

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE: BURKEEN TRUCKING COMPANY, INC. CASE NO. 16-11822JLC
DEBTOR. CHAPTER 11

**UNITED STATES TRUSTEE'S OBJECTION TO
DISCLOSURE STATEMENT**

COMES NOW Samuel K. Crocker, United States Trustee for Region 8 ("U.S. Trustee"), and hereby objects to the Disclosure Statement filed by Burkeen Trucking Company, Inc. ("Debtor"). The hearing on the Disclosure Statement is scheduled to be conducted on May 25, 2017. In support of his objection, the U.S. Trustee respectfully states and represents as follows:

INTRODUCTION

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.
2. Under 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee is charged with monitoring plans and disclosure statements filed under chapter 11 of title 11 and filing with the court "comments with respect to such plans and disclosure statements."
3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard with regard to this objection.

BACKGROUND

4. On August 31, 2016, Debtor filed a Chapter 11 voluntary petition under Title 11 of the United States Code ("Bankruptcy Code"). The Debtor is a corporation engaged in the business of over-the-road trucking. Its sole shareholder is Billy J. Burkeen, who has filed a personal Chapter 13 case (*see*, Case No. 16-12066).

5. The Debtor filed a Disclosure Statement and a Plan of Reorganization on April 12, 2017. (Dkt. Nos. 115-116).

6. The Court's Notice of Hearing on the Disclosure Statement set the deadline for objections, to "any time prior to the actual approval of the disclosure statement." This Objection is timely filed.

LAW AND ARGUMENT

7. Section 1125 of the Bankruptcy Code governs the necessity and adequacy of disclosure statements. Solicitation of votes is prohibited prior to court approval of a written disclosure statement, after notice and a hearing, which contains "adequate information." *See* 11 U.S.C. § 1125(b).

8. Adequate information is defined as being:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a reasonable hypothetical investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1).

9. "Adequate information" under section 1125 is "determined by the facts and circumstances of each case." *See, Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) (citing H.R. Rep. No. 595, 97th Cong., 2d Sess. 266 (1977)). The "adequate information" requirement is designed to help creditors in their negotiations with debtors over the plan. *See, Century Glove, Inc. v. First American Bank*, 860 F.2d 94 (3d Cir. 1988).

10. The primary function of a disclosure statement is to provide creditors with information necessary to determine whether to accept or reject a debtor's plan of reorganization.

In re Monnier Bros., 755 F.2d 1336, 1342 (8th Cir. 1985).

11. Courts have developed a non-exhaustive list of the type of information that should be addressed in a Disclosure Statement:

1. The circumstances that gave rise to the filing of the bankruptcy petition;
2. A complete description of the available assets and their value;
3. The anticipated future of the debtor;
4. The source of the information provided in the disclosure statement;
5. A disclaimer, which typically indicates that no statements of information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
6. The condition and performance of the debtor while in chapter 11;
7. Information regarding claims against the estate;
8. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
9. The accounting and valuation methods used to produce the financial information in the disclosure statement;
10. Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors and/or officers of the debtor;
11. A summary of the plan of reorganization;
12. An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
13. The collectability of any accounts receivable;
14. Any financial information, valuations or *pro forma* projection that would be relevant to creditors' determinations of whether to accept or reject the plan;
15. Information relevant to the risks being taken by the creditors and interest holders;
16. The actual or projected value that can be obtained from avoidable transfers;
17. The existence, likelihood and possible success of nonbankruptcy litigation;
18. The tax consequences of the plan; and,
19. The relationship of the debtor with affiliates.

In re Scioto Valley Mortgage Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988)

12. The Debtor's Disclosure Statement does not contain "adequate information," as that term is defined in 11 U.S.C. §1125(a), regarding the Debtor's financial affairs, and the U.S. Trustee objects to the adequacy of the Debtor's Disclosure Statement particularly on grounds including but not limited to:

a. The Disclosure Statement does not clearly state the condition and performance of the Debtor while in chapter 11, and in fact states that the Debtor has had no significant events to take place during the bankruptcy case. This overlooks, *inter alia*, the continuing dispute with the State of Tennessee over the failure to maintain Workers Compensation coverage, and the difficulties obtaining adequate insurance coverage resulting in the fleet being parked until certificates of adequate insurance could be obtained.

b. Neither does the Disclosure Statement articulate challenges for the future of the Debtor, particularly given the fact that the Debtor's principal and sole shareholder, Billy J. Burkeen, is himself in a Chapter 13 case.

c. Moreover, the feasibility of the proposed Plan is not adequately described by stating that the Debtor believes the Plan to be feasible; especially so since the March Operating Report shows the Debtor operating at a loss.

d. The Disclosure Statement does not contain sufficient projected income and expenses to allow creditors to determine the reasonableness of the Plan. Debtor should provide, at a minimum, two years of such projected information. Future expenses should factor in payments called for under the Plan, specifically setting out payments to administrative, priority, secured creditors, and unsecured creditors. The projections should be accompanied by a statement setting forth the underlying assumptions indulged in by the Debtor in developing the projections.

e. The Disclosure Statement does not clearly describe the future operations of the Debtor and fails to provide adequate information about how the anticipated future operations of Debtor's business will satisfy creditors.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, U.S. Trustee prays that:

1. The Court not approve the Disclosure Statement until or unless the issues raised herein are resolved.
2. The U.S. Trustee be granted a hearing on this Objection.
3. The U.S. Trustee be granted such additional general relief to which U.S. Trustee may be entitled.

SAMUEL K. CROCKER
UNITED STATES TRUSTEE, REGION 8

/s/ Karen P. Dennis, Trial Attorney (#06204)
United States Department of Justice
Office of the United States Trustee
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CERTIFICATE OF SERVICE

I, Karen P. Dennis, hereby certify this 24th day of May, 2017, service of a true and accurate copy of the foregoing by electronic means and/or via regular U.S. Mail, postage prepaid, to the following persons in accordance with Guideline 18B of the Amended Guidelines for Electronic Filing.

/s/ Karen P. Dennis, Trial Attorney (#06204)

Debtor
Debtor's Attorney
Creditors requesting electronic notice