of the foregoing, the Chapter 7 trustee may make a distribution to administrative and minimal distribution to priority creditors (taxing bodies) in approximately 18-24 months after conversion as opposed to the proposal made by the Debtor which provides that administrative and priority creditors will receive payment in full within approximately thirty (30) days from confirmation of its Chapter 11 plan. **In short, in a liquidation, the only creditors which the Debtor forecasts to receive any significant distribution, are the administrative claims (Debtor's counsel fees, accountant fees, auctioneer fees, trustee commission/compensation, and trustee's counsel's fees and costs)** and potentially a small distribution to priority unsecured creditors (tax claims).

Under the proposed Chapter 11 Plan, however, the Debtor is proposing to pay the total amount of approximately \$213,966.16 to general unsecured creditors over time resulting in a distribution to creditors of approximately **65%** of their allowed claim. This is a distribution that candidly, the Debtor believes would never happen in a Chapter 7 liquidation. The Debtor's Chapter 11 plan provides for the payment in full of all administrative and priority claims within approximately forty-five (45) days of confirmation of the plan, not the 18-24 months for a distribution in a Chapter 7, and allow for a substantial distribution to general unsecured creditors over time. Under the Plan, the Debtor is eliminating the additional costs associated with a liquidation and a Chapter 7 trustee including but not limited to trustee's compensation/commission on the gross amount of the estate recovered; trustee's counsel fees and costs; costs of an auctioneer, if any; costs for the retention of an accountant for the estate; as well as any tax liability resulting from a liquidation.

Moreover, even assuming that somehow funds would be available for distribution to administrative and priority creditors (taxing bodies) in a Chapter 7 case, those distributions would not be made until the trustee liquidated all assets and the Court approved the Final Accounting and Distribution Schedules, which, given the nature of the assets in this case, is projected to take at least six (6) months depending on the Trustee's ability to liquidate assets. If the Trustee liquidates assets, expect this Court approval to take 18-24 months before any distribution can occur. Further, any amounts recovered by the trustee would be reduced by the trustee's commission under 11 U.S.C. Section 326, counsel fees, and costs incurred. Under the Plan however, distributions commence within a relatively short period of time after the Effective

Date, at least as it applies to both administrative and priority claims, thereby allowing creditors to commence receiving payments much sooner than they would in a Chapter 7.

<b>Liquidation</b>	<b>Reorganization/Plan</b>
Liquidation of Plan Disbursement Fund account in the amount of \$215,000.00.	Total amount to be paid into Plan for general unsecured creditors as determined by schedules: \$ 213,966.16.
Estimated amount of administrative claims (counsel fees, trustee fees, commission, accountant, administrative tax claims, etc.) - \$136,474.87	Estimated amount of administrative claims (Debtor's counsel fees) - \$85,000.00  Post-petition administrative claims total \$27,474.87
Estimated Tax liability of Bankruptcy Estate (12% liability)  \$0 if no sale of assets	Payment to priority creditors \$95,019.25
Estimated distribution to priority creditors (taxing bodies) in best case scenario would not result in payment in full  \$78,525.13	
<b>NO FUNDS FOR GENERAL UNSECURED CREDITORS</b>	<b>Estimated distribution to unsecured creditors under Plan</b>  <b>\$214,000</b>  <b>representing an approximate 65% distribution to general unsecured creditors</b>

If the trustee were to attempt to liquidate the Debtor's assets, additional costs associated with a sale, including auctioneer commission, advertising and costs of sale along with the need to retain an accountant and potentially pay income tax would be subtracted from any proceeds prior to distribution to creditors. Further, absent a "carve out" agreement between the trustee and secured creditors, the sale would have to generate sufficient funds to pay off all secured creditors, which total approximately \$1,019,339.00. The trustee would have to receive almost 100% of the scheduled value of the assets to see a return to creditors which is unheard of. At best, the trustee can anticipate a 20-25% recovery on assets valued at approximately \$1,234,120.19 or \$308,530.05 at a 25% recovery. Clearly, this would result in little or no distribution to unsecured creditors.



**Accordingly, it is submitted that all creditors will receive a greater return and sooner under the Plan than they would in a Chapter 7 liquidation.**

**VIII. FEASIBILITY OF THE PLAN**

Feasibility involves an analysis of whether the Debtor is likely to be able to comply with the terms of the Plan and fulfill its obligations thereunder. In order to meet the "feasibility" requirement, the Plan must offer a reasonable assurance of success. Success need not be guaranteed. The mere possibility of failure does not render a plan unfeasible.

It is submitted that the Plan, as proposed, is feasible.

As this Plan is predicated on the Debtor's continued operation and future income to fund said Plan, the Debtor is attaching a proposed budget projection for the next twelve (12) months of the Debtor's future financial performance. Based on the Debtor's recent income and expenses being relatively in line with its projections, it is respectfully submitted that the Plan is feasible.

The Debtor is proposing to fund its distribution to creditors, administrative, priority and general unsecured creditors from ongoing operations. **The sources of Plan funding are as follows:**

- A. Continued operations of the Debtor; and
- B. Counsel for the Debtor is currently in possession of \$215,000.00 paid to the Debtor/Bankruptcy Estate as part of the Court approved settlement with the Eminhizers which will be used as plan funding which will be disbursed to creditors in accordance with the Chapter 11 plan first to administrative claimants then to priority general unsecured creditors. The Debtor avers that from these funds, all administrative and priority claims will be paid in full on the Effective Date or as soon as practical.

**IX. CONCLUSION**

This Disclosure Statement has been prepared on behalf of the Debtor in accordance with 11 U.S.C. § 1125. The purpose of this Disclosure Statement is to provide creditors and other parties in interest with information sufficient to allow such parties to make an informed decision regarding the advisability of voting "for" or "against" the proposed Plan. All creditors and parties in interest should carefully review the schedules, pleadings, monthly operating reports, the Plan and this Disclosure Statement to determine whether their best interests and those of similarly situated creditors will be best served by confirmation of the Plan. If, after reviewing the relevant information, questions remain as to the terms of the Plan and/or the effect of said Plan, parties in interest are advised to contact counsel of his/her/its choosing having knowledge of bankruptcy matters.

Respectfully Submitted,

Spence, Custer, Saylor, Wolfe & Rose, LLC

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