

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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IN RE:

AMERICAN CONTAINER, INC.,

Case No. 16-26399-PJD

Debtor.

Chapter 11

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**DISCLOSURE STATEMENT**

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COME NOW American Container, Inc., as debtor-in-possession, pursuant to Section 1125 of the Bankruptcy Code, and for its Disclosure Statement would respectfully show the following:

**I. INTRODUCTION**

The purpose of this Disclosure Statement is to provide parties asserting Claims against the Debtor with information regarding the treatment of those Claims under the Plan. This Disclosure Statement provides parties whose Claims or Interests are impaired under the Plan with adequate information to make an informed and prudent judgment when voting on the Plan. The Schedules and the Monthly Operating Reports filed by Debtor are incorporated by reference into this Disclosure Statement. Interested parties are encouraged to review these schedules and reports in connection with their consideration of the Plan.

This Disclosure Statement is not meant to take the place of the Plan. Any inconsistency between the Plan and this Disclosure Statement, the Schedules or Monthly Operating Reports shall be resolved in favor of the Plan. Claimants are encouraged to consult with their own attorneys regarding the Plan and Disclosure Statement.

The terms and definitions set forth in Article 1 of the Plan are also incorporated herein by reference.

This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan, and nothing contained in it shall constitute an admission of any fact or liability by any party, or be admissible in any proceeding involving the Debtor or any other party, except for those proceedings directly concerning the validity, enforceability, or construction of the Plan.

This Disclosure Statement should not be deemed as providing any advice regarding the tax implications or other legal effects of the Plan upon holder of Claims or Interests.

Except as set forth in this Disclosure Statement, the Bankruptcy Court has authorized no representations concerning the Debtor or the value of its assets. In voting on the Plan, you should not rely upon any representations or inducements made to secure acceptance or rejection of the Plan other than those contained in this Disclosure Statement and Plan.

The statements contained in this Disclosure Statement are made as of the date hereof, unless another time is specified herein. Under no circumstances does delivery of this Disclosure Statement imply that there has been no change in the facts set forth herein since the date the Disclosure Statement was compiled.

The information contained herein has been provided by the Debtor and is believed to be reliable. Counsel for the Debtor has not performed an audit to verify the accuracy of the information contained herein and does not warrant or guarantee that there are no inaccuracies.

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

## **II. VOTING ON AND CONFIRMATION OF THE PLAN**

The confirmation of a plan of reorganization or liquidation is the method by which the claims of creditors against a debtor are satisfied. Whether a plan is confirmed and implemented depends on the acceptance of creditors and approval of the Bankruptcy Court.

**Your vote is important.** As a general rule under Section 1126 of the Bankruptcy Code, an impaired class is deemed to have accepted the Plan if votes representing at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims voting in that Class have accepted the Plan. The Claims of claimants who fail to vote on the Plan are not counted in the determination of whether the Plan has been

accepted or rejected. If the Court determines that the rejection or acceptance of any claimant was not in good faith, then the vote will not be counted.

Pursuant to Section 1129(a)(10) of the Bankruptcy Code, at least one (1) impaired class of claims must accept the plan. In addition, unless the Plan is unanimously accepted by the impaired claimants, in order to confirm the Plan, the Bankruptcy Court must independently determine that the Plan provides each claimant with a recovery which, as of the Effective Date, is at least equal to the distribution such claimant would have received if the Debtor was instead liquidated under Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan meets this requirement.

Included with this Disclosure Statement is a ballot for your acceptance or rejection of the Plan. If you hold a Voting Claim and you wish to vote to accept or reject the Plan after reviewing this Disclosure Statement and Plan, please:

1. use only the ballot form enclosed with this Disclosure Statement;
2. indicate your vote on the enclosed ballot;
3. date, sign and mail the ballot to:

Russell W. Savory  
Beard & Savory, PLLC  
119 South Main Street, Suite 500  
Memphis, TN 38103

The Debtor, as proponent of the Plan, believes that the Plan provides the greatest possible recovery to all claimants. The Debtor believes that acceptance of the Plan is in the best interest of all claimants and recommends voting for the Plan.

### **III. HISTORY OF DEBTOR AND EVENTS LEADING TO FILING**

American Container, Inc., (“American”) is a Tennessee corporation that owns and operates a corrugated container manufacturing facility in Olive Branch, Mississippi. American was formed in 1991. In 2015 American began experiencing serious financial difficulties primarily due to the loss of customers to foreign suppliers. The resulting decrease in revenue and cash flow made it difficult to pay vendors, resulting in varying degrees of collection activity, including a judgment entered against American. American filed for Chapter 11 bankruptcy protection on July 15, 2016 in order to protect its business and assets, and to provide for the orderly payment of claims.

### **IV. THE CHAPTER 11 PROCEEDINGS**

American obtained approval for post-petition financing from Sterling Commercial Credit, LLC, which it used to pay a modest amount of operational and administrative expenses. Also early in the case, Renasant Bank filed a Motion for Relief from Automatic Stay, and an Agreed Order was negotiated providing, among other things, for periodic payments on the bank's loan. These payments have been made directly by American's sole tenant, D&D Packaging, Inc.

In January, 2017, the Debtor obtained an Order rejecting an equipment lease with TCF Equipment Finance resulting in the waiver of any deficiency claim. Also in January, American, with court approval, auctioned surplus vehicles and trailers, generating \$18,000 in net proceeds paid to Sterling Commercial Credit, LLC on its secured debt.

American obtained two Orders extending the time for the filing of a Plan. The Plan was filed in compliance with the Court's final deadline of April 21. All required Schedules and Operating Reports have been filed.

**V. SUMMARY OF POST-PETITION OPERATIONS**

At the time American filed this Chapter 11 case it was essentially out of money and unable to pay or make deposits for insurance covering its employees and building. One of its secured creditors, U.S. Corrugated, had taken steps to enforce its security interest in accounts receivable and equipment. In order to avoid forfeiture of its business assets, American enlisted D&D Packaging, Inc. ("D&D") to acquire the U.S. Corrugated loan and security interests. D&D is a corporation owned by David M. Harris, who is a guarantor of the SBA guaranteed loan owed to Renasant Bank, and controls an LLC holding a 10% non-controlling interest in American. Additionally, in order to preserve the remaining value of its business assets and retain as many employees as possible, American leased its business premises to D&D. D&D, in turn, has paid all necessary adequate protection payments to Renasant Bank and during the case has taken no action to enforce or collect on the secured debt that American owes to it.

American has negotiated an Asset Purchase Agreement for substantially all of its non-leased equipment with D&D and has sought court approval of certain sale procedures, set out in the Plan as the Sale Process. The goal of the Sale Process is to assure that American obtains the highest price possible for the property in connection with the sale.

**VI. OTHER LITIGATION AND POTENTIAL RECOVERY OF PREFERENCES OR VOIDABLE TRANSFERS**

There is no litigation involving the Debtor.

**VII. THE PLAN OF REORGANIZATION**

The following is a summary of the Plan.

**(i) *Unclassified Claims.***

1. **Administrative Expense Claims.** Allowed Administrative claims shall be paid in

cash, in full on the Effective Date of the Plan. Included in this class are the allowed attorneys' fees incurred by the Debtor. Any United States Trustee Quarterly Fees under 28 U.S.C. § 1930(a)(6) due and owing or assessable prior to confirmation shall be paid in full on the Effective Date of the Plan.

**4.2 Priority Tax Claims.** The Internal Revenue Service and Mississippi Department of Revenue have filed Priority Tax Claims in the respective amounts of \$21,324.50 and \$2,644.29. These claims shall be paid in 48 equal monthly installments amortized based on 4% interest. These claimants are deemed to be impaired.

**(ii) Classified Claims**

**4.3 Class 1: Prepetition Secured Claim of Sterling Commercial Credit, LLC.**

Consists of the unpaid balance due to Sterling Commercial Credit, LLC, which is secured by a duly perfected first priority security interest on all personal property of the Debtor, excluding the property securing the Claims of creditors in Classes 2, 3, 4, 5, 6 & 7.

The foregoing claim shall be satisfied in full on or before the Effective Date of the Plan by means of the Sale Process. This claimant is deemed to be unimpaired.

**Class 2: Prepetition Secured Claim of Corrugated Equipment Leasing.**

Consists of the unpaid balance due to Corrugated Equipment Leasing which is secured by a duly perfected first priority security interest on a Tranpac Strapper with bundle squarer. This claim will be paid based on the fair market value of the collateral to be determined prior to the Confirmation Hearing in deferred monthly installment payments amortized over 60 months at 5% interest. After completion of all such payments, the Debtor shall convey title in the collateral to D&D Packaging, Inc. or its designee. Class 2 is impaired.

**Class 3: Prepetition Secured Claim of Corrugated Equipment Leasing.**

Consists of the unpaid balance due to Corrugated Equipment Leasing which is secured by a duly perfected first priority security interest on a Bundle Tyer. This claim will be paid based on the fair market value of the collateral to be determined prior to the Confirmation Hearing in deferred monthly installment payments amortized over 60 months at 5% interest. After completion of all such payments, the Debtor shall convey title in the collateral to D&D Packaging, Inc. or its designee. Class 3 is impaired.

**Class 4: Prepetition Secured Claim of D&D Packaging, Inc.**

Consists of the unpaid balance due to D&D Packaging which is secured by a duly perfected second priority security interest in all personal property of the



Debtor and a second priority Deed of Trust on Debtor's real estate. The foregoing claim shall be satisfied in full by means of the sale of the personal property in the Sale Process and consummation of its purchase of Debtor's real estate. Class 4 is deemed to be unimpaired.

**Class 5: Prepetition Secured Claim of De Lage Landen Financial Services, Inc.**

Consists of the unpaid balance due to De Lage Landen Financial Services, Inc. which is secured by a duly perfected security interest in two Toyota forklifts. This claim will be paid a total of \$9,000 in deferred monthly installment payments amortized over 60 months at 5% interest. After completion of all such payments, the Debtor shall convey title in the collateral to D&D Packaging, Inc. or its designee. Class 5 is impaired.

**Class 6: Prepetition Secured Claim of Leaf Capital Funding, LLC.**

Consists of the unpaid balance due to Leaf Capital Funding, LLC, which is secured by a duly perfected security interest in lighting equipment located in the Debtor's industrial property. This claim will be paid based on the fair market value of the collateral to be determined prior to the Confirmation Hearing in deferred monthly installment payments amortized over 60 months at 5% interest. After completion of all such payments, the Debtor shall convey title in the collateral to D&D Packaging, Inc. or its designee. Class 6 is impaired.

**Class 7: Prepetition Secured Claim of Renasant Bank.**

Consists of the unpaid balance due to Renasant Bank on an Small Business Administration guaranteed loan which is secured by a first priority Deed of Trust and

Assignment of Rents on Debtor's real estate (the "Renasant Loan"). The Renasant Loan is guaranteed by David M. Harris, Mary B. Harris, Randy H. McCormick, Steve M. Harris and Yolanda G. Harris. Renasant Bank has filed a secured claim in the amount of \$2,111,008.36. The arrearages on the Renasant Loan total approximately \$232,850.00.

The Debtor shall cure the arrearages on the SBA Guaranteed Loan on or before the Effective Date of the Plan by means of direct cash payment from D&D Packaging, Inc., in consideration of and pursuant to a Lease Purchase Agreement between the Debtor and D&D for the subject real estate. Upon the cure of such arrearages, the original maturity date of the Renasant Loan shall be reinstated. Thereafter, the Renasant Loan will be paid in accordance with its existing contractual terms until paid in full. Class 7 is deemed to be unimpaired.

**Class 8: Unsecured Claims of Creditors Not Entitled to Priority.**

Allowed Unsecured Non-priority Claims are not secured by property of the estate and are

not entitled to priority under § 507(a) of the Code. Unsecured claims will be paid a pro rata distribution from available funds of the Debtor remaining after payment of all other amounts pursuant to the Plan. Class 7 is impaired.

**Class 9: Interests of the Debtor.** Consists of the equity interests in the Debtor. Upon disbursement of all amounts pursuant to the Plan, the equity interests in the Debtor shall be canceled and the Debtor shall be dissolved.

**Means for Implementation of Plan.**

The Plan shall be implemented through a combination of the sale of the Debtor's equipment in the Sale Process, the lease and sale of Debtor's real estate and payments made to or behalf of the Debtor by D&D Packaging, Inc., and the proceeds and income derived therefrom.

**Post-Confirmation Management of the Reorganized Debtor**

The Debtor shall be managed by its existing president, Steve Harris, who shall serve as disbursing agent for all amounts to be paid pursuant to the Plan after confirmation.

**VIII. LIQUIDATION ANALYSIS**

Attached as Exhibit A hereto is an analysis of the expected distribution pursuant to a hypothetical Chapter 7 liquidation. The amounts of secured and unsecured claims are reflected in the Schedules filed by Debtor, unless a claim has been filed by a creditor, in which case the claim amount is used. The values assigned to specific properties are estimates of the Debtor and based on the best information available. Formal appraisals have not been obtained. This analysis is subject to change based on the actual price obtained for property and costs of sale, the outcome of the claims allowance process, and applications for administrative claims.

**IX. CONFIRMATION PROCESS**

Notwithstanding acceptance of the Plan by Classes of Claimants, in order to confirm the Plan the Bankruptcy Court must independently determine that the Plan is in

the best interest of all claimants. The “best interest” test requires that the Court find that the Plan provides each member of each impaired Class with a recover that is at least equal to the value of the distribution each Claimant would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. The Debtor believes that the Plan satisfies this test.

The Debtor believes that the Plan is in the best interest of the Claimants. In a Chapter 7 proceeding, a Chapter 7 trustee would be appointed to liquidate the Debtor's assets. There is no guarantee that the trustee would be able to sell the Debtor's assets for the full value listed in the schedules. The Chapter 7 trustee would be entitled to receive a commission equal to 25% of the first \$5,000 disbursed, 10% of the next \$45,000 disbursed, 5% of the next \$950,000 and 3% of the balance. Further, a Chapter 7 trustee would retain professionals, including attorneys and accountants, in order to resolve objections to claims and other disputes. Both the Chapter 7 trustee and professionals retained by the Chapter 7 trustee would require time to familiarize themselves with this case and would accrue fees treated as administrative expenses. The Debtor believes that such a process would result in substantial duplication of effort and expenses incurred during this Chapter 11 case, as well as delay to the Claimants. Thus, the appointment of a Chapter 7 trustee would increase the administrative expenses in this case and diminish the funds available for distribution.

The Debtor believes that the Plan provides the greatest possible recovery to the Claimants and that acceptance of the Plan is in the best interest of the Claimants and recommends that you vote to accept the Plan.

Respectfully submitted,

BEARD & SAVORY, PLLC

/s/ Russell W. Savory

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