

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

In re:

MASON'S TRANSPORT, INC.

**Case No. 16-50052
Chapter 11**

Debtor.

**THE SECOND AMENDED DISCLOSURE STATEMENT
OF MASON'S TRANSPORT, INC.**

**ARTICLE I
INTRODUCTION**

This is the ~~disclosure statement~~ **Second Amended Disclosure Statement** (the "Disclosure Statement") in the small business Chapter 11 case of Mason's Transport, Inc. (the "Debtor"). This **Second 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 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 AND 6 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, Robert C. Byrd U.S. Federal Building & Courthouse, 1109 North Heber Street, Beckley, 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 began business in Raleigh County, West Virginia, in 2004. The Debtor operates from Bolt, Raleigh County, and has always been engaged in the coal hauling business.

In 2015 and early 2016 the volume of business slowed to the point where the Debtor was unable to make payments to the taxing authorities and to secured creditors. Secured creditors began to take steps to repossess equipment. This case was filed to preserve the going concern of the business.

The Debtor owns equipment valued at \$20,000. In addition, John Mason, the owner of the Debtor, owns several coal tractors and coal trailers in his individual name. The Debtor leases those tractors and trailers by making the debt payments upon the units and by providing insurance, maintenance and repairs.

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 U.S. Bankruptcy Court for the Southern District of West Virginia. Since the time of the filing of this case, the Debtor's operations have improved.

The Debtor owes the Internal Revenue Service the approximate sum of \$61,422. Prior to the filing of this case, the Internal Revenue Service had filed a federal tax lien in the County Commission of Raleigh County, West Virginia. The filing of a federal tax lien creates a lien against all personal property owned by the Debtor.

The Debtor will continue to operate its business as a coal hauler. The Debtor is currently a party to an agreement with Blackhawk Mining and hauls coal out of Raleigh County, West Virginia, to a processing plant in Boone County, West Virginia. This case was filed because in the months leading up to the filing of the case, there was virtually no work available. The Debtor was unable to make trust fund tax payments and to make secured debt payments. The Debtor believes that the Blackhawk Mining contract can continue for as long as five years.

III. SIGNIFICANT EVENTS

During the pendency of this case, the Debtor has entered into a coal hauling agreement with Blackhawk Mining. Blackhawk Mining has taken over several of the operations of Patriot Coal which had filed a Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Eastern District of Virginia. Mason's Transport, Inc. hauls coal from Bolt Mountain to a loading and processing facility approximately 15 miles away in Boone County. The short distance of the haul allows multiple hauls per day. The mine is also located in close proximity to the place of business of Mason's Transport, Inc. Hauling has increased and work has become steady. Blackhawk Mining operates both a deep mine and a surface mine.

Although the coal tractors and coal trailers are owned primarily by John Mason individually, the individual debtors have entered into adequate protection payments with secured creditors which will dovetail into the individual Reorganization Plan and provide rolling stock for Mason's Transport, Inc. Mason's Transport, Inc. provides the maintenance and repair on the tractors and trailers which are currently in good working condition. Mason's Transport also pays insurance and licenses and fees.

The Debtor has insurance on all equipment and is current with post-petition tax payments to both the Internal Revenue Service and to the West Virginia State Tax Department.

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:

Class A. 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	\$10,000	Paid in full within 60 days after the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	N/A	Paid in full within 90 days after the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court	\$7,500	To be paid in installments over six months after confirmation
Clerk’s Office Fees	\$ 0	Paid in full on the effective date of the Plan
Office of the U.S. Trustee Fees	Estimated \$1,625	Paid in full within 30 days after confirmation
TOTAL		

The Debtor's original Plan listed the Internal Revenue Service as a secured creditor in the amount of \$33,207 and the Service also filed a priority claim in the sum of \$4,424. The West Virginia State Tax Department also filed a pre-petition priority and secured claim.

~~Michelle Steele, Court appointed accountant, has now reconstructed the Debtor's tax returns and filed those with the applicable taxing authorities. Those returns show that there is no obligation owing for the years 2015 and prior. The year 2016 is under extension and any taxes owed for the year 2016 to either taxing authority will be paid in full as a post-petition administrative expense claim.~~

After reconstruction of the books and records of the Debtors individually, and filing 20 separate State and Federal income tax returns, Michelle Steele, the accountant for the Debtors, has calculated that the balance owed to the Internal Revenue Service is approximately \$21,500. For 2016 the Debtors are entitled to a \$4,700 refund. After consultation with representatives of the Internal Revenue Service, the Debtors have agreed to turn over the 2016 refund and to pay the balance owed to the Internal Revenue Service within the period of one year from confirmation. Payments will be made at least at the rate of \$1,500 per month until the balance is paid. This payment shall be paid in the Masons' individual case.

Unsecured Creditors

Class U-1. Class U-1 is the unsecured claim of B&M Oil. B&M Oil has filed a Proof of Claim in the sum of \$118,000. The claim will be compromised at the sum of \$93,486. The Debtor has entered into a compromise with B&M Property Management which will provide for a \$7,500 lump sum down payment with the remaining claim of \$85,986 to be paid by both Mason's Transport, Inc. and John Stephen Mason over a period of five years with monthly payments in the amount of \$1,475. With respect to this payment, both John Stephen Mason and Mason's Transport, Inc. will each remain liable for the full amount of B&M Property Management's claim but each will be entitled to a credit for the amounts paid to B&M Property Management by the other against a total amount due. This class is impaired.

~~Class U-2. Class U-2 is the unsecured claim of Mack Financial. This claim totals the approximate sum of \$125,000. Mack Financial shall be paid the sum of \$36,000 to be paid quarterly, without interest, in the amount of \$1,500 per quarter over 20 quarters. This class is impaired. This payment shall be made in the individual cases.~~

Class U-2 Class U-2 is the unsecured claim of Mack Financial. This claim totals the approximate sum of \$95,000. Mack Financial shall be paid the sum of \$46,500 to be paid quarterly, without interest, in the amount of \$2,325 per quarter over 20 quarters. This class is impaired. This payment shall be made in the individual case.

Class U-3. Class U-3 consists of the claims of non-insider unsecured creditors. Claims in this class, exclusive of B&M Oil, total the sum of \$154,688, including the unsecured claim of the Internal Revenue Service. Creditors in this class shall receive a dividend of 48% based upon 20 quarterly payments, without interest, of \$3,000 per quarter. This class is impaired.

Class I. Class I consists of the claims of insiders upon which no dividend will be paid.

Class O. Class of Equity Interest Holders

John Stephen Mason is the owner of the business. Mr. Mason will continue to hold the ownership interest and will not receive any payment other than salary until the Plan is completed. All pre-petition loans made by John Mason will not receive a payment.

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.

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. To the extent necessary, the Debtor may sell certain surplus equipment to augment Plan payments.

E. Risk Factors

The primary risk is that the Debtor will lose coal hauling contracts and not be able to generate sufficient revenues to make Plan payments. The Debtor's business is based upon a limited number of customers. The Debtor's business is also subject to the fluctuations in the coal industry. Tractors and trailers may become inoperable and the Debtor may not be able to obtain new financing for replacement equipment.

F. Executory Contracts

The Debtor is a party to a coal hauling agreement with Blackhawk Mining. That agreement provides for compensation at the rate of \$4.30 per ton. That agreement will be assumed. In addition, Mason's Transport, Inc. leases a truck yard from the Masons individually. This property is located at Bolt, Raleigh County, West Virginia. The monthly rent paid on this property will be the sum of \$1,000. The Debtor will also pay to the Masons individually the sum of \$3,850 for PACCAR, and \$1,300 per month to Mack Financial.

G. 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 ($1/2$) 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.

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 and equity interest holders who do not accept the Plan will receive as much under the Plan as each claim would receive in a Chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement. Mason’s Transport, Inc. is based almost entirely upon business contacts of John Stephen Mason. It would be difficult to sell the business as a going concern. It would be possible to sell the equipment but the sale proceeds would first be allocated to the Internal Revenue Service. Given the surplus of used equipment in the coal industry, and the shrinkage of the coal hauling business, it is problematic whether the equipment would realize sufficient funds to pay more than what is owed to the Internal Revenue Service. It is upon a going concern business that sufficient funds can be generated to make a meaningful payment to creditors.

The Monthly Operating Reports over the last few months do suggest that a Plan is feasible based upon current revenues. Revenues have been increasing and the Debtor is hauling for an established coal operator.

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. LITIGATION

At the time of the filing of the Chapter 11 case, the Debtor was party to a civil litigation pending in the Circuit Court of Raleigh County, West Virginia, instituted by B & M Property Management which has asserted a claim in the sum of \$118,727. That claim is also personally guaranteed by John Stephen Mason.

The Debtor will enter into a compromise with B & M Property Management which will provide that upon confirmation, a lump sum payment of \$7,500 will be made with the remaining claim of \$88,486 to be paid by both Mason's Transport, Inc. and John Stephen Mason over a period of five years with monthly payments in the amount of \$1,475. With respect to this payment, both John Stephen Mason and Mason's Transport, Inc. will each remain liable for the full amount of B & M Property Management's claim but each will be entitled to a credit for the amounts paid to B & M Property Management by the other against the total amount due.

VII. 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.

VIII. DEFAULT

In the event that the Debtor would default under the terms of the Plan, then the Internal Revenue Service would have the right to take possession of the Debtor's personal property. A levy upon that property and a subsequent sale would not likely generate any surplus for unsecured creditors. Unsecured creditors would have the right to petition the U.S. Bankruptcy Court to convert or dismiss this case in the event of a default, but such remedy would be most likely unavailing. Alternatively, in the event of a default, the Office of the U.S. Trustee or the Debtor itself could move to have this case converted to a Chapter 7 liquidation case.

IX. 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.

X. 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.

3. Effective Date of Plan. The effective date of this Plan is the 11th business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

4. Definitions and Rules of Construction. The definitions and rules of construction set forth in §101 and 102 of the Code shall apply when terms defined or constructed in the Code are used in this Plan, and they are supplemented by the following definitions: {insert additional definitions if necessary}.

5. Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon , and will insured to the benefit of the successors or assigns of each entity

MASON'S TRANSPORT, INC.

By Counsel

/s/ Joseph W. Caldwell

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