

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:

STOLLINGS TRUCKING COMPANY, INC.

Debtor

**Chapter 11
Case No. 15-20624**

**OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT
BY WILLIS MARCUM AND MARCUM & ASSOCIATES, INC.**

Willis Marcum ("Marcum") and Marcum & Associates, Inc. ("Associates" and, together with Marcum, the "Marcum Group"), by and through their counsel, Joseph G. Bunn, Esq. and the law firm of Steptoe & Johnson PLLC, respectfully submit this objection (the "Objection") to debtor's disclosure statement dated July 20, 2017 [ECF No. 346] (the "Disclosure Statement") for the following reasons:

Preliminary Statement

On July 20, 2017, the Debtor filed its Chapter 11 Plan of Liquidation [ECF No. 347] (the "Plan"). On the same day, the Debtor filed the Disclosure Statement in an effort to describe the Plan. On August 2, 2017, this Court ordered that all objections to the Disclosure Statement be submitted on or before September 6, 2017.

Objection

Under § 1125, a disclosure statement must contain adequate information, which is information

of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, . . . that would enable such a hypothetical investor typical of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. §1125(a)(1). Put another way, adequate information is information “that is material, important and necessary for creditors and shareholders to properly evaluate a proposed plan and thus enable the creditors and shareholders to make a reasonably informed decision on the plan.” *See In re William F. Gable Company*, 10 B.R. 248, 249 (N.D.W.Va. 1981). After a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing to consider the disclosure statement and any objections or modifications thereto. Bkr. Rule 3017(a). In determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information. 11 U.S.C. § 1125(a)(1).

This Court should disapprove the Disclosure Statement because it fails to provide adequate information. In particular, the Disclosure Statement fails to provide adequate information because it (1) fails to describe its active litigation cases with reasonable specificity, (2) contains multiple material discrepancies with the Plan, and (3) fails to describe the Liquidation Trust Agreement at all. The foregoing errors are described in further detail below.

1. The Disclosure Statement fails to describe its active litigation cases with reasonable specificity.

The Debtor identifies three causes of action as assets of the Debtor’s estate but fails to provide enough information for a creditor to assess the likelihood that Debtor will succeed in any of those causes of action. In particular, the Debtor fails to identify the defenses and counterclaims being alleged by the other parties in such cases. The Debtor also fails to describe the procedural posture of any of the cases or the amount of expenses incurred by the Debtor in prosecuting those cases. Given the material nature of each of the foregoing causes of action to the feasibility of Debtor’s Plan, the Marcum Group and other creditors should at the very least

understood the basic arguments of each party to those cases, the funds expended in prosecuting those cases so far and an estimated date of when those cases will conclude.

2. *There are multiple material discrepancies between the Disclosure Statement and the Plan.*

The Disclosure Statement describes a variety of claims accorded various priorities that differ from the claims and priorities set forth in the Plan. The most obvious example of such discrepancies is the fact that the Debtor identified Lyndon Property Insurance Company as holding a secured claim in the Disclosure Statement, but does not even identify Lyndon Property Insurance Company as a secured creditor in the Plan. Another striking example of inconsistency is the Debtor's identification of the Marcum Group as an unsecured creditor in Exhibit F of the Disclosure Statement, but the identification of the Marcum Group as a secured creditor elsewhere in the Disclosure Statement and the Plan. Without consistent treatment of claims throughout the Disclosure Statement and the Plan, the Marcum Group and other creditors cannot adequately assess whether the plan is feasible or fair and equitable.

3. *The Disclosure Statement fails to describe the Liquidation Trust Agreement.*

Third, the Disclosure Statement refers to the appointment of a Liquidating Trustee whose powers are governed by a Liquidation Trust Agreement but fails to provide a copy of such agreement. If the Liquidating Trustee will implement the Plan pursuant to the requirements of the Liquidation Trust Agreement, the Marcum Group and other creditors cannot adequately assess whether the Plan is feasible or fair and equitable without reviewing the Liquidation Trust Agreement.

Relief Requested

For the foregoing reasons, the Marcum Group asserts that the Disclosure Statement fails to provide adequate information and respectfully requests that this Court order the Debtor to revise,

amend, supplement or otherwise modify the Disclosure Statement and Plan to address the concerns set forth above. Notwithstanding the statements made in this Objection, the Marcum Group reserves the right to later object to the Disclosure Statement and Plan, as revised, amended, supplemented or otherwise modified.

Dated: September 6, 2017
Charleston, West Virginia

By: /s/ Joseph G. Bunn

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the attached "Objection to Debtor's Disclosure Statement by Willis Marcum and Marcum & Associates, Inc." was served electronically upon the following via the Court's ECMF system which will send notice of such filing to all CM/ECF participants in this case as of this 6th day of September, 2017.

[insert]

/s/ Joseph G. Bunn

Joseph G. Bunn (W. Va. Bar # 11319)