

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.

**FIRST AMENDED
DISCLOSURE STATEMENT OF AIR PHOTOGRAPHICS, INC.**

**ARTICLE I
INTRODUCTION**

This is First Amended Disclosure Statement (the “Disclosure Statement”) in the small business Chapter 11 case of Air Photographics, Inc. (the “Debtor”). This First Amended 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 First Amended 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 State 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, III. 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, III.

The Debtor has always provided aerial photographs 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, III 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.

The Debtor will proceed to a liquidation of its assets with the goal of significantly reducing and/or refinancing the claim of CRF, which at the time of the filing of this Amended Disclosure Statement totals more than \$755,000. In the event the Debtor is unable to obtain third party financing to satisfy the entirety of CRF's claim prior to April 30, 2017, then the collateral shall be made available by the Debtor to CRF.

Houyoux Properties, LLC owns the business premises from which the Debtor operates. As part of the liquidation process, Houyoux Properties, LLC shall execute a deed in lieu of foreclosure to CRF.

The rights of CRF are more particularly spelled out in that certain Voluntary Relinquishment Agreement executed February _____, 2017.

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.

After the filing of the first Disclosure Statement, the Debtor has negotiated with CRF regarding a possible liquidation of assets. The parties have entered into a Voluntary Relinquishment Agreement which provides for surrender of certain collateral, including the digital mapping camera system if not otherwise refinanced by April 30, 2017. Further, Houyoux Properties, LLC will execute a deed in lieu of foreclosure to CRF of the business premises occupied by Air Photographics, Inc. CRF will attempt to sell that collateral and apply the proceeds to a reduction of its debt.

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 Debtor may owe accrued post-petition taxes to the Internal Revenue Service. All post-petition administrative expense claims for taxes owed to the Internal Revenue Service shall be paid within 10 days after confirmation.

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	Administrative Expense Priority
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	Administrative Expense Priority
Clerk’s Office Fees	\$ -	-
Office of the U.S. Trustee Fees	\$1,950	Administrative Expense Priority
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 (4%) from surplus proceeds, if any from sale of assets
West Virginia State Tax Department	Yes	\$10,674 Asset sale
New York State	Yes	\$1,868 priority Asset sale

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 Piper 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. Pre-petition, the contractual payments were \$11,137.56. After the filing of this case, the Debtor entered into a stipulation for the use of cash collateral and adequate protection payments which set the monthly payments under a formula ranging from \$7,500 per month to \$9,000 per month. Under the terms, a new cash collateral order to be presented and to run through April 30, 2017, the Debtor will make adequate protection payments to CRF in the amount of \$9,000 for any month where the Debtor collects less than \$70,000 and \$11,137.36 for any month where the Debtor collects more than \$70,000.

During the interim and through April 30, 2017, the Debtor will forego lease payments otherwise due to Houyoux Properties.

Class S-2. Class S-2 is the secured claim of CNB Bank, Inc.. 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 CNB Bank, Inc.. 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 until April 30, 2017.

Payments to Class S-2; Class OD; and Class U-1 are contingent upon the Debtor being able to meet the requirements of the Voluntary Relinquishment Agreement and obtaining refinancing of the digital camera mapping system.

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 CNB Bank, Inc.. Class OD is the unsecured claim of On Deck Capital. This claim is also personally guaranteed by Arlie Winters, III, the owner of the Debtor.

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.

Class I. Class I is the claim of Arlie Winters, III, 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, III. Mr. Winters shall continue to own the business.

Payments to Class OD and Class U can only be made if there are surplus proceeds after payment in full of secured claims, administrative expense claims and priority claims.

3. Class of Equity Interest Holders

Arlie Winters, III will continue to be the equity interest holder.

D. Means of Implementing the Plan

This Amended Chapter 11 Plan is based upon a liquidation of the Debtor's digital mapping system and real property owned by Houyoux Properties, LLC, a non-debtor. In addition, the Debtor will seek new business partners or a merger with another entity as a means to continue the business. The Debtor shall continue to operate its business through April 30, 2017, and will actively seek out sources of replacement financing.

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

The primary risk is that the Debtor will not be able to sell the non-Debtor owned real property at a price satisfactory to CRF so as to reduce the total CRF obligation to an amount which would allow the balance of its claim to be refinanced by a third party lender. Other risks

include the potential of a decline of new business because customers may be concerned that the Debtor will not be able to fulfill long term contracts.

G. Executory Contracts

The Debtor has previously leased space from Houyoux Properties, which is a limited liability company owned by Arlie Winters, the owner of the Debtor. Under the terms of the Voluntary Relinquishment Agreement, the Debtor will no longer make monthly lease payments on that property which will be relinquished to CRF.

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 (½) 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.

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, III 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.

Because this Plan is predicated upon a liquidation of the Debtor’s principal assets, a liquidation analysis represents which creditors may receive, absent refinancing. The Debtor will diligently attempt to obtain new equity and a refinancing of its principal asset.

D. Feasibility

This Plan is based upon a liquidation of the Debtor’s assets unless the Debtor is able to obtain new equity financing and a refinancing of its principal equipment. In the event that the Debtor is unable to obtain new funds, then the assets will be surrendered pursuant to the terms of that Voluntary Relinquishment Agreement.

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. CNB Bank, Inc. 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

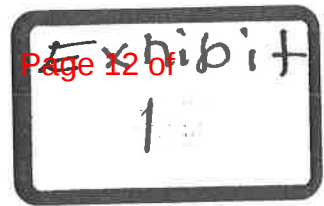
1. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of West Virginia.

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

/s/ Joseph W. Caldwell
Joseph W. Caldwell, Esquire
WV Bar No. 586
CALDWELL & RIFFEE
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List of Creditors

Priority Creditors:

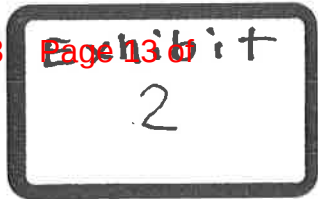
Internal Revenue Service	\$ 6,557
West Virginia State Tax Department	\$ 12,302
Comptroller of New York	<u>\$ 2,117</u>
	\$20,976

Secured Creditors:

Community Reinvestment Fund, Inc.	\$755,684
Citizens National Bank	<u>\$117,984</u>
	\$873,668

Unsecured Creditors:

On Deck Capital	\$123,944
Phillips 66	\$ 8,463
World Fuel	\$ 8,000
Leica Systems	\$ 22,831
Houyoux Properties	\$ 4,000 (Insider)
Capital One	<u>\$ 323</u>
	\$167,561



Air Photographics, Inc.

Liquidation Analysis

<u>List of Assets:</u>	<u>Market Value</u>	<u>Secured Debt</u>	<u>Liquidation Value</u>
DMC II 230 Digital Mapping Camera	\$ 850,000	\$ 755,684	\$ 600,000
Leico Film Camera	\$ 15,000	CRF	\$ 10,000
Accounts Receivable	\$ 50,000	CRF	\$ 25,000
2005 Honda Pilot	\$ 3,000	-	\$ 2,000
2005 Murano Nissan	\$ 6,000	-	\$ 4,500
Piper Navajo PA31 Tail No. 111TK	\$ 175,000	Citizens \$117,984	\$ 125,000
Piper Navajo PA31 Tail No. 500Q	\$ 175,000	Citizens \$117,984	\$ 125,000
Office equipment	\$ 3,500	CRF	\$ 3,000
Cash on hand	<u>\$ 2,500</u>	<u> </u>	<u>\$ 2,500</u>
	\$1,280,000	\$ 873,668	\$ 897,000

Air Photographics, Inc.

NOTE TO LIQUIDATION ANALYSIS

It should be noted that in the event that the Piper Navajos would sell for less than \$118,000 each, and if the digital camera would sell for less than \$400,000, it is possible that the existing secured debt would be greater than all liquidation proceeds.



Air Photographics, Inc.
Case Number: 16-00242

MONTHLY REPORT SUMMARY

MONTH	RECEIPTS	DISBURSEMENTS	INCOME/LOSS
May 2016	\$ 72,600.74	\$ 64,114.36	\$ 8,486.38
June 2016	\$ 77,687.13	\$ 75,803.84	\$ 1,883.29
July 2016	\$ 35,389.22	\$ 52,352.21	(\$16,962.99)
August 2016	\$111,472.79	\$ 72,878.97	\$ 38,593.82
September 2016	\$ 36,523.63	\$ 62,160.36	(\$25,636.73)
October 2016	\$ 45,917.04	\$ 49,923.10	(\$ 4,006.06)
November 2016	\$ 73,428.31	\$ 65,681.47	\$ 7,746.84