

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

In re:

AIR PHOTOGRAPHICS, INC.,

Case No. 16-00242

Chapter 11

Debtor.

THE DISCLOSURE STATEMENT OF AIR PHOTOGRAPHICS, INC.

ARTICLE I
INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the small business Chapter 11 case of Garretson’s Air Photographics, Inc. (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the Plan of Reorganization (the “Plan”) filed by the Debtor. A full copy of the Plan is attached to 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 5.6 and 7 of this Disclosure Statement.

A. 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 Proponent] believes the Plan is feasible, and how the treatment of your claim under the Plan compares to what you would receive on your claim 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.

B. 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.

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

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in the United States Bankruptcy Court, _____, Martinsburg, West Virginia.

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 Joseph W. Caldwell, P.O. Box 4427, Charleston, West Virginia 25304.

Your ballot must be received by _____ or it will not be counted.

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

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Joseph W. Caldwell, P.O. Box 4427, Charleston, West Virginia 25304, by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Joseph W. Caldwell, Caldwell & Riffe, P.O. Box 4427, Charleston, West Virginia 25364.

C. Disclaimer

The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until _____.]

II. BACKGROUND

A. Description and History of the Debtor's Business

The Debtor is a corporation which first began business in Berkeley County, West Virginia, in 1981. The previous owner of the Debtor, John Houyoux, operated the business from its inception until 2010 when the business was sold to Arlie Winters. The business is located adjacent to the Martinsburg Airport. The non-residential real property is owned by Houyoux Properties, an LLC owned by Arlie Winters.

The Debtor has always provided aerial photographics and mapping services to state and local governments and to certain private businesses, including coal companies. The Debtor previously took aerial photographs of coal stock piles to gauge the amount of coal on the ground. With the large coal bankruptcies in southern West Virginia over the past few years, that business has nearly evaporated.

The Debtor owns two airplanes, two Piper Navajo PA-31's. The Debtor also owns a DMC II 230 digital mapping camera and an older film camera. At the time of the filing of the case, accounts receivable were approximately \$114,000. The Debtor has provided services for Blue Mountain Aerial Mapping; Applied Mapping Solutions; Quantum Spatial; and Greenman Pedersen, Inc. The Debtor is also a party to a contract with the Virginia Institute of Marine Science to provide aerial photographs of the Chesapeake Bay.

The Debtor's largest creditor is CRF, Inc. which holds a lien on the digital camera, accounts receivable, and the non-residential real estate owned by the separate LLC.

This Chapter 11 case was filed to preserve the Debtor's existing business operation and to provide a fair repayment plan for existing creditors. Arlie Winters is the person responsible for obtaining work and overseeing completion of the work and Don Siler is the pilot.

The identity and fair market value of the Debtor's assets are listed on an exhibit attached to this Disclosure Statement. The Debtor has prepared Monthly Operating Reports which have been filed with the United States Bankruptcy Court for the Northern District of West Virginia. The Debtor's operations have improved since the time of the filing of this case.

III. SIGNIFICANT EVENTS

Since the time of the filing of this case, the Debtor has entered into an adequate protection payment and a provision for the use of cash collateral with CRF. Those payments have been less than the pre-petition contractual amount. The payments have ranged from \$7,500 per month to \$9,000 per month and the contractual payments are approximately \$11,500 per month. The non-residential real property owned by Houyou Properties has been listed for sale.

If that property is sold, the claim of CRF can be substantially reduced and a new payment schedule negotiated. It is possible for the Debtor to relocate its offices and to pay a reduced rent.

The Debtor has continued to provide work for the Virginia Institute of Marine Science on the Chesapeake Bay. The Debtor has also listed for sale the Leica mapping camera and if sold, those proceeds will be utilized to reduce the claim of CRF.

IV. 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:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$7,500	Paid in ordinary course

The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$ -	-
Professional Fees, as approved by the Court	\$5,000	After Court approval in installments
Clerk's Office Fees	\$ -	-
Office of the U.S. Trustee Fees	\$1,950	
TOTAL		

2. *Priority Tax Claims*

The Debtor did incur priority tax claims prior to the filing of this case. Those claims are as follows:

<u>Class</u>	<u>Impairment</u>	<u>Treatment</u>
<u>Class 1 - Priority Claims</u> Pre-petition claim of the Internal Revenue Service	Yes	\$5,503 Priority \$200 month \$1,254 unsecured (same as Class U)
West Virginia State Tax Department	Yes	\$10,674 \$750 per quarter \$1,728 unsecured (same as Class U)
New York State	Yes	\$1,868 priority \$100 per quarter \$249 unsecured Class U

Class 2 - Secured Claims - Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate to the extent allowed as secured under Section 506 of the Code. Any secured creditor may object to the Debtor's valuation and if an objection is filed, then the Debtor will request the U.S. Bankruptcy Court for the Southern District of West Virginia to conduct a claim hearing. The following lists all classes containing Debtor's secured pre-petition claims and their proposed treatment under the Plan.

Class S-1. The secured claim of CRF Small Business Loan Company, LLC. This claim is secured by a lien on the Debtor's accounts receivable; a DMC II 230 Digital Mapping Camera system; a junior lien on a Pipe Navajo PA-31 airplane; and a lien on real property located at 2115 Kelly Island Road, Martinsburg, West Virginia, which is owned by Houyoux Properties, LLC, a non-debtor. The contractual payments to CRF, pre-petition, were set at \$11,137.56 per month. After the filing of this case, the Debtor entered into a stipulation for the use of cash collateral and adequate protection which set the payments under a formula raising from \$7,500 per month to \$9,000 per month. Under the Plan, the Debtor will make payments to CRF at the rate of \$11,137.56 per month, provided, that in those months in which the Debtor's gross revenues are less than \$70,000, then the payments shall be reduced to \$9,000. Reduction of the payments shall not occur more than four months per year.

Further, Houyoux Properties has listed for sale the real estate located at 2115 Kelly Island Road, Martinsburg. In the event that property is sold, the net sale proceeds shall be applied to reduction of the claim of CRF. If the claim is significantly reduced by a sale of the real property, then the parties shall use their best efforts to renegotiate a new monthly payment amount. THIS CLAIM IS IMPAIRED.

Class S-2. Class S-2 is the secured claim of Citizens National Bank. This claim is secured by a first lien on a Piper Navajo PA-31 airplane, tail number 111TK, and a Piper Navajo PA-3 airplane, tail number 500Q. The Debtor owes the sum of \$117,981 to Citizens National Bank. The Debtor will make payments on this claim at the rate of \$1,000 per month with interest a 5% per annum until the claim of CRF is paid. Then the monthly payments shall increase to \$4,000 per month. This claim is impaired. This claim shall be paid in full but it is impaired because of a change in the pre-petition contractual amount.

Class OD. Class OD is the claim of On Deck Capital. Although On Deck Capital did file a financing statement with the Office of the Secretary of State of the State of West Virginia, this claim is unsecured because of senior liens of CRF and Citizens National Bank. Class OD is the unsecured claim of On Deck Capital. This claim is also personally guaranteed by Arlie Winters, the owner of the Debtor. On Deck Capital has agreed to receive a payment at the rate of \$500 per month for a period not to exceed six months, after which the parties will renegotiate a higher payment. A disproportionate portion of the payment may come from Arlie Winters, individually. The total claim is approximately \$110,000. On Deck Capital is willing to accept a significant discount on the claim if the Debtor and Arlie Winters can pay a percentage over a time period not to exceed two years. This claim is impaired.

Class U-1. Class U-1 consists of the claim of unsecured creditors other than On Deck Capital. Claims in this class total the sum of \$43,617. Creditors in this class shall receive a dividend of 50% based upon 20 quarterly payments, without interest, of \$1,905 per quarter. This class is impaired.

Class I. Class I is the claim of Arlie Winters, based upon contributions to capital of the business. No payments shall be made on this claim.

Class O. Class O is the ownership interest of Arlie Winters. Mr. Winters shall receive a salary of \$5,500 per month. Mr. Winters shall continue to own the business.

3. *Class of Equity Interest Holders*

Arlie Winters will continue to be the equity interest holder.

D. Means of Implementing the Plan

This Chapter 11 Plan is based upon the Debtor's belief that payments to creditors as provided herein will return more to the creditor body than they would receive under a liquidation by a Chapter 7 Trustee. The Plan will be funded by cash flow generated from the Debtor's business based upon a going concern and will be augmented by the sale of non-residential real property owned by a limited liability company with those proceeds to be applied to the reduction of the debt of CRF. Upon the effective date, all property of the estate, wherever situated, shall be vested in the Debtor free and clear of all liens, claims and interests except as may otherwise be provided by the Plan. Management of the Debtor's business shall continue under Arlie Winters.

The Debtor owns a Leica DSW700 Aerial Film Scanner. This equipment is no longer used by the Debtor and is partiall obsolete. The Debtor hopes to sell this equipment in the range of \$25,000 to \$30,000 with all of the net sale proceeds to be paid over to CRF.

E. Risk Factors

One of the primary risks of the Reorganization Plan is that the Debtor will not generate sufficient new contracts to obtain revenues to make Plan payments. The Debtor's business is subject to the fluctuations in the industry. The Debtor may not be able to obtain new financing for replacement equipment and the Debtor's aircraft, which are old, could become inoperable. Other risks include the credit risk of key customers and non-payment by those customers; reliance on a small number of key customers; and operating and maintenance costs which may not necessarily fluctuate in proportion to changes in operating revenues.

G. Executory Contracts

The Debtor leases space from Houyous Properties, which is a limited liability company wholly owned by Arlie Winters, the owner of the Debtor. Pre-petition, the rent was set at \$4,000 per month. The Debtor has not been able to make the normal contractual payment during the term of this case. This real property has been marketed for sale. Pending a sale or other disposition of the real property, the Debtor will make rental payments at the rate of \$2,500 per month.

H. Tax Consequences of the Plan

The Debtor may be able to capture pre-petition net operating loss carry overs and other tax attributes. However, the Plan is not premised upon tax considerations.

Pursuant to the provisions of 11 U.S.C. § 1125, the Debtor states that the Plan will not have any material federal tax consequences upon the Debtor. Payments received by secured creditors will have the same tax effect as if the Debtor were not a party to a Chapter 11 case. Payments received by unsecured creditors are impaired to the extent that a claim is not paid in full.

V. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. 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 § 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. All creditors are entitled to vote on the Plan.

In this case, the Plan Proponent believes that all classes are impaired other than the holders of administrative expense claims. Holders of impaired claims have the right 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.

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 § 1124 of the Code, 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 five 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; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

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 [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 ($\frac{1}{2}$) 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 ($\frac{2}{3}$) in dollar amount of the allowed claims 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 § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims if it meets all the requirements for consensual confirmation except the voting requirements of § 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.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors who do not accept the Plan will receive at least as much under the Plan as such claims would receive in a Chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement. Air Photographics, Inc. is a specialty business primarily based upon industry connections of Arlie Winters and Don Siler. This is not the kind of business that could easily be sold to a third party. The risk factors are reviewed in a separate section of this Disclosure Statement. It is only upon a going concern basis that sufficient funds can be generated to pay creditors. Historically, the Debtor’s revenues fluctuate and the Debtor has operated with inadequate working capital.

The Debtor does believe that CRF is over secured and a sale of the real property owned by Houyou Properties will hopefully make payment of that claim more manageable. Nevertheless, the Debtor’s future revenues depend upon the decisions of administrators and governmental agencies whose own budgets may be constrained.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand within 60 days after the effective date of the Plan to pay all the claims and expenses that are entitled to be paid.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. The Debtors' cash flow has improved over the past five months.

The Plan Proponent has provided financial projections which are listed as Exhibit _____. The Debtor's financial projections shows that the Debtor will have an aggregate cash flow to support the Plan.

VI. EFFECT OF CONFIRMATION OF PLAN

A. Discharge of Debtor

On the effective date 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 §1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt imposed by Plan, 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, claims against the Debtor will be limited to the debts described above.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation but the Court may require a new Disclosure Statement if the modifications are significant.

VII. DEFAULT

In the event that the Debtor would default under the terms of the Plan, then secured creditors would repossess their collateral. CRF could initiate a sale on the digital camera and capture the accounts receivable. Citizens National Bank would be permitted to repossess the airplanes. It is very unlikely there would be any dividend available for unsecured creditors.

VIII. FINAL DECREE

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan proponent, 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.

IX. OTHER PLAN PROVISIONS

Miscellaneous

1. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforce in accordance with the laws of the State of West Virginia.

2. Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

AIR PHOTOGRAPHICS, INC.

By Counsel

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