

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

IN RE:

DENNIS RAY JOHNSON, II, et al.,<sup>1</sup>

Debtors.

Bankruptcy No. 3:16-bk-30227

Jointly Administered  
Chapter 11

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**DISCLOSURE STATEMENT ACCOMPANYING CHAPTER 11 PLAN OF LIQUIDATION  
DATED OCTOBER 27, 2017, FILED BY PEOPLES BANK**

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BERNSTEIN-BURKLEY, PC  
Kirk B. Burkley, Esq.

707 Grant Street, Suite 2200  
Pittsburgh, PA 15219

T: (412) 456-8100  
F: (412) 456-8135

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<sup>1</sup> The debtors in these chapter 11 cases, along with the original case number for each debtor, are: *Dennis Ray Johnson, II*, Case No. 16-30227; *Appalachian Mining and Reclamation, LLC*, Case No. 16-30400; *DJWV1, LLC*, Case No. 16-30249; *DJWV2, LLC*, Case No. 16-30062; *Elkview Reclamation and Processing, LLC*, Case No. 16-30250; *Green Coal, LLC*, Case No. 16-30399; *Joint Venture Development, LLC*, Case No. 16-30403; *Little Kentucky Elk, LLC*, 16-30251; *Moussie Processing, LLC*, Case No. 16-30248; *Producer's Coal, Inc.*, Case No. 16-30402; *Producer's Land, LLC*, Case No. 16-30401; *Redbud Dock, LLC*, Case No. 16-30398; *Sabbatical, Inc.*, Case No. 16-30247; *Southern Marine Services, LLC*, Case No. 16-30063; and *Southern Marine Terminal, LLC*, Case No. 16-30064.

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EXHIBIT – Chapter 11 Plan of Liquidation Dated October 27, 2017

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**DISCLOSURE STATEMENT TO ACCOMPANY THE CHAPTER 11 PLAN OF LIQUIDATION  
DATED OCTOBER 27, 2017, FILED BY PEOPLES BANK**

PEOPLES BANK (“Peoples” or the “Bank”), an Ohio banking corporation formerly known as Peoples Bank, National Association and a secured creditor in the above captioned jointly administered chapter 11 cases, hereby files this Disclosure Statement to accompany its proposed *Chapter 11 Plan of Liquidation Dated October 27, 2017* (the “Plan”). Unless otherwise defined in this Disclosure Statement, capitalized terms used herein have the meanings ascribed to them in the Plan.

**I. INTRODUCTION**

Under the Plan, the Bank proposes to liquidate all remaining assets of the Debtors for the benefit of all creditors of the Debtors’ estates.

The debtors are related entities consisting of the following: Dennis Ray Johnson, II (“Johnson”), Appalachian Mining & Reclamation, LLC (“Appalachian”), Green Coal, LLC (“Green Coal”), Joint Venture Development (“JVD”), Redbud Dock, LLC (“Redbud”), Producer’s Land, LLC (“Producers Land”), Producer’s Coal, Inc. (“Producers Coal”), Sabbatical, Inc. “Sabbatical”), Southern Marine Terminal, LLC (“SMT”), Southern Marine Services Limited Liability Company (“SMS”), DJWV1, LLC (“DJWV1”), DJWV2, LLC (“DJWV2”), Elkview Reclamation & Processing, LLC (“Elkview”), Moussie Processing, LLC (“Moussie”), and The Little Kentucky Elk, LLC (“LKE”) (collectively, Johnson, Appalachian, Green Coal, JVD, Redbud, Producers Land, Producers Coal, SMT, SMS, DJWV1, DJWV2, Elkview, Moussie, and LKE, the “Debtors”), all administratively consolidated at case number 3:16-bk-30227 (“Johnson Case”).

The Debtors were each part of a coal enterprise of related entities owned and operated by Johnson.

On May 9, 2016 (the “Petition Date”), Johnson filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended,

the “Bankruptcy Code”) at Case No. 16-30227 (the “Johnson Case”) in the United States Bankruptcy Court for the Southern District of West Virginia (the “Bankruptcy Court”). By order entered November 7, 2016, the Bankruptcy Court administratively consolidated the Johnson Case with the following cases: *Appalachian Mining and Reclamation, LLC*, Case No. 16-30400; *DJWV1, LLC*, Case No. 16-30249; *DJWV2, LLC*, Case No. 16-30062; *Elkview Reclamation and Processing, LLC*, Case No. 16-30250; *Green Coal, LLC*, Case No. 16-30399; *Joint Venture Development, LLC*, Case No. 16-30403; *Little Kentucky Elk, LLC*, 16-30251; *Moussie Processing, LLC*, Case No. 16-30248; *Producer’s Coal, Inc.*, Case No. 16-30402; *Producer’s Land, LLC*, Case No. 16-30401; *Redbud Dock, LLC*, Case No. 16-30398; *Sabbatical, Inc.*, Case No. 16-30247; *Southern Marine Services, LLC*, Case No. 16-30063; and *Southern Marine Terminal, LLC*, Case No. 16-30064 (collectively, with the Johnson Case, the “Bankruptcy Cases”).

The Plan will not become effective unless and until the Bankruptcy Court confirms the Plan in accordance with the Bankruptcy Code. Confirmation of the Plan requires, among other things, acceptance of the Plan by one-half in number and two-thirds in dollar amount of the Debtors’ general unsecured creditors who vote on the Plan. The Bank submits this Disclosure Statement to the holders of all claims against the Debtors in connection with its solicitation of the necessary acceptances of the Plan.

**THE PLAN HAS TWO ALTERNATIVES. The Creditors are encouraged to vote for Plan Alternative One.** Pursuant to Plan Alternative One, the Bank will contribute Plan Funding to the Creditors’ Trust. From the proceeds of the Recovery Actions and liquidation of the Trust Assets, the Bank, as Plan Funder, shall receive reimbursement for all Plan Funding, and then share the remaining Net Recoveries as follows: 80% to the Bank (75% in the Sabbatical case) on account of its Class 1 Secured Claim, and 20% (25% in the Sabbatical case) to the other Creditors, in this order: First to the Allowed Administrative Expense Claims, then to Claims of Class 3 Creditors and then to Claims of Class 4 Creditors. Under Plan Alternative One, the Bank foregoes any Class 4 deficiency claim and does not share in the distributions to Class 3 and Class 4 Creditors.

If the Class 4 General Unsecured Claims do not vote to accept the Plan Alternative One as filed, specifically meaning the Creditors’ Trust provisions and the provisions for sharing of Net Recoveries in Article V(A), then the Bank, in its sole discretion, may seek confirmation of these provisions for Plan Alternative Two. Pursuant to Plan Alternative Two, the Bank shall purchase all Assets of the Debtors for \$100,000.00, free and clear of all liens, claims, and encumbrances, at a public sale (the “Sale”) held at the same time and place as the confirmation hearing held on the Plan. Assets includes all claims and causes of action owned or claimed by the Estates, including, but not limited to, causes of action under Section 548 (or similar law) and any property the transfer of which is avoided or recovered by any such

cause of action. No distributions to other Creditors is anticipated under Plan Alternative Two.

Your vote to accept the Plan is critical to confirmation of the Plan and expeditious distributions to the creditors. A ballot for acceptance or rejection of the Plan is enclosed with the Disclosure Statement sent to all creditors. PLEASE COMPLETE THE BALLOT PURSUANT TO THE ENCLOSED INSTRUCTIONS. Please note that not all recipients of the Disclosure Statement will receive a ballot. Some creditors and equity interest holders will not receive a ballot, as they are not entitled to vote to accept or reject the Plan.

## **II. OVERVIEW OF THE PLAN ALTERNATIVE ONE**

The following is a brief overview of the provisions of the Plan. The overview is qualified in its entirety by reference to the Plan, a copy of which is attached hereto as Exhibit A.

### **A. Consolidation of Debtors**

The Debtors' Bankruptcy Cases are administratively consolidated per the Order of Court dated November 7, 2016, entered at docket number 170-2 in the Johnson Bankruptcy Case. Pursuant to the Plan, all Assets of the Debtors will be consolidated into the Creditors' Trust, and liquidated. All Net Recoveries from the liquidation of the Assets, plus the recovery from all Causes of Action pursued by the Creditors' Trust, will be distributed among the Debtors' creditors pursuant to the terms of the Plan and as described herein.

### **B. Summary of Classification of Claims**

The categories of Claims listed below classify Claims for all purposes, including voting, confirmation, and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed to be classified in a particular Class only to the extent that such Claim qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that the remainder of such Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that such Claim is Allowed in that Class and has not been otherwise settled prior to the Effective Date.

The classification of Claims of the Debtors pursuant to the Plan are as follows:

<b>Class</b>	<b>Claim or Interest</b>	<b>Treatment</b>	<b>Estimated Claims</b>
	Administrative Expense Claims	Paid in full on the Effective Date	
1	Secured Claim of Peoples Bank	Receive 80% of all Net Recoveries from Creditors' Trust and reimbursement for contribution of Plan Funding	\$N/A
2	Secured Claims of all Secured Creditors other than Peoples Bank	Paid or otherwise reimbursed during the pendency of the Bankruptcy Case; no distribution under the Plan anticipated	\$0.00
3	Priority Claims	Receive 20% of Net Recoveries from Creditors' Trust until paid in full or all Assets liquidated	\$5,000.00
4	General Unsecured Claims	Receive 20% of all Net Recoveries from Creditors' Trust until paid in full or all Assets liquidated; paid 100% of all Net Recoveries from Creditors' Trust after Class 1 paid in full	\$89 million
5	Equity Holders	Cancelled and shall receive no distribution	N/A

**C. Creditors' Trust**

All Assets of the Debtors will be consolidated into a Creditors' Trust, the liquidation of such which will be for the benefit of all Creditors. The Plan shall be implemented and administered by the Trustee and the Plan Administrator of the Creditors' Trust, as applicable, and funded by the Bank or from the Assets of the Estates as described in the Plan.

The Bank (the "Plan Funder") shall assure the funding of at least \$175,000.00 in the Post-Confirmation Operating Account for the Initial Distributions. Plan Funder will augment the cash balance in the Estate on the Effective date in order to assure such amount for the Initial Distribution. In no event will the funding by Plan Funders be less than \$75,000 (the "Plan Funding"). After the initial Plan Funding, the Bank shall have no obligation to provide further Plan Funding. Should the Bank decide to end (or partially end) funding of future Plan Administration expenses under the Plan, Bank shall notify the Plan Administrator in sufficient time to permit the Plan Administrator to avoid incurring fees and expenses that the Bank determines not to fund.

The Creditors' Trust will employ counsel ("Trust Counsel") to pursue all Causes of Action, including but not limited to the Enumerated Cause of Action, Avoidance Actions, any adversary proceedings, actions under chapter 5 of the Bankruptcy Code, and any other Cause of Action the Plan Administrator deems appropriate to pursue. The Creditors' Trust will compensate Trust Counsel pursuant to a reasonable fee arrangement agreed to by the Plan Administrator and Trust Counsel, and paid by the Bank as fees are billed.

#### **D. Distributions**

From the proceeds of the Recovery Actions and liquidation of the Trust Assets, the Bank, as Plan Funder, shall receive reimbursement for all Plan Funding, and then share the remaining Net Recoveries as follows:

- 80% to the Bank on account of its Class 1 Secured Claim (except in the Sabbatical case where the share shall be 75%), and
- 20% the other Creditors (except in the Sabbatical case where the share shall be 25%), in this order:
  - First to the Allowed Administrative Expense Claims,
  - Second to Claims of Class 3 Creditors, and
  - Third to Claims of Class 4 Creditors.

Under Plan Alternative One, the Bank foregoes any Class 4 deficiency claim and does not share in the distributions to Class 3 and Class 4 Creditors.

Distributions shall be made from time to time as receipt of Net Recoveries allow. All distributions of Net Recoveries shall be made by the Plan Administrator within a reasonable time after receipt, provided that the corresponding distributions are not de minimis. The Creditors' Trust shall hold all Net Recoveries until such time as a meaningful distribution can be made. The Initial Distribution to Allowed Administrative Expense Claims shall be made on the Effective Date, with periodic subsequent distributions made thereafter.

#### **E. Chapter 11 Trustee**

Upon the Effective Date of the Plan, the Chapter 11 Trustee shall be discharged from his duties as chapter 11 trustee of the Debtors' Estates. The Chapter 11 Trustee shall cooperate and turn over all document and records to the Plan Administrator, and file any reports as required by the Court's Local Rules, including but not limited to SDLR 3022-1.

**F. Plan Administrator**

The Plan shall be implemented and administered by the Plan Administrator of the Creditors' Trust, as applicable, and funded by the Bank or from the Assets of the Estates, as described herein. The Plan Administrator shall be a person selected by the Bank. The Plan Administrator shall be deemed the representative of the Estates in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and all of the Estates' Assets shall vest with the Plan Administrator for purposes of carrying out the provisions of this Plan. The Plan Administrator shall be the Trustee of the Creditors' Trust.

**G. Class 4 Advisory Committee**

The Plan Administrator shall offer the holders of the five (5) largest Allowed Class 4 Claims in each Case who vote in favor of the Plan the opportunity to participate on the Class 4 Advisory Committee. If fewer than five (5) holders of Allowed Class 4 Claims in each Case vote, the Plan Administrator shall offer the opportunity to participate on the Class 4 Advisory Committee to all holders of Allowed Class 4 Claims that vote in that specific Case. The Committee shall have the authority to direct the Plan Administrator to file and prosecute any appropriate objections to Class 4 Claims. The Plan Administrator shall not file any objections to Class 4 Claims unless directed by a decision of a majority of the members of the Class 4 Advisory Committee. The members of the Class 4 Advisory Committee shall receive no compensation or reimbursement of expenses for their work on the Class 4 Advisory Committee. If no holders of Allowed Class 4 Claims vote in favor of the Plan or elect to participate on the Class 4 Advisory Committee, then the Plan Administrator shall have the sole authority and final decision to file and prosecute any objections to Class 4 Claims.

**H. Causes of Action**

**1. Generally.**

The Creditors' Trust will employ counsel ("Trust Counsel") to pursue all Causes of Action, including but not limited to all Causes of Action, Avoidance Actions, any adversary proceedings, actions under chapter 5 of the Bankruptcy Code, and any other Cause of Action the Plan Administrator deems appropriate to pursue. The Creditors' Trust will compensate Trust Counsel pursuant to a reasonable fee arrangement agreed to by the Plan Administrator and Trust Counsel, and paid by the Bank as fees are billed. "Causes of Action" means any and all actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, claims, remedies (including without limitation any remedy based on



theories of equitable subordination or similar equitable relief) and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Bankruptcy Case, belonging to the Debtors, including through the Effective Date.

## **2. Known Causes of Action**

The Plan Proponent is aware of the following known potential Causes of Action:

- a. Conspiracy, fraud, tortious interference, trespass, conversion, turnover of Estate Assets, diminution of value of Estate Assets and any and all related claims that may be discovered, related to Sabbatical, including but not limited to the TJD&B litigation;
- b. Breach of contract claim against Carbon Partners, Inc.;
- c. Turnover and/or fraudulent conveyance or avoidable transfer claims against Denise Johnson;
- d. Turnover and/or fraudulent conveyance or avoidable transfer claims against trusts established by Johnson for his children and spouse.
- e. Claim for recoupable royalties related to Producers Land under various coal leasing and royalty agreements;
- f. Claim against Johnson related to the sale of land owned by The Silo Golf Course, LLC;
- g. Conspiracy, fraud, tortious interference, collusion and any and all related claims that may be discovered, against and related to Johnson and his family members;
- h. Professional malpractice claims;
- i. Claims against entities or individuals still in possession of estate assets or liability for improperly disposing of estate assets;
- j. Litigation involving unresolved insurance claims;
- k. Claims against lessors for receipt of fraudulent transfers or royalties that should be repaid; and
- l. Avoidance actions against creditors receiving preferences or fraudulent transfers prior to the filing of the bankruptcy cases.

The Plan Proponent estimates a net recovery of \$2.5 million from the Causes of Action.

### **3. Reservation of Rights Related to Causes of Action**

The above described Causes of Action are not the only potential Causes of Action, and the Plan Proponent, Plan Administrator, and Creditors' Trust explicitly reserve all rights to pursue all Causes of Action, whether known or unknown, existing or hereafter arising, against any party for the benefit of the Estates, Creditors' Trust, and holders of Allowed Claims.

#### **I. Plan Alternative Two Terms**

If the Class 4 General Unsecured Claims do not vote to accept the Plan Alternative One as filed, specifically meaning the Creditors' Trust provisions and the provisions for sharing of Net Recoveries in Article V(A), then the Bank, in its sole discretion, may seek confirmation of these provisions for Plan Alternative Two.

Under Plan Alternative Two, there shall be no Creditors' Trust and no Plan Funding by the Bank. The Bank's claims shall be unaffected by this Plan.

The Bank shall purchase all Assets of the Debtors for \$100,000.00, free and clear of all liens, claims, and encumbrances, at a public sale (the "Sale") held at the same time and place as the confirmation hearing held on the Plan. The Sale shall be cash only with no purchasing contingencies other than Court approval, with closing on the Sale to be held within ten (10) days of the Sale. If any other party decides to bid at the Sale, all bids will be in minimum increments of \$10,000.00 and all bidders (other than the Bank) shall deposit \$100,000.00 with the Chapter 11 Trustee prior to the commencement of the bidding, which amount shall serve as a bid deposit in the event the bidder is the successful bidder at the Sale.

### **III. CLAIM INFORMATION**

#### **A. Class 1: Secured Claim of Peoples Bank**

Class 1 shall consist of Peoples Bank, a secured creditor of the Debtors. The Bank will (i) contribute at least \$75,000 (but not more than \$175,000) to the Creditors' Trust to pay all Allowed Administrative Claims on the Effective Date, (ii) provide the Plan Funding for the liquidation and litigation costs for the Trust Assets and Recovery Actions of the Creditors' Trust, and (iii) to provide the Plan Administration Reserve. From the proceeds of the Recovery Actions and liquidation of the Trust Assets, the Bank, as Plan Funder, shall receive reimbursement for all Plan Funding, and then share the remaining Net Recoveries as follows: 80% to the Bank on account of its Class 1 Secured Claim, and 20% to other Creditors, in this

order: First to the Allowed Administrative Expense Claims, then to Claims of Class 3 Creditors and then to Claims of Class 4 Creditors. Under Plan Alternative One, the Bank foregoes any Class 4 deficiency claim and does not share in the distributions to Class 3 and Class 4 Creditors. In the Sabbatical case only, the sharing of the Net Recoveries shall be 75% to Bank and 25% to other Creditors. In all cases, when the Creditors in any case shall no longer hold unpaid Allowed Claims, all of the Net Recoveries shall be paid to the Bank. Class 1 is Impaired, but as the Plan Proponent, is deemed to have accepted the Plan.

The Bank has the following filed Class 2 Claims:

Claim No.	Amount	Debtor	Basis for Claim	Treatment
2-2	\$ 19,627,402.39	Sabbatical	Perfected lien on all collateral as borrower/guarantor of Promissory Note	Peoples Bank's Class 1 Secured Claim shall be paid with 80% of the Net Recoveries from the Trust Assets until paid in full or all Trust Assets have been liquidated.
4-1	\$ 13,473,406.99	Producer's Coal	Promissory Note, Security Agreement, UCC Financing Statement on all collateral	
2-2	\$ 720,388.89		Term Note, Security Agreement, UCC Financing Statement on all collateral	
47	\$ 18,252,984.70	Green Coal	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
48	\$ 18,252,984.70	DJWV1	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
49	\$ 18,252,984.70	DJWV2	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
50	\$ 18,252,984.70	Appalachian	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
51	\$ 18,252,984.70	Elkview	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
52	\$ 18,252,984.70	LKE	Perfected lien on all collateral as borrower/guarantor of Promissory Note	
53	\$ 18,252,984.70	Producer's Land	Perfected lien on all collateral as borrower/guarantor of Promissory Note	

54	\$ 18,252,984.70	Redbud	Perfected lien on all collateral as borrower/guarantor of Promissory Note
55	\$ 18,252,984.70	SMT	Perfected lien on all collateral as borrower/guarantor of Promissory Note
56	\$ 18,252,984.70	SMS	Perfected lien on all collateral as borrower/guarantor of Promissory Note
57	\$ 1,157,759.93	JVD	Perfected lien on all collateral as borrower/guarantor of Promissory Note
58	\$ 19,102,984.70	Moussie	Perfected lien on all collateral as borrower/guarantor of Promissory Note

The Bank reserves the right to assert any additional claims or causes of action, against any Debtor, under any applicable law or in equity, including but not limited to objecting to the discharge of any Debtor. The Plan and Disclosure Statement do not limit or waive any right or remedy available to the Bank against any Debtor post-petition or post-confirmation.

**B. Class 2: Secured Claims of Creditors Other Than Peoples Bank**

Class 2 shall consist of all Secured Claims other than the Class 1 Secured Claim of Peoples Bank. All holders of Class 2 Secured Claims have either (i) received their collateral or payment for their claim through the course of the Bankruptcy Case, or (ii) will receive possession of their collateral upon the Effective Date to dispose of in accordance with applicable non-bankruptcy law. To the extent that any holder of a Class 2 Secured Claim seeks a deficiency claim, all deficiency claims will be considered Class 4 General Unsecured Claims and treated accordingly. Class 2 is Impaired, and each holder of a Class 2 Claim is entitled to vote to accept or reject the Plan.

Claimant	Debtor	Claim No.	Amount	Treatment
Ally Financial	Johnson	45-1	\$ 15,735.35	All holders of Class 2 Secured Claims have either (i) received their collateral or payment for their claim through the course of the Bankruptcy Case, or (ii) will receive possession of their
Caterpillar Financial Services Corp.	Redbud	Schedule	\$ 33,254.63	
		Schedule	\$ 47,753.62	
		Schedule	\$ 18,808.28	
		Schedule	\$ 14,198.36	
		Schedule	\$ 60,168.17	
		Schedule	\$ 62,832.22	
		Schedule	\$ 62,832.22	

		Schedule	\$ 1,590,322.01	collateral upon the Effective Date to dispose of in accordance with applicable non-bankruptcy law. To the extent that any holder of a Class 2 Secured Claim seeks a deficiency claim, all deficiency claims will be considered Class 4 General Unsecured Claims and treated accordingly.
		Schedule	\$ 49,514.18	
Chase Bank	Johnson	Schedule	\$ 181,386.64	
	Johnson	Schedule	\$ 697,977.02	
	Johnson	Schedule	\$ 47,865.14	
Chase Records Center	Johnson	33-1	\$ 47,197.81	
Community Trust Bank	Redbud	Schedule	\$ 89,726.34	
		Schedule	\$ 65,460.35	
		Schedule	\$ 65,460.35	
		Schedule	\$ 46,238.20	
		Schedule	\$ 46,238.20	
First Sentry Bank	Johnson	27-1	\$ 140,005.97	
		23-1	\$ 38,511.57	
		19-1	\$ 121,784.63	
		18-2	\$ 25,403.36	
First Surety Corp.	Johnson	44-1	\$ 114,896.00	
JPMorgan Chase Bank, NA	Johnson	43-1	\$ 680,914.79	
MVB Bank, Inc.	Redbud	Schedule	\$ 97,685.80	
		Schedule	\$ 65,281.87	
		Schedule	\$ 75,901.05	
		Schedule	\$ 58,753.68	
		Schedule	\$ 77,352.85	
		Schedule	\$ 17,244.27	
		Schedule	\$ 97,220.71	
		Schedule	\$ 77,352.85	
Ohio Valley Bank	Johnson	5-1	\$ 364,316.60	
Toyota Motor Corp.	Johnson	3-1	\$ 28,092.10	
United Bank	Johnson	Schedule	\$ 72,234.00	

**C. Class 3: Priority Claims**

Class 3 shall consist of all Priority Claims. The treatment of the Claims of the Internal Revenue Service (“IRS”) in (i) the Johnson Bankruptcy Case and (ii) the Appalachian Bankruptcy Case is described below in Class 4 General Unsecured Claims. The IRS filed additional Priority Claims against other Debtors, including Green Coal, Producers Coal, Redbud, and Sabbatical. Class 3 Claims shall receive in full satisfaction of and in exchange for such Claims, their pro rata share of distributions from the Allocable Net Recoveries from the Asset liquidation and litigation conducted by the Creditors’ Trust, as described more fully in Article VIII(A) of the Plan. All Allocable Net Recoveries will be distributed to Allowed Claims of Class 3 Creditors (excluding the Claims of the IRS in the Johnson Bankruptcy Case

and the Appalachian Bankruptcy Case, which shall be treated as Class 4 Claims), as provided for in section 8A.5 of the Plan. Class 3 is Impaired, and each holder of a Class 3 Claim is entitled to vote to accept or reject the Plan.

Claimant	Debtor	Claim No.	Amount	Treatment
Dept of Treasury - IRS	Johnson	1-2	\$ 408,433.76	To be paid as a Class 4 General Unsecured Claims
	Appalachian		\$ 899,691.84	
	Producer's Coal	1-2	\$ 1,000.00	Class 3 Claims shall receive in full satisfaction of and in exchange for such Claims, their pro rata share of distributions from the proceeds of liquidation and litigation conducted by the Creditors' Trust: 80% to the Bank on account of its Class 1 Secured Claim, and 20% to the Allowed Claims of Class 3 Creditors (after reimbursement of the Plan Funding to the Plan Funder)
	Redbud	1-1	\$ 3,300.00	
	Sabbatical	1-4	\$ 390.00	

**D. Class 4: General Unsecured Claims**

**1. Treatment of Class 4 General Unsecured Claims**

Class 4 shall consist of all General Unsecured Claims, other than Claims of the Bank. Class 4 General Unsecured Claims shall receive in full satisfaction of and in exchange for such Claims, their pro rata share of distributions from the Allocable Net Recoveries from the Asset liquidation and litigation conducted by the Creditors' Trust, as described more fully in Article VIII. All Allocable Net Recoveries will be distributed Class 4 General Unsecured Creditors (after Class 3 Claims are paid in full, as provided for in section 8A.5 of the Plan). Class 4 shall also include the Claim of the IRS in the Johnson Bankruptcy Case (Claim No. 1) pursuant to section 507(a)(8) of the Bankruptcy Code as a claim for penalty payments. Class 4 shall also include the Claim of IRS in the Appalachian Bankruptcy Case (Claim No. 5). In the event that the IRS objects to the treatment of Claim No. 1 or Claim No. 5 under the Plan, the Plan will no longer include the Assets, Claims, and liabilities of the Appalachian Bankruptcy Case, which case shall stand on its own and not be affected by the terms of this Plan. Class 4 is Impaired, and each holder of a Class 4 Claim in entitled to vote to accept or reject the Plan.

Claimant	Debtor	Claim No.	Amount
A&D Parts & Service, LLC	Appalachian	Schedule	\$ 40,322.42
	Producer's Land	Schedule	\$ 82,764.08
A Z Septic Tank Service	Producer's Coal	Schedule	\$ 230.00
Action Petroleum	Appalachian	Schedule	\$ 44,209.89
Airgas USA, LLC	Appalachian	3-1	\$ 4,600.92
Alchemy Engineering Associates	Elkview	Schedule	Unknown
Alex Spong, SGS US Mineral Services	Producer's Coal	6-1	\$ 13,123.00
American Coal Terminal	Sabbatical	Schedule	\$ 2,041,588.82
American Hydraulic Service, Inc.	Appalachian	18-1	\$ 93,615.01
	Producer's Land	Schedule	\$ 48,107.01
Appalachian Coal	JVD	Schedule	\$ 19,277.00
Appalachian Land Company	Elkview	5-1	\$ 4,546,703.14
	SMT	7-1	\$ 4,901,264.64
Appalachian Mining & Reclamation	DJWV1	Schedule	\$ 100.00
Arch Coal, Inc.	Sabbatical		\$ -
Ashland Office Supply	Producer's Coal	Schedule	\$ 135.00
AT&T Mobility	Producer's Coal	Schedule	\$ 230.06
Bailes, Craig & Yon, PLLC	Appalachian	21-1	\$ 11,389.54
	DJWV1	5-2	\$ 4,666.01
	DJWV2	2-1	\$ 4,108.41
	Green Coal	2-1	\$ 3,733.79
	JVD	2-1	\$ 392.40
	Producer's Coal	16-1	\$ 22,605.56
		15-1	\$ 4,915.94
	Producer's Land	5-1	\$ 9,910.02
	Redbud	6-1	\$ 7,881.05
	Sabbatical	3-1	\$ 4,383.51
	SMS	2-1	\$ 5,689.35
	SMT	5-3	\$ 5,001.41
Belt Tech Inc.	Appalachian	16-1	\$ 56,975.05
Berkeley Energy Corp.	Elkview	Schedule	\$ 961,000.00
	SMT	9-1	Unknown
Big Green Properties, III, LLC	JVD	Schedule	\$ 38,333.62
Bocock Engineering, Inc.	Appalachian	Schedule	\$ 47,637.71
Boyd County Sheriff	JVD	1-1	\$ 27,387.33
Brickstreet Mutual Insurance Co.	Appalachian	9-1	\$ 403,376.00
BridgelT.com	Producer's Coal	Schedule	\$ 1,908.00
C S & S	Appalachian	Schedule	\$ 35,514.40

Carbon Partners, Inc.	SMT	4-1	\$ 397,425.44
	SMT	3-1	\$ 126,026.60
Cargill, Inc.	Producer's Coal	7-1	\$ 2,792,989.31
	Sabbatical	Schedule	\$ 2,792,989.31
Carpenter's Repair, Inc.	Producer's Land	Schedule	\$ 138,828.07
Case Dock, LLC	Sabbatical	4-1	\$ 5,910,464.18
Caterpillar Financial Services Corp.	Johnson	32-1	\$ 1,922,227.07
	Appalachian	4-1	\$ 1,954,016.96
	Producer's Coal	5-1	\$ 1,954,016.96
	Redbud	2-1	\$ 1,954,016.96
City National Bank	Johnson	2-1	\$ 2,856,098.11
Community Trust Bank	Johnson	37-1	\$ 64,039.20
		36-1	\$ 88,915.03
		35-1	\$ 86,026.14
		34-1	\$ 2,114,160.75
	Redbud	9-1	\$ 98,339.94
		8-1	\$ 101,644.26
		7-1	\$ 65,960.34
Crouse Corporation	Producer's Coal	10-1	\$ 72,390.86
CSX Transportation, Inc.	SMT	2-1	\$ 11,474.11
Dennis R. Johnson, Sr.	Johnson	46-1	Unknown
Denise Dawn Johnson	LKE	2-1	\$ 57,650.00
Dept of Treasury - IRS	Johnson	1-2	\$ 408,433.76
	Appalachian	5-1	\$ 1,231,006.53
	DJVV1	1-1	\$ 360.00
	DJVV1	3-2	\$ 300.00
	Producer's Land	3-1	\$ 209,196.69
	SMS	1-1	\$ 500.00
SMT	1-1	\$ 500.00	
Diamond Mining Associates, Inc.	Appalachian	13-1	\$ 24,296.39
Dyno Nobel, Inc.	Producer's Land	Schedule	\$ 28,671.98
East Equipment Company	Producer's Land	Schedule	\$ 26,000.00
East Pea Ridge	JVD	Schedule	\$ 28,789.00
Eastern Screens & Drives, Inc.	Appalachian	Schedule	\$ 43,708.40
Fairmont Supply Company	Producer's Land	Schedule	\$ 38,641.43
First Sentry Bank	Johnson	26-1	\$ 2,649.21
		25-1	\$ 666,460.84
		24-1	\$ 470,818.52



		22-1	\$ 1,449,615.31
		21-1	\$ 129,282.35
		20-1	\$ 132,253.98
		18-2	\$ 76,622.53
		17-1	\$ 203,947.36
		16-1	\$ 270,680.31
		15-1	\$ 149,259.86
		14-1	\$ 278,268.88
		13-1	\$ 413,222.10
		12-1	\$ 120,429.45
		11-1	\$ 122,158.75
		10-1	\$ 336,908.45
		9-1	\$ 288,275.37
		8-1	\$ 106,579.10
		7-1	\$ 138,642.18
		6-1	\$ 62,587.13
First Surety Corporation	Johnson	43-1	\$ 556,394.00
	DJWV2	1-1	\$ 671,290.00
	LKE		\$ 620,000.00
Flomin Coal, Inc.	Appalachian	15-1	\$ 10,961,773.00
Fraley, Miller & Company	Producer's Coal	Schedule	\$ 27,209.66
G & S Contracting, Inc.	Producer's Land	Schedule	\$ 33,900.49
Guardco Security, LLC	Appalachian	Schedule	\$ 35,328.34
Harbor Steel & Supply Corp	Producer's Land	Schedule	\$ 16,739.13
Hart Sanitation	Producer's Coal	Schedule	\$ 145.56
Honeycutt Properties, LLC	Producer's Coal	Schedule	\$ 15,000.00
Hubble Mining Company, LLC	Appalachian	23-1	\$ 560,863.29
	LKE	3-1	\$ 780,487.17
Huntington National Bank	Green Coal	Schedule	Unknown
Industrial Supply Co.	Appalachian	Schedule	\$ 700,036.90
ITT Goulds Pumps, Inc.	Appalachian	Schedule	\$ 50,962.24
J & R Repairs	Appalachian	Schedule	\$ 26,339.82
	Producer's Land	Schedule	\$ 33,929.45
James River Coal Sales, Inc.	Johnson	41-1	\$ 1,937,733.00
	LKE	Schedule	\$ 1,700,000.00
	Producer's Coal	8-1	\$ 1,937,733.00
Jemika Bottled Spring Water	Producer's Coal	Schedule	\$ 77.18
JPMorgan Chase Bank, N.A.	Johnson	42-1	\$ 3,282,871.30
Kanawha Scales and Systems, Inc.	Appalachian	2-1	\$ 25,087.76
Kentucky Dept. of Revenue	Appalachian	10-3	\$ 38,510.48

	JVD	3-1	\$ -
	Producer's Coal	14-1	\$ 52,642.49
	Redbud	4-2	\$ 479,264.91
Kentucky Power Company	Producer's Coal	Schedule	\$ 331.40
L & M Trucking & Equip. Co., Inc.	Producer's Land	Schedule	\$ 21,775.00
Lee Supply Co., Inc.	Appalachian	6-1	\$ 8,304.25
Louisa Construction Company	Producer's Land	Schedule	\$ 46,367.00
Marco Concrete Lifting, Inc.	Appalachian	12-1	\$ 139,410.00
	Producer's Land	4-1	\$ 139,410.00
Martin Excavating, Inc.	Producer's Land	Schedule	\$ 35,955.00
McGinnis, Inc.	Producer's Coal	Schedule	\$ 4,617.20
Mineral Labs, Inc.	Producer's Coal	9-1	\$ 405,801.22
Moussie Processing LLC	LKE	Schedule	\$ 23,500.00
MVB Bank, Inc.	Johnson	40-1	\$ 603,643.30
		39-1	\$ 124,808.34
		38-1	\$ 929,656.18
	Producer's Coal	13-1	\$ 313,283.58
		12-1	\$ 633,173.31
	Redbud	5-1	\$ 360,283.58
Office of Surface Mining Reclamation & Enforcement	DJWV1	2-1	\$ 736.06
Ohio Valley Bank	Johnson	4-1	\$ 1,011,012.71
Patterson Contracting, Inc.	Producer's Land	Schedule	\$ 17,415.00
Paul's Repair Shop	Producer's Land	Schedule	\$ 141,796.00
Peoples Insurance	JVD	Schedule	\$ 3,687.63
Pioneer Conveyor	Producer's Land	Schedule	\$ 82,402.16
Prater Creek Coal Corporation	Elkview	4-1	\$ 4,546,703.14
	SMT	8-1	\$ 4,901,264.64
Professional Benefit Administrators	Appalachian	Schedule	\$ 65,455.96
Quality Magnetite, LLC	Appalachian	14-1	\$ 207,132.66
Roadside Processing, Inc.	Elkview	Schedule	\$ 961,000.00
	SMT	10-1	Unknown
Root Hog Coal Co., Inc.	Producer's Coal	Schedule	\$ 50,801.01
Sabbatical, Inc.	Producer's Coal	Schedule	\$ 44,565.19
Saminco, Inc.	Appalachian	22-1	\$ 12,000.00
	Producer's Land	Schedule	\$ 15,497.76
SGS North America, Inc.	Producer's Coal	Schedule	\$ 12,225.00

Solenis LLC	Appalachian	17-1	\$ 73,955.72
Southern Coals Conference, Inc.	Producer's Coal	Schedule	\$ 150.00
Southern Marine Terminal	Elkview	Schedule	\$ 16,319.45
Strata Safety Products, LLC	Appalachian	19-1	\$ 267,740.00
Summit Engineering	Producer's Land	Schedule	\$ 49,745.00
Todd Case Trucking, LLC	Producer's Coal	Schedule	\$ 2,338.78
Transporters, LLC	Producer's Coal	Schedule	Unknown
	Producer's Land	Schedule	Unknown
Turner Technology, Inc.	Appalachian	20-1	\$ 16,638.00
	Elkview	2-1	\$ 12,666.00
Verizon Wireless	Producer's Coal	Schedule	\$ 160.66
Wayne County Land and Mineral Company	Producer's Land	6-1	\$ 908,442.31
Wells Group, LLC	Producer's Land	Schedule	\$ 17,495.00
West Virginia State Tax Dept.	Appalachian	1-1	\$ 43,343.67
	Producer's Land	2-1	\$ 42,631.32
Whayne Supply Co.	Appalachian	8-1	\$ 202,465.10
Windstream Communications	Appalachian	7-1	\$ 973.49
	Producer's Coal	11-1	\$ 1,089.80
Zinkan Enterprise Inc.	Appalachian	11-1	\$ 45,839.34

## 2. Potential Objections

The Plan Proponent recommends that the Plan Administrator object to claims that may fall in to the following categories, including but not limited to, late-filed claims, claims filed with a lack of supporting evidence, redundant claims, and duplicative claims. The Bank and Plan Administrator reserve all rights to object to any claim for any reason under the Bankruptcy Code or other applicable law.

### E. Class 5: Equity Holders

On the Effective Date, all Equity Interests of the Debtors shall be canceled, annulled and voided, and holders thereof shall be entitled to no distribution whatsoever under this Plan or in the Bankruptcy Cases on account of such Equity Interests. Class 5 is Impaired, and each holder of a Class 5 Claim is entitled to vote to accept or reject the Plan.

#### **IV. CONFIRMATION AND CONSUMMATION OF THE PLAN**

##### **A. Balloting and Confirmation**

Section 1129 of the Bankruptcy Code specifies the requirements to confirm a chapter 11 plan. Pursuant to section 1129 of the Bankruptcy Code, at least one impaired class of claims must vote to accept the Plan. Classes 2, 3, 4, and 5 are all impaired and are entitled to vote to accept or reject the Plan.

Each holder of a claim in an impaired class will receive a Ballot and is entitled to cast a vote to accept or reject the Plan. Ballots must be received by the law offices of Bernstein-Burkley, PC on or before 5:00 pm on \_\_\_\_\_, 2017 (the "Ballot Deadline").

The Bankruptcy Code allows creditors and other parties in interest to object to the confirmation of the Plan. Any objection must be made in writing and specify in detail the grounds for the objection. Any such objection must be filed with the Court and served on the Plan Proponent, all Debtors, the Chapter 11 Trustee, and the Office of the United States Trustee on or before 5:00 pm on \_\_\_\_\_, 2017.

A hearing on the confirmation of the Plan is scheduled for \_\_\_\_\_, 2017, at \_\_\_\_\_ .m. before the Honorable Frank W. Volk, Chief Judge of the United States Bankruptcy Court for the Southern District of West Virginia, at the Robert C. Byrd United States Courthouse, 6<sup>th</sup> Floor, Bankruptcy Courtroom A, 300 Virginia Street East, Charleston, West Virginia 25301.

##### **B. Consummation and Implementation of the Plan Alternative One**

As noted above in Section II.F., a Plan Administrator shall implement the Plan Alternative One and administer the Creditors' Trust. The Plan Administrator shall liquidate the Debtors' Assets for the benefit of all holders of allowed claims and make periodic distributions.

In lieu of any commission or fees which may be fixed by applicable law for trustees or fiduciaries (and which are hereby waived by the Plan Administrator), the Plan Administrator and his agents, accountants, professionals and any other persons retained by him shall be compensated by the Bank, as further Plan Funding, to be reimbursed from the Assets of the Estates, based on his standard hourly rate then in effect (and the standard hourly rates of others in his office then in effect, as applicable), plus reimbursement of reasonable and necessary expenses shall also be compensated. The Plan Administrator shall be entitled to reimbursement from the Assets of the Estates of all out-of-pocket expenses, and costs and

expenses of distributions. The Plan Administrator shall exercise its own business judgment to assure that the duties of the Plan Administrator are performed on the most economical basis to the Estates. Such reimbursement shall be paid from the Assets of the Estates as of each month end consummated during the reporting period.

The Plan Administrator will have those responsibilities created by the Plan upon the terms and conditions summarized herein and will, for the benefit of the Claimants, exercise the rights and powers vested in it by the Plan in the same manner, and use the same degree of care and skill in their exercise, as a prudent person would exercise and use under the circumstances in the conduct of its own affairs, notwithstanding Section 345, and further agrees to receive and disburse all of the Assets in accordance with the terms hereof.

1. The Plan Administrator is empowered, in his sole discretion (subject to paragraph IV.B.2. below), to:
  - a. perform all of the obligations and agreements of the Plan provided for herein;
  - b. control the liquidation and/or disposition of all Assets after confirmation of the Plan and reduce such assets to Cash or to abandon any such Assets, in the exercise of its reasonable discretion. The Plan Administrator shall have sole discretion as to the disposition of any Assets and may do so without obtaining Bankruptcy Court approval, except where Bankruptcy Court approval is required under a specific provision of this Plan. The Plan Administrator shall cause the distribution of the Assets of the Estates in accordance with the terms of this Plan;
  - c. keep and maintain bank accounts in the name of the Estates into which the Plan Administrator shall deposit all proceeds resulting from the initial receipt or from the sale or other disposition of, or from the income resulting from, all or any part of the Assets of the Estate, without the restrictions of §345(b) of the Bankruptcy Code. The Plan Administrator shall not permit any person other than a designated representative of the Plan Administrator to have authority to make withdrawals from, or to issue drafts against, any accounts maintained with any bank, unless such bank has been furnished a copy of this Plan;
  - d. commence or continue Recovery Actions for the purpose of liquidating the Assets of the Estates or maximizing the value of the Estate;
  - e. terminate or provide for the termination of all employee benefit plans of the Debtor, if any;
  - f. possess the exclusive right to object to any Claims (disputed or otherwise), and to compromise or settle any Claims prior to objection without

supervision or approval of the Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the Court, and the guidelines and requirements of the United States Trustee, other than those restrictions expressly imposed by the Plan or the Confirmation Order; and/or to seek Bankruptcy Court approval, on a periodic basis, for any Claims settlements made;

g. market, negotiate and enter into and perform agreements for the sale or other disposition of the Assets as may be required by the Plan or the United States Bankruptcy Court; as may be required by the Plan;

h. seek a determination of tax liability under Section 505 of the Bankruptcy Code and to pay taxes, if any, related to the Debtor, Estates or the sale of the Assets of the Debtors or Estate;

i. collect, receive, and give receipt for all sums of money or other property due to the Debtors or Estates and, if necessary, foreclose upon any security agreement or the like securing any liability or obligation owed to the Debtors or the Estates or liquidate any securities held by the Plan Administrator as a pledge and/or take any other actions necessary to the collection, receipt or disposition of any Assets of the Estate;

j. compromise or settle disputes with respect to debt obligations owed to the Debtors or the Estate;

k. execute and deliver all releases, satisfactions and termination statements as may be required in connection with full payment of any debt obligation secured by any lien or security interest;

l. enter into financing agreements to the extent necessary to supplement the cash flow of the Estates so as to allow the Plan Administrator to maximize the liquidation value of the Assets, maximize the amounts collected pursuant to Recovery Actions and minimize amounts paid to settle liabilities, including but not limited to disputes;

m. engage and compensate professionals, including attorneys, accountants, investment advisors and others, to assist the Plan Administrator in carrying out its duties hereunder which professionals include, without limitation, those retained to assist the Plan Administrator in any litigation related to the liquidation of the Assets as well as the Estates Litigation or the settlement of the Liabilities. All professionals employed by the Plan Administrator shall be compensated by the Estate;

n. file or cause to be filed all required tax returns for the Estates and pay any and all taxes, if any, when due from the Assets of the Estate; and

o. in its sole discretion, settle, compromise, litigate to a final judgment, or abandon any Cause of Action, Disputed Claim, or Claim Objection, including but not limited to adversary proceedings brought under Chapter 5

of the Bankruptcy Code. The Plan Administrator must obtain approval from the Bank of any settlement or compromise that results in a claim (held either by the Estates or a Creditor) with a liquidated amount greater than one hundred thousand (\$100,000) dollars. In the event that the Bank opposes any such settlement or compromise, the Plan Administrator shall file a motion pursuant to Rule 9019 of the Bankruptcy Rules to consummate settlement of any Causes of Action.

2. The Plan Administrator shall obtain the prior written consent of the Bank to:
  - a. agree on a budget or any financing to liquidate any remaining Assets, excluding Avoidance Actions;
  - b. with regards to Avoidance Actions, the Plan Administrator shall manage the process of handling such Avoidance Actions, including the hiring of counsel on a contingency fee basis, unless otherwise agreed by the Bank. The Plan Administrator can settle Avoidance Actions except above levels agreed upon prior to the Effective Date by the Plan Administrator and the Bank, in which case consent of the Bank is required. Specifically, the Bank has the right to consent to all Recovery Action settlements on each claim where the gross claim amount (whether an individual claim or multiple claims against the same potential defendant or its affiliates) is greater than \$100,000;
  - c. reconcile and/or object to any Class 2, Class 3, Class 4, and Unclassified Claims; provided, however, that Bank reserves the right to separately object to any Class 2, Class 3, Class 4, and Unclassified Claims. The Plan Administrator needs the consent of the Bank for purposes of allowances and settlements of such Claims; and
  - d. reconcile any Class 4 General Unsecured Claim, where such allowance or settlement involves a payment to the Claimant or offset of amounts owing by the Claimant.

### **C. Release of the Bank and Indemnification**

Article XIV of the Plan includes several Exculpation, Release, and Injunction Clauses, including the following:

**IN CONNECTION WITH THE EXCULPATION PROVISION IN SECTION 14.1 OF THE PLAN, AND IN CONSIDERATION FOR ITS SUBSTANTIAL CONTRIBUTION TO THE CASE, ITS CLAIM WAIVERS AND REDUCTIONS, ITS STALKINGHORSE OFFER FOR THE PURCHASE OF ASSETS UNDER PLAN ALTERNATIVE TWO, AND ITS FUNDING OF THE PLAN UNDER PLAN ALTERNATIVE ONE, THE DEBTORS, THE ESTATES, THE TRUSTEE, THE PLAN**

**ADMINISTRATOR, THE CREDITORS' TRUST, AND HOLDERS OF CLAIMS, FOR THEMSELVES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, AFFILIATES, PRINCIPALS, PARENTS, SUBSIDIARIES, ASSIGNEES, PREDECESSORS, SUCCESSORS AND ASSIGNS (THE "RELEASING PARTIES"):**

**(A) UNCONDITIONALLY AND WITHOUT RESERVATION, RELEASE PEOPLES BANK, N.A. AND PEOPLES INSURANCE AGENCY, LLC ("RELEASED PARTIES") AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, PRINCIPALS, SUBCONTRACTORS, ASSIGNEES, PREDECESSORS, SUCCESSORS AND ASSIGNS, INSURERS, ATTORNEYS, AND LEGAL REPRESENTATIVES OF EACH OF THE FOREGOING, FROM ANY AND ALL MANNER OF CLAIMS, INCLUDING, WITHOUT LIMITATION, ACTIONS, CAUSES OF ACTION, RIGHTS, JUDGMENTS, DEBTS, SET-OFFS, CONTRACTS, PROMISES, REPRESENTATIONS, ALLEGATIONS, DEMANDS, OBLIGATIONS, DUTIES, SUITS, EXPENSES, ASSESSMENTS, PENALTIES, CHARGES, INJURIES, LOSSES, COSTS, DAMAGES AND LIABILITIES OF EVERY KIND, CHARACTER AND MANNER WHATSOEVER, IN LAW OR IN EQUITY, CIVIL OR CRIMINAL, ADMINISTRATIVE OR JUDICIAL, CONTRACT, TORT (INCLUDING NEGLIGENCE OF ALL KINDS AND RICO CLAIMS), FOR INDEMNIFICATION, CONTRIBUTION OR OTHERWISE, WHICH THEY EVER HAD, HAVE OR MAY HAVE, WHETHER OR NOT KNOWN OR UNKNOWN, CLAIMED OR UNCLAIMED, ASSERTED OR UNASSERTED, SUSPECTED OR UNSUSPECTED, DISCOVERED OR UNDISCOVERED, ACCRUED OR UNACCRUED, ANTICIPATED OR UNANTICIPATED, CONTINGENT OR FIXED, FOR, UPON, OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER ARISING OUT OF ANY RELATIONSHIP OR TRANSACTIONS BETWEEN OR AMONG THE RELEASED PARTIES AND THE RELEASING PARTIES, WHETHER RELATED TO THE BANKRUPTCY CASES OR OTHERWISE, AND IN ANY JURISDICTION OR COURT OF LAW; AND**

**(B) IRREVOCABLY COVENANT TO REFRAIN FROM, DIRECTLY OR INDIRECTLY, MAKING ANY CLAIM OR DEMAND, CAUSING TO BE COMMENCED OR MAINTAINED, ANY SUIT, ACTION, PROCEEDING OF ANY KIND OR CHARACTER, OR RAISING ANY DEFENSE IN ANY RECOVERY ACTION, WHATSOEVER AGAINST THE RELEASED PARTIES ARISING OUT OF OR IN ANY WAY RELATED, DIRECTLY OR INDIRECTLY, TO ANY RELATIONSHIP, BUSINESS, FINANCIAL, OR OTHERWISE, BETWEEN THE RELEASING PARTIES AND THE RELEASED PARTIES.**

Through the above Releases, the Trustee is vacating a potential claim against the Bank asserting various violations of lender liability law. The Trustee's allegations against the Bank are numerous, and include but are not limited to, alleging that the Bank: breached its fiduciary duty to Johnson and other Debtors as lender and servicer on loans; committed fraud during forbearance negotiations; violated RICO during the attempt to collect money; and tortiously interfered with a business relationship.



The Bank wholly disputes all alleged accusations in the potential complaint. First, Johnson previously waived all such claims for any action of the Bank prior to June 30, 2015 in the executed forbearance agreement. Additionally, the Bank was completely within its rights to loan money at the request of a borrower, to forbear the exercise of its rights at the request of a borrower, to request additional collateral when the borrower requests such forbearance, and to refuse to lend additional money in any event. Johnson and the debtor entities have been shown throughout this case to have done everything possible to obstruct creditors and fraudulently transfer assets. The Bank has rightfully pursued those assets and enforced its rights. Lastly, most if not all potential claims are barred by the doctrines of *res judicata* and the *Rooker-Feldman*, due to the fact these alleged claims have already been asserted in previous litigation and rejected by courts of appropriate jurisdiction and the forbearance agreement upheld as enforceable.

## **V. ALTERNATIVES TO THE PLAN: CHAPTER 7 LIQUIDATION ANALYSIS**

The Plan Alternative One provides for a greater recovery for creditors than if each of the Debtors' cases are converted to chapter 7 under the Bankruptcy Code and liquidated by a chapter 7 trustee. The Bank would retain its Class 1 Secured Claims and Holders of Class 4 Unsecured Claims in all but two of the Debtors' cases would receive a zero percent (0%) distribution. Under the Plan Alternative One, the Bank agrees to eliminate its Class 2 Secured Claim and to fund the recovery efforts of the Creditors' Trust. Because of the expense of pursuit, the Bank does not believe that the Causes of Action would be pursued if there is no funding for the litigation expenses. If each case is converted and liquidated, the chapter 7 trustee(s) would incur additional time and administrative expenses, and the Bank would retain a large secured claim, preventing the holders of Class 4 General Unsecured Claims to receive much, if any, distribution. Similarly, the Bank does not anticipate any distribution to Holders of General Unsecured Claims under Plan Alternative Two. Therefore, the Plan Proponent believes that the proposed percentage of Net Recoveries going to Class 3 and Class 4 Creditors provides for a greater recovery to creditors and in a more expeditious manner than would Plan Alternative Two or cases under chapter 7 of the Bankruptcy Code.

## **VI. CONCLUSION AND RECOMMENDATION**

The Plan Proponent recommends confirmation of the Plan Alternative One because it believes that the Plan provides for the greatest recovery to creditors than any alternatives. The Plan provides for an eliminated Class 2 Secured Claim for the Bank and a shared pool of Net Recoveries for all creditors. Other alternatives would involve significant delay, uncertainty, and additional administrative expenses. The Plan Proponent urges all holders of claims in Classes 2, 3, 4, and 5 to submit their ballots accepting the Plan by the Ballot Deadline.

IN WITNESS WHEREOF, the undersigned has submitted this Disclosure Statement as of the date first above written.

PEOPLES BANK, NATIONAL ASSOCIATION

By: /s/ Kevin F. Garvey  
Plan Proponent