

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

In re:

**VANSCOY CHIROPRACTIC CORPORATION
HOLISTIC HEALTH CENTER,**

**Case No. 17-30271
Chapter 11**

Debtor.

**AMENDED
DISCLOSURE STATEMENT OF VANSCOY CHIROPRACTIC
CORPORATION HOLISTIC HEALTH CENTER**

**ARTICLE I
INTRODUCTION**

This is the Amended Disclosure Statement (the “Disclosure Statement”) in the small business Chapter 11 case of Vanscoy Chiropractic Corporation Holistic Health Center (the “Debtor”). This 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 distribution under the Plan is discussed herein.

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.
- 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 treatment of your claim under the Plan compares to what you would receive on your claim in the liquidation, and
- The effect of the 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 approve the 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. Courthouse, 300 Virginia Street, East, Room 3200, Charleston, 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**

The Debtor operates a chiropractic clinic located at 3761 Teays Valley Road near Scott Depot, Putnam County, West Virginia. The Debtor has been in business for 15 years. The Debtor's annual revenues over the past three years have averaged \$491,000. The Debtor employs eight persons. The business also offers massage therapy and water therapy.

Medical Investors, LLC, an entity in which Darrin Vanscoy, the owner of the Debtor, was involved, previously owned the real property located at 3761 Teays Valley Road, Scott Depot, West Virginia. Medical Investors, LLC became unable to make payments to First Bank of Charleston and the Bank was ultimately given permission to foreclose on the property after a failed Chapter 11 Plan of Medical Investors, LLC. As a result of that sale, a deficiency in the approximate sum of \$780,000 was

determined. Teays Valley Chiropractic guaranteed the obligation of Medical Investors, LLC to First Bank of Charleston and it is that guaranty upon the deficiency which led to the filing of this case.

III. SIGNIFICANT EVENTS

During this case, the Debtor has entered into a commercial Lease Agreement with AMS Enterprises for continued occupancy of the premises located at Teays Valley Road. The monthly rent is \$6,000 per month. In the event of a sale of the assets, the Lease will be assigned.

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. The Plan also states whether each class of claims is impaired. THE SALE OF THE BUSINESS ASSETS SHALL BE CONDUCTED WITHIN 120 DAYS. THE SALE SHALL BE SUPERVISED BY DEBTOR'S COUNSEL. IN THE EVENT THAT A SALE IS NOT SUCCESSFUL, INCLUDING SUBMISSION OF A CREDIT BID UNDER SECTION 363(k) OF THE BANKRUPTCY CODE, THEN THIS CASE SHALL BE IMMEDIATELY CONVERTED TO A CHAPTER 7 LIQUIDATION CASE.

B. Unclassified Claims

Certain types of claims are automatically entitled to special and 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 Bankruptcy 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 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	0	
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	0	
Professional Fees, as approved by the Court		
Clerk's Office Fees		Paid in full on the effective date of the Plan
Office of the U.S. Trustee Fees	\$975.00	Paid in full within 30 days after confirmation
TOTAL		

2. *Priority Tax Claims*

The Debtor did incur priority tax claims prior to the filing of this case. Those claims are as follows:

<u>Class</u>	<u>Impairment</u>	<u>Treatment</u>
<u>Class 1 - Priority Claims</u> Pre-petition claim of the Internal Revenue Service	\$2,782.00	Payment upon sale of assets.
West Virginia State Tax Department	\$271,342.00 (to be revised and returns to be filed)	Payment upon sale of assets.

Class 2 - Secured Claims - The Internal Revenue Service has filed a secured claim in the amount of \$15,719. The State Tax Department has filed a secured claim in the amount of \$48,231. A sale of the assets, after approval by U.S. Bankruptcy Court for the Southern District of West Virginia, will realize a sum sufficient to pay the secured claim of each taxing authority. The large priority claim of the West

Virginia State Tax Department is primarily based upon estimates from unfiled tax returns. Further, a portion of what is listed as priority should be determined to be an unsecured claim because it is for taxes owing for a period more than three years prior to the filing of the bankruptcy. The Debtor will take steps to file the missing returns with the West Virginia State Tax Department and will attempt to negotiate an agreement regarding the correct amount of the priority tax claim of the West Virginia State Tax Department. Any surplus after payment of the secured claims of the taxing authorities will be paid over to First Bank of Charleston.

Class S-3 is the secured claim of First Bank of Charleston. This claim is secured by a judgment lien of record in the Office of the Clerk of the County Commission of Putnam County, West Virginia. After payment of the Federal and State tax liens, the balance of the net sale proceeds of the assets of the Debtor will be paid over to the First Bank of Charleston.

3. *Unsecured Creditors*

Class U consists of allowed general unsecured claims which total the approximate sum of \$797,000. The amount which can be paid to these creditors will be dependent upon successful negotiations with First Bank of Charleston and/or the sale of the business assets.

4. *Class of Equity Interest Holders*

Darrin Vanscoy is the owner of the business. Mr. Vanscoy will not receive any payment on any claim which he has for pre-petition loans to the business.

D. Means of Implementation

This Chapter 11 Plan is based upon the Debtor being able to sell the chiropractic practice and/or to negotiate an affordable repayment plan with First Bank of Charleston.

E. Risk Factors

The primary risk is that the Debtor will not be able to sell the assets of the chiropractic practice and/or to negotiate a feasible repayment plan with First Bank of Charleston. The Debtor will sell the assets of the chiropractic practice to a qualified purchaser who will be a duly licensed physician under the laws of the State of West Virginia or a duly licensed chiropractor, with that sale to be free and clear of liens with liens to attach to the proceeds. The sale will include equipment; accounts receivable; good will; and an assignment of the existing Commercial Lease. Darrin Vanscoy, the current owner of Vanscoy Chiropractic, would not be an owner of the new purchaser, but may become an employee of that entity.

G. Executory Contracts

The Debtor is party to a Lease Agreement with AMS Enterprises.

H. Tax Consequences of the Plan

The Debtor does not believe that the Plan has any material tax consequences to creditors.

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 ($\frac{1}{2}$) 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 ($\frac{2}{3}$) 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

Because this is a Plan which provides for a sale of all assets, the Liquidation Analysis is the equivalent of what sale price may be achieved. If no bids are made on the assets of the Debtor at a price which can be approved by the U.S. Bankruptcy Court for the Southern District of West Virginia, then the case will be converted to a Chapter 7 case and a Chapter 7 Trustee would take over the responsibility for a liquidation of the assets.

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 is based upon a sale of the chiropractic practice assets and/or negotiation with First Bank of Charleston for a workable repayment compromise.

VI. LITIGATION

Prior to the filing of this case, First Bank of Charleston had obtained a judgment against the Debtor which is the basis of its claim. At the time of the filing of this case, there was also pending in the Circuit Court of Putnam County, West Virginia, a civil action brought by Sonia Mitchell, Civil Action No. 17-C-51, based upon alleged failure to pay fringe benefits.

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 is unable to sell assets free and clear of liens, upon Court approval, then this case may be converted to a Chapter 7 liquidation case under which the Court would appoint a Chapter 7 Trustee and the Trustee will determine what assets, if any, to sell or whether to surrender the assets to First Bank of Charleston.

In the event that a sale has not occurred within 120 days following confirmation, then creditors shall have the right to petition the U.S. Bankruptcy Court to convert or dismiss this 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 enforce 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

VANSCOY CHIROPRACTIC CORPORATION
HOLISTIC HEALTH CENTER,

By Counsel

/s/ Joseph W. Caldwell
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List of Exhibits

1. Plan of Reorganization
2. List of priority creditors and secured creditors.
3. List of unsecured creditors.
4. Assets:
 - Monies on deposit in checking.
 - Office furniture, fixtures and equipment.
 - Accounts receivable.
 - Inventory and supplies.
 - Good will.
5. Projections.
5. Liquidation Analysis.