

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

**In re:**

**McGee Trucking, LLC  
Debtor in Possession**

**Case No. 17-30185  
Chapter 11  
Small Business Case**

**AMENDED DISCLOSURE STATEMENT**

**I. INTRODUCTION**

A. This is the amended disclosure statement (the “Disclosure Statement”) in the Chapter 11 case of MCGEE TRUCKING, LLC. This Amended Disclosure Statement contains information about the Debtor and describes the Debtor’s Amended Plan of Reorganization dated January 5, 2018 and filed with the Clerk of the Bankruptcy Court. A full copy of the Plan is attached to this Amended Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

B. The proposed distributions under the Plan are discussed in detail in the attached Plan which is made an exhibit to this Disclosure Statement. **All general unsecured creditors are classified as Class 3, and will receive a distribution of one-hundred percent (100%) to be paid over a period of 72 months or less, without interest. There is only one class of unsecured creditors. Priority Creditors will also be paid a distribution of 100% plus interest as required by the Bankruptcy Code.** In the Plan, the Debtor has reserved the right to prepay the monthly installments and when all amounts required under the plan the claims will be deemed fully satisfied and released.

**C. Creditors with Claims and How They Are Treated.** Priority Tax Creditors and Secured Tax Creditors will be paid in full, with interest, as required by the Bankruptcy Code. General Unsecured Creditors will be paid 100% of their approved claim. Peoples Bank’s partially secured claim will receive payments as detailed in the plan. Keystone’s fully secured claim will receive payments as detailed in the plan. See “Specific Claim Treatment” exhibit to Plan (Exhibit A).

**D. Purpose of This Document**

This Amended 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 Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Amended Plan as well as the Amended Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**E. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement.

The Court has not yet approved 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 shall be set by the Court and you will receive notice of that hearing.*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on at date and time to be set by the Court, in the Bankruptcy Courtroom, 1<sup>st</sup> Floor, Sydney L. Christie Federal Building, in Huntington, West Virginia. Again, you will receive notice of this hearing.

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 Megan A. Patrick, Attorney at Law, Klein & Sheridan, LC 3566 Teays Valley Road, Hurricane, West Virginia, 25526. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by the date established by the Court or it will not be counted. You will receive an order setting the deadlines for voting.

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 Megan A. Patrick, Attorney at Law, Klein & Sheridan, LC 3566 Teays Valley Road, Hurricane, West Virginia, 25526 by the date set by the Court.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Megan A. Patrick, Counsel for the Debtor-In-Possession, Klein & Sheridan, LC 3566 Teays Valley Road Hurricane, West Virginia, 25526, 304-562-7111.

**F. Disclaimer**

*The Court has NOT 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 confirmation.*

**II. BACKGROUND**

**A. Description and History of the Debtor's Business**

**Background.** The Debtor is a long-haul trucking business, picking up loads and transporting them to their destination for delivery. The Debtor operates two semi-trucks with trailers driven by its insider, Mr. McGee and the other, by the Debtor's only employee. The Debtor suffered financial distress when Mr. McGee was injured and was not able to drive a truck for several months. The Debtor also suffered from high employee turnover in 2016. But, Mr. McGee has now recovered, and the Debtor has employed a reliable second driver thus, both trucks have been operational for the last seven months, bringing the Debtor's income back to average levels. See detailed account of the history and historical financial data contained in the Debtor's summary of monthly operating reports which is attached hereto as Exhibit C.

**B. Insiders of the Debtor**

The insiders of the Debtor, as defined in §101(31) of the United States Bankruptcy Code (the “Code”) are the co-shareholders Robert McGee and Susan McGee. They are insiders as defined by the Bankruptcy Code.

**C. Management of the Debtor Before and During the Bankruptcy.**

The co-shareholders, Robert and Susan McGee will continue to manage and operate the Debtor’s business as discussed above in Paragraph “A.” Their compensation will continue at the rate specified in the application to employ.

**D. Events Leading to Chapter 11 Filing.** See Paragraph “A” above.

**E. Significant Events During the Bankruptcy Case**

1) Immediately after filing the petition the Debtor ceased all payments to its creditors. Payments in the ordinary course of business resumed after the operating order was entered and the Debtor has begun making adequate protection payments to its secured creditors.

2) There is no cash collateral order.

3) There have been no asset sales outside the ordinary course of business; there has been no debtor in possession financing.

4) The Debtor is current on all post-petition obligations through December 2017 to state and federal taxing authorities. Pre-petition obligations are treated in the Plan.

**F. Projected Recovery of Avoidable Transfers:** There were no transfers and therefore no avoidable transfers.

**G. Claims Objections:** None at this time.

**H. Current and Historical Financial Conditions:**

The identity and fair market value of the estate’s assets are listed in **Exhibit B**. The Debtor-In-Possession's pre-petition financial information is set forth in **Exhibit H**. A summary of the Debtor’s monthly operating reports filed since the commencement of the Debtor’s bankruptcy case is set forth in **Exhibit C**.

**III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. What is the Purpose of the Plan of Reorganization?**

The purpose of this Plan is to reorganize the Debtor’s finances and continue its business. The crux of the plan is to pay in full all priority and secured tax claims through the plan. No

new financing will be required. Cash contributions from the principal may be necessary. These would likely come in the form of Mr. McGee electing to reduce or forgo his compensation from time to time.

This Plan of Reorganization (the “Plan”) under chapter 11 of the Bankruptcy Code (the “Code”) proposes to pay creditors of the Debtor from revenue generated by the operation of the Debtor’s long-haul trucking business. The average gross income from the operation of this business averages \$39,000 per month. Additionally, the Debtor’s principal will contribute additional capital as required to make plan payments if operating revenue is insufficient.

Additionally, the Debtor has a potential claim against Truck Fuel Island resulting from an injury its shareholder/operator obtained while on the job prior to its Chapter 11 filing<sup>30185</sup>. The Debtor will file a Motion to Employ Special Counsel to pursue that claim and any settlement proceeds received by the Debtor will be used to fund operations and prepay the monthly installments.

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

## **B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

### *1. Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor’s chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

- a) Fees due to the United States Trustee or the Court

b) Any claims given administrative status by the Court. As of the preparation of this Disclosure and Plan there were no such claims.

c) Attorney fees to Debtor's counsel in an amount no greater than \$2,500.

## *2. Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief. There are several priority tax claims in this case. All approved pre-petition priority tax claims will be paid in full over a 60-month period at the statutory rate.

## **C. Classes of Claims and Equity Interests.**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

Class 1. All allowed claims entitled to priority under § 507 of the Code. Priority tax claims will be paid via the plan.

Class 2. Keystone Equipment is included in Class 2 as having a fully secured claim. Peoples Bank holds a partially secured claim.

Class 3. All General Unsecured Creditors. These creditors will receive a 100% dividend payable in 72 monthly equal installments without interest.

Class 4. Equity Interest Holders. Mr. and Ms. McGee will retain their interest in the Debtor as the plan will pay 100% of all priority, secured, and general unsecured claims.

## **D. Means of Implementing the Plan**

1. The Debtor will continue operation of its business and seek wherever possible to increase revenue and reduce operating expenses.

2. The Debtor does not propose to borrow any money or sell any assets to fund the plan.

#### **E. Risk Factors**

The proposed Plan has the following risks: Normal economic variables and risks can be expected. Additionally, unexpected equipment repairs are a concern for the Debtor. The Debtor is not aware of any extraordinary risks associated with the continued operation of the company.

#### **F. Executory Contracts and Unexpired Leases.**

1. **Executory Contracts. None.**
2. **Unexpired Leases. None.**

#### **G. Tax Consequences of Plan.**

The following are the anticipated tax consequences of the Plan to the Debtor is: **None.**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

### **IV. 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.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes **that Classes 2 & 3 are impaired** and that holders of claims in each of these classes are therefore entitled to vote 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. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

*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.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***



#### *4. Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

### **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 a 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.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

#### *2. Treatment of Non-Accepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a cram-down plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests 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.

***You should consult your own attorney if you interests are affected by the confirmation of a cram down plan. The variations and exceptions to this general rule are numerous and complex.***

### **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 at least as much under the Plan as such claim and equity

interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as **Exhibit D**.

In Chapter 7, there is the potential for a zero% distribution to unsecured creditors. The Debtor's plan provides for payment of 100% of all unsecured claims.

#### **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 Debtor believes that it will have sufficient cash on hand and cash flow over the next 72 months from operating revenue to pay all the priority, secured, and unsecured claims and expenses of the proposed Chapter 11 plan in full. See Exhibit F.

##### *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 Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have a positive monthly cash flow, after paying operating expenses and post-confirmation taxes, and all plan payments. The final Plan payment is expected to be paid on or before January 2024. However, the Debtor has reserved the right to pre-pay the plan obligations.

#### **E. Risk Factors.**

The proposed Plan has the following risks: Normal economic variables and risks can be expected. The Debtor is not aware of any extraordinary risks associated with the continued operation of the Debtor.

#### **F. Executory Contracts and Unexpired Leases.**

1. There are no executory contracts.
2. There are no unexpired leases.

**G. Tax Consequences: No adverse tax consequences are anticipated.**

**H. Assumptions:**

1. The Debtor will maintain its relationship with its regular customers and new customers and as a result the Debtor's gross income will continue to increase.
2. The general economic conditions will remain constant or improve over the life of the plan.

Basis for Assumptions:

1. Operating revenue has remained constant or improved in the past 6 months.
2. The Debtor now has two full time drivers.

***You Should Consult with Your Accountant or Other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. Discharge of the Debtor.**

The Debtor is a corporation on the effective date of 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 Section 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (I) imposed by the plan, (ii) of a kind specified in Section 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 Section 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (I) through (iii) of the preceding sentence.

**B. Modification of Plan.**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan. The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

**C. 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.

## **VI. OTHER PROVISIONS**

### **Full Satisfaction and Release Upon Completion of Plan Payments.**

The Debtor has reserved unto itself the right to pre-pay the amounts set forth in the Plan. The Plan provides that the payment of all the required payments under the Plan shall constitute a full satisfaction and release of the claims treated in the plan. If no creditors object to this provision it shall become part of the confirmation order which is a final decree and is binding upon the unsecured creditors listed in the plan. Thereafter, none of creditors shall be able to maintain an action to collect the balance of their claims as they are fully satisfied and released.

/s/Robert & Susan McGee  
Members & Plan Proponents