

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

In Re:  MCGEE TRUCKING LLC,  Debtor.	Bankruptcy No. 3:17-BK-30185  Chapter 11  Judge Frank W. Volk  Related to Doc 65
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**PEOPLES BANK’S OBJECTION  
TO PROPOSED DISCLOSURE STATEMENT**

Peoples Bank (“*Peoples*”), Arch W. Riley, Jr. and Bernstein-Burkley, P.C., its attorneys, states as follows for its *Objection to the Proposed Disclosure Statement* (the “*Objection*”) [Doc 65] of McGee Trucking LLC (the “*Debtor*”):

**PROCEDURAL BACKGROUND**

1. On April 24, 2017 (the “*Petition Date*”), the Debtor filed its voluntary petition for relief (the “*Bankruptcy Case*”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of West Virginia (the “*Court*”) at case number 3:17-bk-30185. No trustee has been appointed in the Bankruptcy Case and the Debtor continues in possession of its property and manages its financial affairs as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors has been appointed by the United States Trustee for Region Four pursuant to section 1102 of the Bankruptcy Code.

2. October 17, 2017, the Debtor filed its Disclosure Statement (the “*Disclosure Statement*”) pursuant to 11 U.S.C. § 1125 and Debtor’s Proposed Plan of Reorganization dated October 2nd, 2017 (the “*Plan*”) [Doc 65-1].

3. Peoples is a secured creditor of the Debtor, holding four (4) secured claims totaling \$224,169.30 as of the Petition Date. Peoples' secured claims comprise the majority (two-thirds) of the Debtor's filed claims in the Bankruptcy Case.

4. Peoples is a party in interest with standing to object to the Disclosure Statement pursuant to 11 U.S.C. § 1109(b). Peoples files this objection in accordance with Bankruptcy Rule 3017(a).

### **FACTUAL BACKGROUND**

5. The Debtor was formed in October 2014 by Robert and Susan McGee (the "*McGees*"), who are the sole members of the Debtors, to operate a long-haul trucking business.

6. The Debtor is obligated to Peoples pursuant to four (4) different loans:

- a. A Promissory Note, Business Loan Agreement, and Commercial Security Agreement dated October 8, 2015, in the original principal amount of \$55,500, secured by a first lien on 2007 Peterbilt Truck. *See* Claim 3.
- b. A Promissory Note, Deed of Trust, and Commercial Guaranty dated August 19, 2105, in the original principal amount of \$67,464, secured by a first deed of trust lien on the McGees' personal residence located at 2398 McComas Road, Barboursville, West Virginia. *See* Claim 4.
- c. A Promissory Note and Commercial Security Agreement dated August 19, 2015, in the original principal amount of \$99,915, secured by a 2005 Peterbilt Truck. *See* Claim 5.
- d. A Promissory Note, Deed of Trust, and Commercial Guaranty dated August 19, 2105, in the original principal amount of \$15,000, secured by a second deed of trust lien on the McGees' personal residence located at 2398 McComas Road, Barboursville, West Virginia. *See* Claim 6.

## OBJECTION

**A. The Bankruptcy Court should not approve the Disclosure Statement because it does not contain adequate information.**

7. Section 1125 of the Bankruptcy Code requires a debtor to file a disclosure statement containing adequate information from which a creditor can determine whether to vote for or against a plan.

8. In determining the adequacy of information under the Bankruptcy Code, a bankruptcy court reviews the information on a case by case basis. *In re A.H. Robins, Co.*, 880 F.2d 694, 696 (4th Cir. 1989). The purpose of a disclosure statement is to provide enough information to creditors to permit them to determine whether to vote for or against a plan of reorganization. *In re Phoenix Petroleum Co.*, 2787 B.R. 385, 392-93 (Bankr. E.D. Pa. 2001).

9. To meet the “adequate information” standard under the Bankruptcy Code, “a disclosure statement must contain information that is material, important and necessary for creditors and shareholders to properly evaluate the proposed plan and thus enable them to make a reasonably informed decision on the plan.” *In re William F. Gable Co.*, 10 B.R. 248, 249 (Bankr. N.D. W.Va. 1981). That is, “[i]n general terms, ‘adequate information’ means that information which ‘clearly and succinctly informs the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.’” *In re Williams*, 1992 WL 521537 (D. Md. 1992). As one bankruptcy court observed, “creditors are not expected to be mindreaders or clairvoyant.” *In re Adana Mortgage*, 14 B.R. 29, 31 (Bankr. N.D. Ga 1981); see also, *In re Civitella*, 15 B.R. 206, 208 (Bankr. E.D. Pa. 1981) (“[M]ere allegations or opinions, unsupported by factual information, do not meet the required standard.”).

10. The Disclosure Statement lacks sufficient information from which the Bankruptcy Court can determine whether the Plan meets the “fair and equitable” test of 11 U.S.C. § 1129(b)(2).

11. Finally, the Disclosure Statement lacks meaningful disclosures as to a liquidation analysis from which the Court can determine whether the Plan is confirmable in light of the liquidation test of 11 U.S.C. § 1129(a)(7).

12. Specifically, the Disclosure Statement fails to disclose in detail either the Debtor's past financial performance, specifically by failing to timely file the Debtor's operating reports (the October and November operating reports have not been filed), or its projected financial performance for the business in a way that is meaningful for creditors to determine the economic viability of the Debtor meeting the obligations it sets forth in the Plan.

13. The Disclosure Statement fails to provide an update on the status the Debtor's lawsuits claims against third parties and the projected recovery from such claims.

**B. The Disclosure Statement is related to a Plan of Reorganization which is not confirmable.**

14. Additionally, when deciding whether to approve a disclosure statement, the Bankruptcy Court should determine whether the plan to which the statement relates can be confirmed. *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986)(Holding that if the court can determine from a reading of the plan that it does not comply with section 1129 of the Bankruptcy Code, then it is incumbent upon the court to decline approval of the disclosure statement). *See also, In re Kehn Ranch, Inc.*, 41 B.R. 832, 832-33 (Bankr. S.D. 1984). Where it relates to a plan of reorganization that cannot be confirmed, approval of a disclosure statement is a waste of resources.

15. While mindful of the procedural difference between objections to disclosure statements and objections to confirmation under a plan of reorganization, courts may consider substantive plan confirmation issues at the hearing to approve the disclosure statement. *See In re Atlanta West VI*, 91 B.R. 620, 622 (Bankr. N.D. Ga. 1988) and *In re Felicity Assocs., Inc.*, 197

B.R. 12, 14 (Bankr. D.R.I. 1996) (“It has become standard Chapter 11 practice that when an objection raises substantive plan issues that are normally addressed at confirmation, it is proper to consider and rule upon such issues prior to confirmation, where the proposed plan is arguably unconfirmable on its face.”)(internal quotation omitted); *In re Market Square Inn, Inc.*, 163 B.R. 64, 68 (Bankr. W.D. Pa. 1994) (“Where it is clear that a plan of reorganization is not capable of confirmation, it is appropriate to refuse the approval of the disclosure statement.”).

16. The Plan proposes to “cramdown” impaired Peoples secured claims on the 2007 Peterbilt Tractor and 2005 Peterbilt Tractor and treat the balance of the secured claims as unsecured claims.

17. At the same time, the Plan proposes to allow the McGees to retain their equity interests in the Debtor, despite the impairment of Peoples’ secured claims in violation of the absolute priority rule of 11 U.S.C. § 1129(b)(2)(B)(ii).

18. And, the Plan does not allocate the proceeds from the lawsuit to the payment of unsecured claims in further violation of the absolute priority rule.

### **RESERVATION OF RIGHTS**

19. The Bank reserves its rights to supplement this Objection and make such other and further objections as deemed necessary or appropriate.

WHEREFORE, Peoples Bank respectfully requests that this Court deny approval of the Debtor's Disclosure Statement and for such other relief as is just and proper.

Dated: December 10, 2017

BERNSTEIN-BURKLEY, P.C.

By: /s/Arch W. Riley, Jr.

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