

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE

HOOPER TIMBER COMPANY, LLC,

Case No. 16-29970-GWE

Debtor.

Chapter 11

DISCLOSURE STATEMENT

Comes now Hooper Timber Company, LLC, and respectfully submits the Disclosure Statement to its Small Business Plan of Reorganization (the “Plan”) pursuant to 11 U.S.C. §1125.

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 Statement of Financial Affairs filed or to be filed by the Debtor, and the Monthly Operating Reports to be filed by Debtor are incorporated by reference into this Disclosure Statement as if set forth fully herein. 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 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.

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 were 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 enclosed with this Disclosure Statement;
2. indicate your vote on the enclosed ballot;
3. date, sign and mail the ballot to Russell W. Savory, 119 South Main Street, Suite 500, Memphis, Tennessee 38103.

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

III. HISTORY OF THE DEBTOR

Hooper Timber Company, LLC, was founded in 2004 by Timmy Hooper, who continues as sole member. The Debtor has two lines of business, harvesting and sale of timber and the manufacture of railroad ties. The Debtor sought lending from several non-traditional, so called “merchant” lenders and found that the re-payment terms were not feasible. One of these “merchant” lenders obtained a judgment and attempted to execute on Debtor's equipment. When John Deere Financial threatened to commence repossession, the Debtor filed this Chapter 11 case for the purpose of preserving its business assets and providing for the orderly payment of claims.

IV. THE CHAPTER 11 PROCEEDINGS

This Chapter 11 case was filed on October 28, 2016. The Debtor has continued business operations as debtor-in-possession. The Debtor entered into an Agreed Order for Adequate Protection with John Deere and found that it could not make the payments due to wet weather that hindered operations. John Deere filed a Motion for Relief from Stay, and the Debtor filed a Motion to Modify the Agreed Order to conform with the payments proposed in the Plan. Saturn Funding, LLC, obtained an order to examine the Debtor. The Debtor has filed all required Schedules and Monthly Operating Reports. The Plan and Disclosure Statement were timely filed.

V. SUMMARY OF POST-PETITION OPERATIONS

The Debtor resumed normal operations during the Chapter 11 case. The two most recently filed Monthly Operating Reports will be attached as Exhibits to this Disclosure Statement.

VI. OTHER LITIGATION

There were two contested lawsuits pending as of the Petition Date. Floyd and Wanda Baker filed an state court action for alleged breach of contract. The Bakers' claim was listed by the Debtor as contingent, disputed and unliquidated. However, the Bakers did not file a claim. Kevin Dedmon filed a state court action against the Debtor asserting a variety of claims. His claim was listed in the Schedules as contingent, disputed and unliquidated. He filed an untimely claim in the amount of \$300,000. The Debtor anticipates filing an objection to this claim.

VII. THE PLAN OF REORGANIZATION

A. Future Operations of Debtor

The Plan provides that the Debtor continue operating under existing management.

B. Means for Payment of Claims

The Plan provides that Claims will be paid from future business operations.

C. Payment of Claims

The Plan provides for payment of claims as follows:

Class 1 Administrative Claims.

Allowed Class 1 claims shall be paid in cash on the Effective Date of the Plan. Any administrative claims representing liability incurred in the ordinary course of business of the Debtor may be paid in cash in the ordinary course of business. Included in this class are the attorney fees incurred by the Debtor. Additionally, any United States Trustee Quarterly Fees due and owing or assessable prior to confirmation shall be paid in full on the Effective Date of the Plan and any post-confirmation United States Trustee Fees shall be paid pursuant to 28 U.S.C. Section 1930(a)(6). Class 1 is deemed to be unimpaired.

Class 2A Unsecured Priority Claim of the I.R.S.

The Internal Revenue Service is owed \$96,292.33 as an unsecured priority claim. This claim shall be paid in 60 equal monthly installments, amortized based on 4% interest, or the Federal Interest Rate in effect on the Effective Date of the Plan. If the reorganized debtor substantially defaults on the plan payments due to the Internal Revenue Service, the outstanding balance shall be immediately due and payable. Said payment shall be for the entire amount owed to the IRS under the plan, and the IRS may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code. Class 2A is deemed to be impaired.

Class 2B Unsecured Priority Claim of Tennessee Department of Revenue.

The Tennessee Department of Revenue is owed \$207.19 as an unsecured priority claim. This claim will be paid in full on the Effective Date of the Plan. Class 2B is deemed to be unimpaired.

Class 2C Unsecured Priority Claim of Tennessee Department of Labor.

The Tennessee Department of Labor is owed \$17,670.05 as an unsecured priority claim. This claim will be paid in 60 equal monthly installments, amortized based on 4% interest. Class 2C is deemed to be impaired.

Class 3 Secured Claims of John Deere Construction and Forestry Company.

John Deere Construction and Forestry Company holds five claims in the following amounts: \$16,913.62, \$63,487.79, \$90,931.31, \$81,624.50 and \$91,673.87. Each of these claims will be paid in 60 equal monthly installments amortized at an annual interest rate of 5.5%. The combined payment for these claims will be approximately \$6,582.87 per month. Class 3 shall retain its liens in the John Deere Collateral to the extent of its secured claim. Class 3 is deemed to be impaired.

Class 4 The Somerville Companies, Inc.

The Somerville Companies, Inc. holds a secured claim in the amount of \$198,912.00. This claim will be paid according to the terms of the original agreement between the parties. Class 4 shall retain its liens in the Somerville Colateral to the extent of its secured claim. Class 4 is deemed to be unimpaired.

Class 5 Saturn Funding, LLC

Saturn Funding, LLC shall be paid the value of its allowed secured claim in 60 equal monthly installments amortized at an annual interest rate of 5.5%. The Debtor will amend the Plan as to Class 5 before the Confirmation Hearing after further research and review as to the priority, extent and value of this creditor's secured claim. Class 5 shall retain its lien to the extent of its secured claim. Class 5 is deemed to be impaired.

Class 6 General Unsecured Claims.

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. Included in this Class are all claims not specifically classified in this Plan. Class 4 claims shall be paid 100% of their allowed amounts in one hundred twenty (120) equal monthly installments beginning on the Effective Date of the Plan. Class 6 is deemed to be impaired.

The Class 7 claim of the sole equity holder, Timothy Hooper, shall retain his interest.

All fees of the United States Trustee payable under 28 U.S.C. § 1930, as determined by the court will be paid on the Effective Date of this plan.

VIII. LIQUIDATION ANALYSIS

Attached hereto as an Exhibit is a Liquidation Analysis containing a pro forma analysis of the expected distribution pursuant to a hypothetical plan of liquidation.

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. Therefore, the Debtor believes 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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