

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:) Chapter 11
MSES Consultants, Inc.) Case No. 15-01204
Debtor.)

MSES CONSULTANTS, INC.'S
SECOND AMENDED DISCLOSURE STATEMENT, DATED FEBRUARY 13, 2017

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THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE CHAPTER 11 PLAN OF MSES CONSULTANTS, INC. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS PROPOSED DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THEREFORE, CERTAIN DEADLINES CONTAINED HEREIN HAVE NOT BEEN DETERMINED.

I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the small business Chapter 11 case of MSES Consultants, Inc. (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes MSES Consultants, Inc.’s Plan of Reorganization, Dated February 13, 2017 (the “Plan”). A full copy of the Plan has been provided with this Disclosure Statement as Exhibit A. Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

The proposed distributions under the Plan are discussed at pages 16 through 22 of this Disclosure Statement. General unsecured creditors are classified in Class 5, and will receive a distribution of 13.8% of their allowed claims,¹ to be distributed in sixty equal monthly payments, with the first payment being made on May 1, 2017.

A. Summary of Changes from September 5, 2016 Disclosure Statement

¹ Said percentage may increase or decrease depending on the amount of the allowed claims. The payment amount is \$3,600 a month regardless of the amount of allowed, unsecured claims.

The primary change from the September 5, 2016 Disclosure Statement is that in the interim, the Debtor has negotiated a sale of its corrosion equipment and supplies (“CES”) business line for \$530,000 and such sale has been approved by the Court. See Doc. No. 189. Such sale does not change the payout to unsecured creditors. The updated liquidation analysis is available as Exhibit F.

The second major change is a change in the Debtor’s proposed managers and officers. The third change is that the Debtor has proposed closing its Clarksburg office and consolidating operations in Fairmont. Fourth, the Debtor has updated its assets to include a disputed claim against Blackwood Associates, Inc.

B. Summary of Significant Changes from December 12, 2016 Disclosure Statement

The Disclosure Statement has been updated in a number of ways that are significant. First, the exhibits have been updated to reflect the best figures available to the Debtor. Further, various narratives have been updated based upon the Debtor’s changing condition from when it first submitted the disclosure statement in September 2016. At the time, the Debtor had proposed a number of budget cuts and was in the process of implementing those. The Debtor has implemented many of those cuts and the narratives contained herein reflect those cuts.

The major change is the treatment of the \$530,000 from the sale of the CES business line. The Debtor proposes to use those funds to pay post-petition administrative claims, including trade creditors and employee medical claims. Further, the Debtor proposes to pay outstanding, post-petition taxes owed to the State of West Virginia.

Another change is the addition of another large, unpaid account receivable. Specifically, the State of West Virginia owes the Debtor over \$140,000 and has refused to pay. To deal with this issue, the Debtor proposes to file suit in the West Virginia Court of Claims because the State

is immune from breach of contract actions. Creditors are cautioned that the Debtor's understanding is that the State of West Virginia has no legal obligation to pay regardless of the outcome of that case.

C. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

D. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed and if the Disclosure Statement is approved.

1. Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan

The Court will hold a hearing to determine whether to approve this Disclosure Statement at the United States Bankruptcy Court for the Northern District of West Virginia located at 324 West Main Street, Clarksburg, WV, 26301. **No date has yet been set for this hearing and a notice of the hearing will be separately provided.**

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to P. O. Drawer 2040, Clarksburg, WV, 26302-2040, attn: Richard Marsh, Esq. See Section IV(A) below for a discussion of voting eligibility requirements.

Your ballot must be received by the date set by the Court or it will not be counted.²

3. Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan

Objections to this Disclosure Statement must be filed with the Court and served upon counsel for the Debtor, being McNeer, Highland, McMunn and Varner, L.C., by the date of the hearing to approve the Disclosure Statement. The date of the hearing has not yet been set at the time of filing. You are advised that the Court may set a different deadline for filing of objections, which deadline is generally a few days to a week before the date of the hearing.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Richard Marsh, Esq., McNeer, Highland, McMunn and Varner, L.C., 400 West Main Street, Clarksburg, WV, 26301.

II. BACKGROUND

A. Description and History of the Debtor's Business

² Please note that ballots will follow with the approved Disclosure Statement, assuming said statement is approved at the hearing to approve the amended disclosure statement. Such hearing has not been scheduled and notice will be separately sent.

The Debtor is a corporation formed in 1974 by Lawrence Rine, its sole shareholder. It provides engineering, architectural, safety, and environmental consulting services in West Virginia and the surrounding states.

The Debtor does not sell products as a core part of its business: it sells services. For this reason, its primary good is its employees and their professional knowledge.

The Debtor primarily leases its vehicles. It does not own any real property, instead leasing office space in Clarksburg and Fairmont, West Virginia. Clarksburg is its current home office. However, it intends to close the Clarksburg office and consolidate its business in Fairmont.

B. Insiders of the Debtor

1. Lawrence Rine – President and Sole Shareholder. The Debtor has not paid Mr. Rine a salary or wages during the two years prior to December 14, 2015, or during the pendency of the Chapter 11 case. It has provided him with health insurance, reimbursement of reasonable business expenses, and use of a vehicle. During the entire period, Mr. Rine worked on behalf of the Debtor as an engineer as well as focusing his efforts on securing contracts in addition to general management.

2. John J. Keeling – Former Vice-President. Mr. Keeling was paid approximately \$15,066.62 in December 2013. He was paid \$173,155.50 in 2014, \$179,357.75 in 2015, \$166,038.50 in 2016, and \$14,016.09 in January 2017. Mr. Keeling is a professional engineer and serves as the project manager for the Debtor. Mr. Keeling has no ownership interest in the Debtor. As set forth in his enclosed resume, Mr. Keeling has numerous professional registrations and has experience in a number of specialty areas. Further, the Debtor believes that Mr. Keeling's salary is comparable to market salary for a professional engineer with Mr. Keeling's

experience and scope of duties. Mr. Keeling resigned as vice-president effective September 26, 2016. He remains employed by MSES as project manager.

3. Jason N. Rine – Director, Corrosion Products Division. Mr. Rine is Lawrence Rine’s son. He was paid approximately \$11,923.71 in December 2013, \$150,857.50 in 2014, \$157,383 in 2015, \$134,135.75 in 2016, and \$14,157 in January 2017. Mr. Jason Rine is the director of the Debtor’s Corrosion Products Division. As with Mr. Keeling, Mr. Jason Rine has numerous professional registrations and experience in a number of safety and environmental areas. His resume is attached. He has no ownership interest in the Debtor. Further, the Debtor believes that Mr. Jason Rine’s salary is comparable to market salary given Mr. Jason Rine’s experience, education, and scope of duties. Additionally, Mr. Jason Rine was instrumental in selling the corrosion equipment supply business line and generating those funds for MSES. The Debtor believes that the sale would not have been possible but for Mr. Jason Rine.

4. Mary B. Rine – Office Assistant/Marketing/Administration. Ms. Rine is the daughter-in-law of Lawrence Rine. She was paid approximately \$2,354.47 in December 2013, \$15,908.52 in 2014, \$30,035.89 in 2015, \$29,722.89 in 2016, and \$2,775.50 in January 2017. Ms. Rine has no ownership interest in the Debtor. Her resume is attached and includes some of her scope of duties, which includes marketing, purchasing, and accounts receivable. Given the scope of her duties, the Debtor believes that Ms. Rine’s salary is comparable to market salary for a comparable employee who could carry out the same duties.

5. Joan W. Rine – Corporate Secretary. Ms. Joan Rine is the wife of Lawrence Rine. She does not directly work for the Debtor other than act as corporate secretary. She does not receive a salary or any other benefits.

C. Management of the Debtor Before and During the Bankruptcy

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers, or other persons in control of the Debtor (collectively the “Managers”) were Lawrence Rine, Joan Rine, and John Keeling. However, only Lawrence Rine had a significant role of actually controlling the Debtor and its finances. As stated previously, Joan Rine acts as corporate secretary, but has no involvement in the day-to-day activity of the company or the overall management of the company. John Keeling acted as vice-president, but did not exercise control over the company in that position.

John Keeling and Jason Rine both acted as managers of individual departments of the Debtor. They acted in a typical middle-management role wherein they managed their personnel and projects. They could incur reasonable, expected expenses. However, they did not have any actual control over the Debtor as a whole or its overall finances. Further, both served under Lawrence Rine, who, as sole shareholder and president, controlled the company.

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the “Post Confirmation Managers”) will be Lawrence Rine as President and Joan Rine as Corporate Secretary. John Keeling has resigned as Vice-President.

Post-confirmation, Lawrence Rine will continue to have control of day-to-day operations and business decisions. John Keeling and Jason Rine will have input as department heads, but will not have any ultimate decision-making abilities.

D. Events Leading to Chapter 11 Filing

The primary event leading to the Chapter 11 filing was the slowdown in West Virginia's oil and gas industry. With the gas boom, there was an increased demand for the Debtor's services throughout West Virginia. This boom also increased the number of competing companies offering similar services. Even with the increased competition, the Debtor was able to prosper because demand for its services outstripped the supply.

The equation flipped with the extreme slowdown in the oil and gas industry. The falloff in the oil and gas industry is apparent. According to Baker Hughes's nationwide rig count, there were between 22 and 37 rigs operating in West Virginia at any given time between January 2012 and December 2014.³ However, through 2015, that number was in the mid-to-high teens.

With the slowdown in the gas field, there was an oversupply of services similar to the Debtor's. This created a buyer's market. Customers were able to negotiate lower prices from the Debtor and if the Debtor balked, there was a competitor willing to take the work. Further, customers were able to dictate a longer payment schedule. Instead of net 30, customers negotiated net 90 or net 120 days to cover their own cash flow problems.

The Debtor was diversified when the slowdown occurred, but the loss of business and the need to accept less favorable terms caused a decrease in cash flow. The Debtor also had services directed at the coal field and it is generally agreed that the coal industry is in even worse shape than the oil and gas industry.

The Debtor also provided numerous services to the State of West Virginia and local governments. With the slowdown in the natural resource industries, the State and the local governments' spending slowed down as well due to decreased tax revenues.⁴

³ See generally <http://phx.corporate-ir.net/phoenix.zhtml?c=79687&p=irol-reports> for data on rig count.

⁴ See generally <http://www.statejournal.com/story/30964438/wv-weakens-as-coal-severance-crumbles>, discussing the reduction in coal severance taxes.

All of these issues combined to cause the Debtor's cash-flow problems and its inability to service its then-current debt. The Debtor was certainly not alone in this problem, as evidenced by the bankruptcies of multi-billion-dollar resource companies (i.e. Arch Coal, Patriot, Peabody, Linn Energy, and SandRidge) as well as numerous smaller companies servicing the natural resources industry.

The slowdown in the natural resources industry notwithstanding, the Debtor is now focusing its efforts on the stable companies in the field along with companies in traditional manufacturing and governmental agencies and asserts that it can weather its financial storm and recover to continue operations.

E. Significant Events During the Bankruptcy Case

1. **Asset Sales Outside The Ordinary Course Of Business.** The Debtor sold its corrosion equipment supply business in October 2016. See Doc. No. 189. Such sale was approved by the Court. Other than that sale, the Debtor has not made any sales of assets outside the ordinary course of business.

2. **Debtor-in-Possession Financing.** There is no debtor-in-possession financing.

3. **Cash Collateral.** At the time of filing, the IRS had an involuntary lien against the Debtor's cash, accounts receivable, and other cash equivalents. On February 29, 2016, the Court entered the Agreed Order Resolving Debtor's Motion to Use Cash Collateral and Motion of Internal Revenue Service for Adequate Protection or to Prohibit Use of Cash Collateral, which allowed the Debtor to continue using the cash collateral. As a condition of such Order, the IRS retained a lien against pre- and post-petition accounts receivable and cash. Further, the Debtor has been paying the IRS \$10,000 a month on the associated debt.

4. **Professionals Approved by the Court.** The Court has approved McNeer, Highland, McMunn and Varner, L.C., as counsel for the Debtor. The Debtor intends to seek Court approval for Whitesell & Whitesell, accountants. Further, the Debtor also previously employed Pullin, Fowler, Flanagan, Brown & Poe, PLLC, as defense counsel in a series of civil actions pending in the Circuit Court of Harrison County, West Virginia. However, Pullin, Fowler, Flanagan, Brown & Poe, PLLC's bills were paid by the applicable insurance carrier at no cost to the bankruptcy estate. Those civil actions have resolved via settlement and funds were paid by the Debtor's insurance carrier.

5. **Adversary Proceedings and Significant Litigation.** No adversary proceedings have been instituted by or against the Debtor. However, Wells Fargo Vendor Financial Services, LLC and/or its successor in interest has repossessed a number of vehicles for failure to make lease payments. The Debtor's position is that such lease payments were not due and owing and such vehicles were assets of the bankruptcy estate. Therefore, the Debtor will be filing an adversary proceeding to recover those assets and seek damages.⁵ The Debtor believes that any litigation will be disputed.

The Debtor has a potential claim against Blackwood Associates, Inc. ("Blackwood"). Blackwood and the Debtor partnered on a number of projects pre-bankruptcy. The Debtor takes the position that outstanding balances are owed by Blackwood to it in relation to those projects. However, Blackwood takes the opposite position, asserting that it is entitled to significant setoffs. Therefore, it is the opinion of the Debtor at this time that any litigation would be disputed.

The Debtor also has a claim against the State of West Virginia for \$149,453 for services rendered. The Debtor intends to file that action in the West Virginia Court of Claims.

⁵ The Debtor is currently negotiating with Wells Fargo Vendor Financial Services, LLC to resolve the matter pre-suit.

There were four civil actions pending in the Circuit Court of Harrison County at the time of filing, being: *Frederick Sharp v. Veolia Water Technologies, Inc., a Delaware corporation, and MSES Consultants, Inc., a West Virginia corporation*, Civil Action No. 15-C-283-2, Circuit Court of Harrison County, West Virginia, consolidated with *Richard Burkhammer v. Veolia Water Technologies, Inc., a Delaware corporation, and MSES Consultants, Inc., a West Virginia corporation*, Civil Action No. 15-C-284-2, Circuit Court of Harrison County, West Virginia, *Jason Glover v. Veolia Water Technologies, Inc., a Delaware corporation, and MSES Consultants, Inc., a West Virginia corporation*, Civil Action No. 15-C-285-2, Circuit Court of Harrison County, West Virginia, and *Frederick Sharp v. Veolia Water Technologies, Inc., a Delaware corporation, and MSES Consultants, Inc., a West Virginia corporation*, Civil Action No. 15-C-286-2, Circuit Court of Harrison County, West Virginia. Such cases were being defended by Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and Westfield Insurance provided coverage. Those cases have been settled at no cost to the bankruptcy estate as settlement payments were made by Westfield Insurance.

6. **Steps to be Taken to Improve the Debtor's Profitability.** The Debtor has reduced its workforce and intends to lower office/location expenses and operational expenses as well as eliminate inefficient services currently provided by the company to achieve the necessary funding and sustainability of the repayment of monies to creditors. The Debtor has also discontinued healthcare coverage, as it employs less than 50 full-time employees. The Debtor would reinstate healthcare if financial conditions allow for it.

The Debtor has reduced its workforce from 72 to 50 employees as of November 1, 2016. Additionally, the Debtor has reduced its workforce again to 31 employees as of February 1, 2017. The cost savings for this workforce reduction has been approximately \$120,000 a month, including salary and benefits. The remaining 31 employees will be able to provide the Debtor's most

profitable services, creating an increase in net cash flow. As of January 31, 2017, the payroll for the Debtor was approximately \$205,000, a significant decrease from its original payroll of \$451,000 a month.

The Debtor has closed its Beckley office, resulting in a savings of at least \$4,625 a month. Such savings began in September 2016. The Debtor primarily opened its Beckley office to serve its coal clients. With the losses in the coal industry, such services are no longer needed. To the extent that work for the Beckley office remains, such work can be carried out by employees in the Fairmont office.

The Debtor also intends to close its Clarksburg office and consolidate all of its operations in Fairmont. With the combination of the downsizing of the labor force and the sale of the corrosion equipment and supplies business line, the Debtor's need for the office in Clarksburg is severely reduced. It is not cost-effective to maintain two offices given the Debtor's current needs.

The Debtor believes consolidation will lead to cost savings within two months. The current rent for the Clarksburg office is \$12,200 a month. The Debtor believes that it can secure sufficient office space with its current lessor in Fairmont for \$3,000 to \$4,000 a month. It will cost approximately \$20,000 to move the equipment from Clarksburg to Fairmont and conduct the limited build-out. The Debtor has to move its lab and that is the greatest cost component in the \$20,000 relocation expense.

Through the reduction in the size of its workforce, the Debtor will be able to reduce certain other expenses. It can reduce the number of leased vehicles that it has as well as cell phones and other operational items. It estimates this monthly cost savings at approximately \$4,000 a month.

The Debtor operates a Corrosion Products Division. That division is comprised of three working groups: equipment supply, laboratory, and hydrocarbons. Moving forward with the

manufacturing group was not feasible due to that group's cash flow needs. Further, such group required significant manpower. Therefore, the Debtor sold the equipment supply group⁶ within its Corrosion Products Division. The Debtor estimates that by eliminating that group, it has freed up demand on cash at a level of approximately \$47,000 a month.

Those combined budget cuts have a potential of creating a monthly savings/cost reduction of \$300,000. To date, such cost savings have resulted in approximately \$100,000 to \$200,000 in reduced overall expenses a month. The Debtor continues to work to cut costs and find hidden costs to better utilize the larger savings seen from the reduction in payroll. Based upon the budget cuts, the Debtor believes that there will be approximately \$53,000 a month available to pay creditors.

F. Projected Recovery of Avoidable Transfers

The Debtor does not intend to pursue any preferential or fraudulent transfers, or any other avoidance actions.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld.

At this time, the Debtor believes that several claims are incorrect. Such claims are related to leases in which the Debtor is the lessee and critical vendors that the Debtor was able to pay post-petition. The Debtor is working with each company to correct the proofs of claim and believes that most, if not all, will resolve themselves without requiring a formal objection.

⁶ Being the CES business line discussed throughout.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in Exhibit B.

The Debtor's most recent financial statements issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit E. A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit D as well. Complete copies of the operating reports are available through the Court's PACER system.

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the

value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$250,000	\$170,000 will be paid upon confirmation of the Plan from the proceeds of the CES Sale and the remainder will be paid in accordance with the terms and conditions of the trade creditors’ standard payment terms
Expenses Arising in the Ordinary Course of Business After the Petition Date – American Express	\$8,167.58 – American Express - Disputed	12 monthly payments of \$692.37 each including interest payment of 3.75%, with the first payment being due on May 1, 2017
Expenses Arising in the Ordinary Course of Business After the Petition Date – Medical Expenses	\$265,000	Payment in full on the effective date of the Plan from the proceeds of the CES Sale.
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	Zero	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court. ⁷	\$130,000.00	To be paid in 24 equal monthly payments, beginning on May 1, 2017
Clerk’s Office Fees	Zero	Paid in full on the effective date of the Plan
Other administrative expenses	Zero	Paid in full on the effective date of the Plan
Office of the U.S. Trustee Fees	\$16,900	Paid in full on the effective date of the Plan
TOTAL	\$670,067.58	

⁷ Such fees have not yet been approved.

Prior to the Petition Date, the Debtor had a group health insurance policy through Highmark West Virginia. Highmark West Virginia claims it terminated that policy, without informing the Debtor, as of December 1, 2015. The Debtor disputes that there was a proper termination, but, nonetheless, Highmark West Virginia has refused to pay outstanding claims. Due to the termination of that policy, at least two employees had substantial medical claims that were not paid. Those two employees filed proofs of claim totaling \$44,410.03 and those claims will be paid in full as administrative claims.

The Debtor also had a group health insurance policy through Benefit Assistance Corp. that began after the cancellation of the Highmark West Virginia policy. The Benefit Assistance Corp. was partially self-funded. The Debtor made this switch because it was led to believe that its monthly costs would reduce from the \$98,000 a month it was to pay Highmark West Virginia. Under the Benefit Assistance Corp., the Debtor would pay Benefit Assistance Corp. \$25,000 a month to manage the healthcare plan and deposit \$35,000 to cover claims. Benefit Assistance Corp.'s projections were inaccurate and the Debtor suffered higher-than-expected claims. Ultimately, through the time that the Debtor terminated the Benefit Assistance Corp. policy in October 2016, there were accumulated and processed, but unpaid, claims of \$177,000. Further, there are also accumulated, unprocessed, and unpaid claims of \$50,000. The Debtor proposes to use the remainder of the \$265,000 to pay these claims.

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the date of the order of relief.

The following chart lists the Debtor’s estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
IRS - 941 Employment Taxes	\$2,266,961.64	09/29/2014 12/29/2014 07/06/2015 09/28/2015 01/04/2016 04/04/2016 04/25/2016 06/30/2016 07/31/2016 08/30/2016	Pmt interval – Monthly Payment - \$41,365.01 Begin date – 05-01-2017 End date – 04-01-2022 Interest Rate – 3.75% Total Payout Amount - \$2,507,718.60
State of WV – Employment Taxes	\$57,816.66	9/30/2015 12/31/15	Pmt interval – Monthly Payment - \$1,294.94 Begin date – 05-01-2017 End date – 04-01-2021 Interest Rate – 3.75% Total Payout Amount - \$62,157.12
State of WV – Employment Taxes	\$56,108.62	6/30/2016	Payment in full upon confirmation of the Plan. Payment to come from the CES proceeds.

The State of West Virginia is taking the position that it cannot award purchase orders to the Debtor due to outstanding employment taxes. At the same time, the State of West Virginia owes the Debtor \$149,453 for services rendered that it has refused to pay due to its own budgetary problems. As a compromise of this issue, the Debtor proposes to pay its post-petition, past due employment taxes upon confirmation of the Plan. Those funds will come from the CES proceeds. The Debtor will pay the remainder of the State of West Virginia’s claim through regular payments. However, in the event that the State of West Virginia pays the money it owes the Debtor, then the Debtor will pay the State in full upon receipt of those funds.

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor’s bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor’s claim is less than the amount of the creditor’s allowed claim, the deficiency will be classified as a general unsecured claim.

The following chart lists the Debtor’s secured pre-petition claims and their proposed treatment under the Plan:

Class No.	Description	Insider	Impairment	Treatment
3	Freedom Bank Collateral: Infinitofocus System G4 Allowed secured amount: \$3,334.38 by POC Priority of lien: First Principal owed: \$3,334.38 Pre-petition arrearage: None Total claim: \$3,334.38	No	Impaired	Monthly Pmt: \$282.66 Pmts Begin:05-01-2017 Pmts End: 04-01-2018 Interest Rate: 3.75% Treatment of Lien: Retained
4	Internal Revenue Service \$968,821.90 Collateral: Accounts receivable and cash Allowed secured amount: \$968,821.90 Priority of lien: First Principal owed: \$2,266,961.64 Pre-petition arrearage: \$1,883,961.64 Total claim: \$2,266,961.64	No	Impaired	See IRS’s treatment under priority claim. Secured claim will be paid in full via 60 equal monthly payments.

Given the IRS’s status as both a secured creditor and a priority creditor, further explanation is needed. The IRS has a secured, pre-petition claim of \$968,821.90. It has a priority, pre-petition claim of \$805,860.41, but the secured, pre-petition claim would have priority if not otherwise secured. This creates a total claim of \$2,266,961.64. The IRS also has a claim for post-petition, priority claims in the amount of \$383,000. Additionally, the IRS has a post-petition lien against all cash collateral.

The entirety of the secured/priority debt due, being \$2,266,961.64, will be paid monthly over 5 years at an interest rate of 3.75%. Such payment would be \$41,365.01 and begin on May 1, 2017.

2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists the Debtor’s priority claims and their proposed treatment under the Plan:

Class No.	Description	Impairment	Treatment
1	None are known at this time	No	If any, 12 monthly payments, including interest payment of 3.75%, with the first payment being due on 05-01-2017
2	Allowed Attorney’s Fees	Yes	24 monthly payments of \$5,416.66 each, no interest, with the first payment being due on 05-01-2017. Subsequent approved fees are due within thirty days after Court approval.

3. Class of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

Per the Debtor’s schedules and the proofs of claim, the Debtor has \$1,944,264.16 in unsecured claims against it. However, up to \$631,348.43 of such claims are disputed or are incorrect. The Debtor believes that of that amount, \$190,805.24 is truly disputed and will result in litigation. Approximately \$50,000 will be agreed upon once creditors update their claims. Therefore, the Debtor is considering the true unsecured claims to be \$1,562,915.73, which includes the disputed, but not incorrect, claims.

The following chart lists the Debtor’s proposed treatment of the general, unsecured creditors under the Plan:

Class No.	Description	Impairment	Treatment
5	General Unsecured Claims	Yes	Monthly Pmt: \$3,600.00 Pmts Begin: 05-01-2017 Pmts End: 04-01-2022 Estimated percent of claims paid: 13.8%

4. Class of Equity Interest Holders

Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders.

The following chart sets forth the Plan’s proposed treatment of the class of equity interest holders:

Class No.	Description	Impairment	Treatment
6	Equity Interest Holders – Lawrence Rine	Unimpaired	Will retain ownership interest; not receive any dividends or other payouts

D. Means of Implementing the Plan

1. Source of Payment

Payments and distributions under the Plan will be funded by the continued cash-flow of the Debtor. Specifically, the Debtor shall continue operations and continue to collect for its services. The Debtor may also have additional funds from lawsuits related to collection of past-due accounts.

2. Post-Confirmation Management

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider	Position	Compensation
Lawrence Rine	Shareholder/President	Yes	Engineer	None other than reasonable business expenses, and business vehicle ⁸
Joan Rine	Secretary	Yes	None	None

E. Risk Factors

The proposed Plan has the following risks:

The primary risk is a failure of the Debtor’s customers to pay timely and unexpected costs. The Debtor invoices all work performed on net 30, 60, 90, or 120 day invoices. The Debtor has also lost employees due to the cut in health insurance coverage and, with the loss of additional employees, risks not being able to fully market itself.

There is also risk that the oil and gas slowdown will continue. The Debtor is not as dependent upon that industry as it was, but a further slowdown would harm the Debtor. However,

⁸ The Debtor reserves the right to move the Court to pay Mr. Rine compensation in relation to work provided in the event that the Debtor’s net revenues can support such a payment.

anecdotal evidence from other, non-engineering fields is that work began picking up immediately after the 2016 election was over and continues to this day.

The same concern is true of reduced government spending. For example, President Trump has made representations about increased infrastructure spending, which would benefit the Debtor. Moreover, the State of West Virginia continues to have budget problems and has proposed budget cuts. Federal and state spending priorities are obviously a moving target and, therefore, creditors are advised to use their own best judgment when analyzing this risk factor.

F. Executory Contracts and Unexpired Leases

The Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. The Plan also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in the Plan will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is Forty-Five Days After Confirmation of the Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

G. Tax Consequences of Plan

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.

The following are the anticipated tax consequences of the Plan:

(1) Tax consequences to the Debtor of the Plan: There should be no tax consequences to the Debtor. Normally, when there is a forgiveness of debt, the debtor will have a corresponding cancellation of debt income. However, the Debtor should be able to use a provision of the Internal Revenue Code that excludes from income cancellation of debt income when such cancellation of debt occurred as part of a discharge in a Chapter 11 case.

To the extent that the Debtor sells any assets, then such sales will trigger income tax or gain recognition.

(2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation: Creditors should consult with their accountants regarding the effect of discharge. Creditors should realize a gain or loss on the payments and the claims.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in 11 U.S.C. §§ 1129(a) or (b). These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must

distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in 11 U.S.C. § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes 1, 3, 4, and 5 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes 2 and 6 are unimpaired and that holders of claims in those class, therefore, do not have the right to vote to accept or reject the Plan.

1. What Is an Allowed Claim or an Allowed Equity Interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the

claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing proofs of claims has passed.

2. What Is an Impaired Claim or Impaired Equity Interest?

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in 11 U.S.C. § 1124, a class is considered *impaired* if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is Not Entitled to Vote

The holders of the following six types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- administrative expenses.

Please note that even if you are not entitled to vote on the Plan, you have a right to object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.

4. Who can Vote in More than One Class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section IV(B)(2).

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if **both** of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Nonaccepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by 11 U.S.C. § 1129(b). A plan that binds nonaccepting classes is commonly referred to as a “cramdown” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of 11 U.S.C. § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and equitable toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a Chapter 7 liquidation.

The liquidation analysis is attached hereto as Exhibit F. It can be said with almost complete certainty that the unsecured, pre-petition creditors will not receive **any** payout in the event of a liquidation. The Debtor has approximately 1.65 million dollars in assets. At the same time, the IRS is owed in excess of 2.2 million dollars as priority or secured pre-petition debt. In a Chapter 7 liquidation, the IRS (along with the State of West Virginia) would receive priority status on all of its claims. This is in addition to the payment of any United States Trustee fees and other administrative fees.

Further, because of a lien filed pre-Bankruptcy, the IRS has a lien against all accounts receivable of the Debtor. To allow the Debtor to use its cash collateral, the Court granted the IRS a lien against the post-petition accounts receivable. Although there is some question as to the extent of the IRS lien against the other assets of the Debtor, such question is merely academic because even without a lien, the IRS is second in line for payment. In a Chapter 7 liquidation, the IRS’s secured lien would be paid in full, then the United States Trustee would be paid, along with other administrative claims, then the IRS’s remaining claim along with the State of West Virginia’s claim would be paid, in part, and no payment would be made to the unsecured creditors.

The Debtor has a number of contracts with third-parties, but does not believe that such contracts hold value. All of the Debtor’s contracts are to be carried out by it; it cannot assign the

contracts without the customers' approval. Further, in the event that the Debtor was to shut down, it is unclear how the panel trustee could continue to operate efficiently enough to continue to carry out the contracts.

The final aspect of the liquidation analysis is the value of the Debtor's intellectual property and overall files. The Debtor cannot accurately determine a value on such items. Further, a large portion of the value would come from the Debtor's employees.⁹ The Debtor was able to sell a portion of its business for \$530,000, which was largely conditioned on the continued involvement and assistance of Jason Rine. Those funds are included in the liquidation analysis.

Overall, the liquidation analysis evidences that the unsecured creditors are unlikely to receive any payout if the Debtor is liquidated. The Debtor believes that in a liquidation scenario, its value is primarily as a sum of its parts. Moreover, such value may be limited because employees may not transfer with it.

D. Feasibility

1. Cost Savings

The Debtor believes that the Plan is feasible because of the cost-cutting measures it will institute. According to the operating reports, the Debtor's average income has been \$454,129.72 a month since February 1, 2016.¹⁰ Its average expenses have been \$482,380.84 during that same time period. This creates an average loss of \$28,253.85. This loss will be offset by the cost-reduction measures to be implemented by the Debtor. This was seen in September 2016 when the monthly expenses were \$406,693.93, considerably lower than average. October's expenses were further reduced to \$393,474.06. November's expenses continued the trend with \$404,669.74 in

⁹ The employees bring enormous value to the Debtor as a whole or as a going concern, but have no value if the Debtor is sold off.

¹⁰ January 2016 had a larger than normal income due to the collection of past due invoices. Therefore, it is not used in the calculation.

expenses. December's expenses were higher at \$439,290.76, but the income was correspondingly up, creating a profit of \$45,710.37 for the month.

These savings largely come from the reduction in employees. The Debtor's payroll was approximately \$451,500 a month at the time of filing for Chapter 11. The monthly payroll now is approximately \$205,000.

Another benefit of the reduction in workforce is the corresponding reduction in payroll tax expenses. The Debtor has a significant tax liability and has continued to have problems during this bankruptcy in ensuring that its payroll taxes are current. By lowering the number of employees and the associated payroll tax, the Debtor will be able to more easily meet the current tax load as well as pay down the old taxes. For example, the payroll tax in December 2016 was \$61,840.36. By comparison, in the fourth quarter of 2015, such taxes were \$302,039.33, or approximately \$100,000 a month.

The Debtor has also cancelled its health insurance coverage. Although it hopes to bring that benefit back to the employees at a later time, it has discontinued offering employee coverage.

The Debtor sold its CES group, which is part of its Corrosion Productions Division. This sale allows Debtor to better manage its cash flow as the group is one of the more expensive to operate.

The Debtor also plans to close its Clarksburg office. The Debtor currently pays \$12,200 a month in rent for the Clarksburg office. It believes it can secure comparable space at its Fairmont office for \$4,000 a month. It will have costs of \$20,000 to move the office, but within three months, it will be saving a considerable sum each month.

The Debtor also has significant accounts receivable that will continue to come due. Through January 31, 2017, the Debtor had accounts receivable of approximately \$367,022.05. This helps ensure continued cash flow even.

Ultimately, the Debtor continues to cut its budget. It believes that it can further cut the payroll to \$160,000 a month. Further, by the time of confirmation, it can have its variable expenses at approximately \$44,000 a month. Monthly fixed expenses will total \$34,000. The Debtor does expect a lower income of \$300,000, but such income level will generate sufficient funds to fund the plan payment of \$53,000 a month.

2. Future Income in Light of Workforce Reduction

Previously, the Debtor was staffed at a level to provide the same quantity of professional services to its clients as provided prior to 2015. By late 2014, as explained previously, demand for the Debtor's services, primarily in the energy sector, had significantly diminished. The energy sector clients assured the Debtor that this was a short-term condition and asked the Debtor to remain ready to assume a full project load for them later in 2015. Many of the Debtor's contracts were not cancelled, but merely placed on hold.

Based on the information available about future project work and the difficulty of maintaining highly-qualified staff, the Debtor maintained its staff levels through the rest of 2014 and 2015, even through August of 2016. The Debtor believed that it could secure this work in the future, but obviously could not do so if it did not have the skilled employees in place.

With the slowdown in work, the 2015 and 2016 projects were divided amongst the Debtor's staff. This resulted in many of the employees' job functions not being efficiently utilized and a significant amount of non-billable time accumulated. This was a major factor with respect to the

financial issues which have resulted in the bankruptcy and need for Chapter 11 reorganization protection.

Because the Debtor could not maintain the current staff levels, layoffs have been conducted. At this point, the Debtor has reduced its employee number from 72 to 31. The positions affected by the layoff have partially adversely impacted the scope of the Debtor's work. However, the layoffs have not harmed the Debtor's ability to compete in its most profitable areas of business. Further, the layoffs have resulted in the Debtor fully utilizing the remaining staff in an efficient manner.

As a result in the overall reduction in scope of services, the Debtor's income will decrease. The Debtor is aiming for income of at least \$300,000 a month, which will cover all costs and expenses, plus Plan payments. It believes that it can fulfill this income goal as it is only 66% of its December income.

To ensure sufficient income, the Debtor has also pursued commercial and government sectors to replace a portion of the project load which was lost during the energy sector slowdown. This includes manufacturing, chemical, county school systems, county and city government, as well as retail property developers.

Ultimately herein, the expectation is that the savings of the cuts will outweigh the loss in revenue because the Debtor has focused on cost-cutting non-profitable/less profitable areas. Based upon current workload, the Debtor expects that monthly invoice totals will begin to decline beginning in February 2017 from its current average of \$450,000 a month. Nonetheless, with its additional budget cuts, the Debtor does not need that level of income to sustain it.

3. Additional Savings

The Debtor continues to work to discover additional cost savings and believes that it can do so. Such cost savings are likely small individually and minimal overall, but can assist in ensuring that the Plan succeeds.

4. Overall Effect

The best course of action for the unsecured creditors in this matter is for Plan confirmation. In a liquidation, the Debtor's customers would be unlikely to stick with it while a buyer is found. The Debtor discovered this first-hand when the Trustee filed its motion to convert earlier this year. A number of potential contracts were lost and current contracts cancelled (without breaching) when it was believed that the Debtor was going to be forced to convert to Chapter 7.

The confirmation of a Chapter 11 Plan will have the opposite effect. It is known that the Debtor's competitors are ensuring that potential customers know that the Debtor is in reorganization. With a confirmed plan of reorganization, the Debtor will be better prepared to respond to any such concerns. The Debtor believes that having a higher level of certainty of its continued existence will allow it to generate additional work.

V. EFFECT OF CONFIRMATION OF PLAN

A. Discharge Of Debtor

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in 11 U.S.C. § 1141(d)(1)(A), except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan, your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan. Further, the Debtor may only seek to modify the Plan at any time after confirmation if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the bankruptcy estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Respectfully submitted,

MSES Consultants, Inc.

By: 

Lawrence Rine, Its President

MSES Consultants, Inc., by counsel:

/s/ Richard R. Marsh

Richard R. Marsh (W. Va. State Bar #10877)

McNeer, Highland, McMunn and Varner, L.C.

Post Office Drawer 2040

Clarksburg, WV 26302-2040

Telephone No. (304) 626-1119

Facsimile No. (304) 623-3035

rrmarsh@wvlawyers.com