

§363(b)(1) Use of Property of Estate

- **(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,**

§1129 (b) (2) (B) Confirmation of Plan

. . . .

(B) With respect to a class of unsecured claims —

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, **except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115**, subject to the requirements of subsection (a)(14) of this section.

§1129 (a) (15) Confirmation of Plan

. . . .

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan —

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

§1325 (b) Confirmation of Plan

(2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable non-bankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

- (A)
- (i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

§1325 (b) Confirmation of Plan

- (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan —
- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
 - (B) the plan provides that **all of the debtor's projected disposable income** to be received in the applicable commitment period beginning on the date that the first payment is due under the plan **will be applied to make payments to unsecured creditors under the plan.**

§1141 (d) (5) Effect of Confirmation

. . . .

(5) In a case in which the debtor is an individual —

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

§1141 (d) (5) Effect of Confirmation (cont'd.)

(5) In a case in which the debtor is an individual —

(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —

(i) section 522(q)(1) may be applicable to the debtor;
and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)

§1127 (e) Modification of Plan

(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to —

Chapter 11 v. Chapter 13

Advantages of Chapter 11

- No secured or unsecured claim limit
- No regular income requirement
- New taxable estate
- No “hanging paragraph” as under 1325
- Plan is not limited to 36-60 months
- No IRS standard deductions in determining “project disposable income”
- No anti-stripdown under 506
- No charitable contribution limitation
- No subsequent discharge limitation

Chapter 11 v. Chapter 13

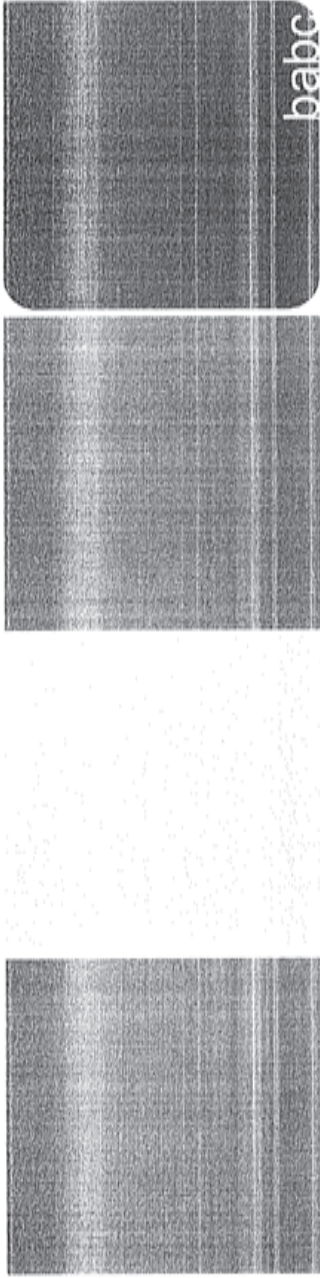
Advantages of Chapter 13

- No involuntary petition under § 303(b)
- Priority claims may be paid without interest over the term of the plan
- Less than full payments of domestic support obligations that have been assigned to government is possible
- Plan payments may be less than the “projected disposable income”
- Debtor’s counsel may be paid for services that may not benefit estate
- No “small business debtor”

Chapter 11 v. Chapter 13

Advantages of Chapter 13 (cont.)

- No court permission to use post-petition wages to pay personal expenses and debtor's counsel
- More debts are dischargeable
- Debtor may dismiss at any time
- No voting in plan process
- Debtor retains post-petition wages upon good-faith conversion
- Payments reduced for health insurance
- No third-party modification of plan



Bankruptcy Code Sections Affecting Individuals in Chapter 11

Presented by
William L. Norton III



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:)
) Case No.
)
)
 Debtor.)
_____)

DEBTOR’S DISCLOSURE STATEMENT DATED OCTOBER 1, 2010

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I. INTRODUCTION

The Debtor, _____, hereby submits this Disclosure Statement in connection with his/her Plan of Reorganization Dated October 1, 2010 (the “Plan”). The Debtor submits this Disclosure Statement in compliance with the provisions of the Bankruptcy Code requiring adequate information to be supplied to creditors to arrive at an informed decision in voting on the Plan. A copy of the Plan accompanies this Disclosure Statement.

[Disclaimer. The Court has conditionally approved this Disclosure Statement as containing adequate information. The Court’s final approval, as well as confirmation of the Plan, will be pursuant to Notice served herewith.]

II. BACKGROUND

A. EVENTS LEADING TO THE CHAPTER 11 FILING

[Set out all circumstances leading up to the filing, including loss of income, business failure, lawsuits].

B. THE CHAPTER 11 CASE

[Detail important events occurring in the case, including Orders authorizing ordinary course expenses, Orders for adequate protection, or use of cash collateral (as applicable), pre-confirmation sales or surrender of property, etc.]

III. LIQUIDATION ANALYSIS / PROJECTED DISPOSABLE INCOME

Attached hereto as Appendix “A” is a Liquidation Analysis of the Debtor’s non-exempt assets as of October 1, 2010. The Liquidation Analysis is provided for creditors to compare their treatment under the Plan with the results of a hypothetical Chapter 7 case. See § 1129(a)(7) of the Code. As set out in the Liquidation Analysis, if the Debtor’s non-exempt assets were liquidated, _____ would be paid in full on its secured claim, but _____ would be paid only a portion of its secured claim, with the balance (deficiency) becoming an unsecured claim. Unsecured creditors would likely receive _____ [nothing]. [This is less than under the Plan.]

Attached as Appendix “B” is the Debtor’s calculation of Projected Disposable Income. The amount to be paid under the Plan [is equal to] [is greater than] five (5) years of such Income.

IV. SUMMARY OF THE PLAN/TREATMENT OF CLAIMS

The Debtor will fund the Plan from [a combination of sale of property and] Projected Disposable Income. [Upon completion of all payments under the Plan, the Debtor will be discharged.]

The Plan does not classify administrative and unimpaired creditors, and they will be paid in full. The Plan provides for 5 Classes of creditors: Class 1 (priority creditors), Classes 2, 3, and 4 (secured creditors), and Class 5 (unsecured creditors). All creditors should refer to Articles 3 through 6 of the Plan for information regarding the precise treatment of their claim. A Disclosure Statement providing more detailed information regarding the Plan and the rights of creditors is attached.

Unimpaired claims include _____ secured by the Debtor's exempt homestead. The Debtor has continued to pay _____ pursuant to the parties note and mortgage and will continue until paid in full. [Also unimpaired is _____ secured by the Debtor's exempt vehicle.] The Debtor has continued to pay _____ pursuant to the parties note and security agreement and will continue until paid in full. _____ and _____ will retain their liens.

Administrative claims include the Debtor's attorney and accountant, who have provided services for the Chapter 11 case. Fees in the amount of \$_____ [attorney] and \$_____ [accountant] have been authorized and paid to date. Additional amounts will be paid as authorized by the Court. As of the date of the Plan and this Disclosure Statement, additional fees of at least \$_____ and \$_____ are anticipated.

The Plan provides for payment in full of the priority claims of the Internal Revenue Service and the Kansas Department of Revenue. The tax and interest portion of such claims will be paid in full, with applicable statutory interest, in equal monthly payments, with the first payment being due thirty (30) days from the Effective Date, for a period of 5 years from [the Effective Date] [the Filing Date] [If applicable, add DSO treatment.]

Secured creditors will be paid [set out specific treatment, per Class, including modification of terms, bifurcation under § 506, interest rate, etc.]

[No insiders are dealt with or involved in the Plan.] [Confirmation of the Plan will vest all property of the estate in the Debtor, individually, subject to the terms of the Plan.] [Notwithstanding Confirmation, property of the estate will not vest in the Debtor, individually, until the Debtor has been discharged and entry of a Final Decree.]

[Attached hereto as Appendix “C” is a Claims Summary of claims deemed allowed, or separately filed by creditors, as of the date of the Plan. If no objections or amendments are filed, and if the Debtor’s proposed treatment of otherwise secured creditors is adopted, unsecured creditors can expect a dividend of ____%. Creditors are cautioned that this is only an estimate at this time.]

V. EXECUTORY CONTRACTS/UNEXPIRED LEASES

The Plan provides for the assumption of executory contracts or unexpired leases as listed in Article 7A of the Plan. The list may be amended at any time prior to the Confirmation Date. Any executory contract or unexpired lease not assumed will be rejected. Claims for rejection damages must be filed no later than ____ days after the Confirmation Date [pursuant to Court Order of ____].

VI. TAX CONSEQUENCES

The filing of the Chapter 11 case created a separate taxable entity – the bankruptcy estate. The Debtor remains a separate taxable entity. The estate must include in its income all of the Debtor’s post-petition income, except as otherwise determined by the Court. Both the Debtor and the estate will be required to file income tax returns for the post-petition period. The estate has succeeded to all of the Debtor’s pre-petition tax attributes.

The Debtor, and/or the estate, may incur gain upon the sale of _____. However, the Debtor had a loss on the sale of _____ and has a large net operating loss carry-forward from his/her pre-petition ____ short year return. The Debtor

therefore believes that any gain will be offset and the estate will not incur any tax liability. Distribution to creditors should not, therefore, be affected by any tax liability.

Creditors who are secured and will be paid in full under the Plan should consult their accountants concerning the tax effect of such payments. The Debtor believes no adverse tax effects will result. Unsecured creditors who are not paid in full should also consult their accountants. The Debtor believes that once payments under the Plan are made, the balance of any unsecured claim could be “written off” by the claimant as a “bad debt” business expense. [A delay in the Debtor’s discharge may affect the timing of such a deduction].

Neither the Debtor nor the estate should incur any “forgiveness of debt income” based on creditors not being paid in full, although certain tax attributes may have to be reduced.

VII. CONFIRMATION REQUIREMENTS

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; the Plan must distribute to each creditor at least as much as creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible.

Any party in interest may object to confirmation of the Plan if they believe the requirements for confirmation are not met. A creditor may vote to accept or reject the Plan if the creditor holds a claim that is both (a) allowed or allowed for voting purposes, and (b) impaired. In this case, the Debtor believes that creditors in Classes 1-5 are

impaired, and eligible to vote. Secured creditors whose claims are bifurcated (Classes ___ and ___) also hold claim in Class 5 and may vote in both.

A Class accepts the Plan if both (a) the holders of more than one-half (1/2) of the allowed claims in the Class, who vote, vote to accept, and (b) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims, who vote, vote to accept.

At least one impaired Class of claims must vote to accept the Plan. If any one Class rejects, the Plan may still be confirmed if it does not “discriminate unfairly” and is “fair and equitable” to the rejecting Class. Creditors should consult their attorneys with regard to this matter.

VIII. EFFECT OF CONFIRMATION

A. Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

B. Final Decree. [Upon substantial consummation, see 11 USC § 1101(2), the Debtor will file an application for final decree, even if all payments under the Plan have not been completed. Notwithstanding entry of a final decree on such notice, the Debtor will subsequently file a “Notice of Completion of Plan Payments and Request for Entry of Discharge” when all payments have been completed. Such “Notice” will be served on all parties in intent. If no objections are filed within 21 days, the case will automatically be re-opened without a fee and a discharge order may be entered.] [Once the estate has

been fully administered, see Fed. Rule Bankr. Proc. 3022, the Debtor will file an application for final decree to close the case.]

Debtor

Attorney for Debtor

Appendix “A”

LIQUIDATION ANALYSIS OCTOBER 1, 2010

ASSETS

| | | |
|-------|--|--------------|
| 1. | Cash ^{A1} | \$5,010.00 |
| 2. | Real Estate ^{A2} | 550,000.00 |
| 3. | Non-exempt personal property ^{A3} | 4,600.00 |
| 4. | Business Equipment ^{A4} | 80,000.00 |
| 5. | Accounts ^{A5} | 20,000.00 |
| Total | | \$659,610.00 |

^{A1} Funds in the D.I.P. Account at _____ Bank

^{A2} The Debtor’s **exempt** homestead, _____, Newton, Kansas is **not included**. Included is the Debtor’s business building valued at \$550,000.00.

^{A3} Per Schedule B: Fishing Equipment \$500.00; Rifles \$100.00; Shotgun \$500.00; ’95 Olds \$1,000.00; boat lift \$2,500.00. **Exempt personal property per Schedule C not included.**

^{A4} Equipment, inventory, and accounts per appraisal of _____. Equipment (\$50,000.00); discounted inventory (\$30,000.00).

^{A5} Discounted value of accounts. Book value is \$30,000.00.

DISBURSEMENTS

| | | |
|-------|--|--------------|
| 1. | Administrative Expenses ^{D1} | \$27,669.90 |
| 2. | Liquidation Costs ^{D2} | 41,460.00 |
| 3. | Bank of _____ ^{D3} | 400,000.00 |
| 4. | EDG ^{D4} | 86,250.00 |
| 5. | _____ Bank ^{D5} | 68,000.00 |
| 6. | Chapter 7 Trustee ^{D6} | 36,230.10 |
| 7. | Priority/Unsecured Creditors ^{D7} | <u>0.00</u> |
| Total | | \$659,610.00 |

^{D1} Estimate for Debtor's attorney, accountant, and accrued ordinary living expenses. Fees and expenses may exceed available funds of \$29,150.00. Consisting of net proceeds for sale of non-exempt personal property (\$4,140) plus net value of liquidated accounts (\$20,000); plus cash (\$5,010); less Chapter 7 Trustee fees (\$_____).

^{D2} Auctioneer/Realtor fee on sale of real estate: _____ 6% \$33,000.00; Auctioneer fees on sale of non-exempt personal property and business equipment (no including accounts): _____ 10% \$8,000 + \$460.

^{D3} Payoff of fully secured first mortgage on business real estate

^{D4} Balance of net proceeds of real estate. Net: less auctioneer/realtor fees and Chapter 7 Trustee fees.

^{D5} Net proceeds of auction sale of business equipment and inventory (\$_____). Net: less auctioneer fees and Chapter 7 Trustee fees.

^{D6} A theoretical liquidation in Chapter 7 would produce trustee fees pursuant to 11 U.S.C. §326 on disbursements of \$659,610.

^{D7} No funds would be available for unsecured creditors.

Appendix “B”

PROJECTED DISPOSABLE INCOME

Attached hereto is a Form B 22B showing the Debtor’s Current Monthly Income (CMI) of [\$7,132.22]. This is based on an average of income from all sources during the six calendar months before the Filing Date. [This amount includes \$_____ received during the six month pre-petition period which was a one time event which will not recur. The Debtor has therefore adjusted the CMI figure by removing this one time income item, to produce a six month average of \$_____. [Debtor proposes this figure as CMI].

Also attached hereto is an itemization of Debtor’s Monthly Expenses, which shows a total of [\$7,787.28].

Based on the above, the Debtor’s Projected Disposable Income is [\$0 per month.]
[\$_____ per month.]

ABI/UMKC MIDWESTERN BANKRUPTCY INSTITUTE & CONSUMER FORUM

B22B (Official Form 22B) (Chapter 11) (01/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedules I and J, this statement must be completed by every individual chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

| Part I. CALCULATION OF CURRENT MONTHLY INCOME | | | | | |
|---|---|---|------------------------------|---|---|
| 1 | Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A (“Debtor’s Income”) for Lines 2-10. b. <input checked="" type="checkbox"/> Married, not filing jointly. Complete only Column A (“Debtor’s Income”) for Lines 2-10. c. <input type="checkbox"/> Married, filing jointly. Complete both Column A (“Debtor’s Income”) and Column B (“Spouse’s Income”) for Lines 2-10. | | | | |
| | All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line. | | | Column A Debtor’s Income | Column B Spouse’s Income |
| 2 | Gross wages, salary, tips, bonuses, overtime, commissions. | | | \$ | \$ |
| 3 | Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. | | | | |
| | a. | Gross receipts | \$ 12,336.51 | | |
| | b. | Ordinary and necessary business expenses | \$ 5,204.29 | | |
| | c. | Business income | Subtract Line b from Line a. | \$7,132.22 | \$ |
| 4 | Net rental and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. | | | | |
| | a. | Gross receipts | \$ | | |
| | b. | Ordinary and necessary operating expenses | \$ | | |
| | c. | Rent and other real property income | Subtract Line b from Line a. | \$ | \$ |
| 5 | Interest, dividends, and royalties. | | | \$ | \$ |
| 6 | Pension and retirement income. | | | \$ | \$ |
| 7 | Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor’s spouse if Column B is completed. | | | \$ | \$ |
| 8 | Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: | | | | |
| | Unemployment compensation claimed to be a benefit under the Social Security Act | Debtor \$ _____ | Spouse \$ _____ | \$ | \$ |

| | | | | |
|----|--|--|-------------------|----|
| 9 | Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. | | | |
| | a. | | \$ | |
| | b. | | \$ | |
| 10 | Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s). | | \$ | \$ |
| 11 | Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A. | | \$7,132.22 | |

Part II: VERIFICATION

| | | |
|----|---|--|
| 12 | <p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i></p> <p style="text-align: center;">Date: _____ Signature: _____ (Debtor)</p> <p style="text-align: center;">Date: _____ Signature: _____ (Joint Debtor, if any)</p> | |
|----|---|--|

MONTHLY EXPENSES

| | |
|--|-------------------|
| Countrywide (mortgage payment including tax and insurance) | 2089.66 |
| Auto Insurance | 100.00 |
| City of Newton (water and trash) | 149.00 |
| Cox (cable, TV, phone) | 195.00 |
| Electricity/heating | 200.00 |
| Etter's Lawn Care | 110.00 |
| Alltel (cell phones) | 173.34 |
| Salem Methodist Church (contributions) | 100.00 |
| Housekeeper/home maintenance | 200.00 |
| Vehicle tags and taxes | 39.71 |
| Life Insurance (whole life) | 736.00 |
| Life Insurance (term) | 184.00 |
| Newton Kansan (newspaper) | 10.58 |
| Wichita Eagle (newspaper) | 15.99 |
| Prescription drugs | 52.00 |
| Food | 500.00 |
| Recreation | 120.00 |
| Auto payment | |
| Subtotal | <u>\$4,975.28</u> |
| Withholding Estimated Taxes | 2,812.00 |
| Total | <u>\$7,787.28</u> |

APPENDIX “C”

**CLAIMS SUMMARY
OCTOBER 1, 2010**

Class 1 Priority Creditors \$ _____ IRS
\$ _____ KDR

Class 1 consists of the Internal Revenue Service and Kansas Department of Revenue. The priority portion of these claims (by their terms) are listed here. The unsecured portions are listed under Class 5.

Class 2 Bank of _____ \$400,000.00

Class 1 consists of the secured claim of Bank of _____.

Class 3 Economic Development Group \$ _____

Class 3 consists of the secured claim of Economic Development Group. The secured portion of its claim based on value is set out here. The unsecured portion is listed under Class 5. Filed claim \$_____. Secured amount \$_____, unsecured amount \$_____. \$_____ per Debtor’s values.

Class 4 _____ Bank \$ _____

Class 4 consists of the secured claim of _____ Bank. The secured portion of its claim is set out here. The unsecured portion is listed under Class 5. Filed claim \$_____. Secured amount \$_____, unsecured amount \$_____. \$_____ per Debtor’s values.

Class 5 Unsecured Claims

(A) Deemed Filed Claims (§1111(a))

| | |
|-------------------------------|------------------|
| Advanta Bank Corp | \$25,905.45 |
| American Express | \$0 ¹ |
| AT&T Advertising & Publishing | \$830.70 |

| | |
|-------------------|------------------|
| Avaya | \$0 ² |
| Bank of America | \$501.67 |
| Bank of America | \$0 ³ |
| Bank of America | \$13,938.39 |
| Bank of America | \$2,242.19 |
| Capital One | \$14,076.35 |
| Capital One | \$3,307.35 |
| Chase | \$0 ⁴ |
| Chase | \$5,843.41 |
| CitiBusiness Card | \$37,778.74 |
| Discover | \$4,139.04 |
| Discover Card | \$0 ⁵ |
| First Equity Card | \$11,315.63 |
| US Bank | \$1,859.38 |

Subtotal \$

(B) Filed Claims

| | | |
|---|---|-------------|
| 1 | Discover Bank | \$12,216.25 |
| 2 | | \$0 |
| 3 | American Infosource LP as Agent for FIA Card Services NA Bank of America | \$16,014.62 |
| 4 | American Express Bank FSB | \$16,973.64 |
| 5 | Chase Bank USA NA | \$1,493.97 |
| 6 | Avaya Inc | \$374.74 |

Subtotal \$

(C) Unsecured Portion of Priority Secured Claims

| | |
|------------------------------|--|
| Internal Revenue Service | |
| Kansas Department of Revenue | |
| Economic Development Group | |
| _____ Bank | |

Subtotal

Total Unsecured Claims _____

Based on the above and [Projected Disposable Income] [Debtor's application of \$_____ to unsecured creditors], unsecured creditors may anticipate a dividend of [___%]. There is no assurance that this % will actually be paid. The amount of allowed claims may vary significantly before claims are finally resolved.

- ¹ Superceded by Filed Claim # 4
- ² Superceded by Filed Claim #6
- ³ Superceded by Filed Claim # 3
- ⁴ Superceded by Filed Claim # 5
- ⁵ Superceded by Filed Claim # 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

| | | |
|---------|---|----------|
| IN RE: |) | |
| |) | Case No. |
| _____, |) | |
| |) | |
| Debtor. |) | |
| _____ |) | |

DEBTOR’S PLAN OF REORGANIZATION DATED OCTOBER 1, 2010

The Debtor, _____, hereby submits, as proponent, the following Plan of Reorganization.

ARTICLE 1

Summary of Plan

The Debtor will fund the Plan from [a combination of sale of property and] projected disposable income. See Article 8. [Upon completion of all payments under the Plan, the Debtor will be discharged. See Article 10.]

The Plan provides that administrative and unimpaired creditors are not classified and will be paid in full. The Plan also provides for 5 Classes of creditors: Class 1 (priority creditors), Classes 2, 3, and 4 (secured creditors), and Class 5 (unsecured creditors). All creditors should refer to Articles 3 through 6 of the Plan for information regarding the treatment of their claim. A Disclosure Statement providing more detailed information regarding the Plan and the rights of creditors is attached.

ARTICLE 2

Definitions

The definitions and rules of construction set out in § 101 and § 102 of the Code (11 USC § 101 et seq.) apply when terms defined or construed in the Code are used in the Plan. They are supplemented by the following:

Confirmation Date: The date of the entry of an order of the Bankruptcy Court confirming the Plan.

Debtor: The Debtor, _____, and/or the Debtor-in-Possession as the context requires.

Effective Date: The date on which the order of the Bankruptcy Court confirming the Plan has become final and no appeal therefrom is pending. If no appeal is taken, this will be fourteen (14) days after the Confirmation Date.

Filing Date: _____, 2010

Plan: The Debtor's Plan of Reorganization, as it may be modified in accordance with its provisions and/or the Code.

ARTICLE 3

Classification of Claims

Administrative and Unimpaired claims are not classified under this Plan and are treated in accordance with the terms of Articles 4 and 5. Classified claims are as follows:

Class 1: Allowed claims of Priority Creditors

Class 2: Allowed claim of Bank of _____

Class 3: Allowed claim of _____ Economic Development Group

Class 4: Allowed claim of _____ Bank

Class 5: Allowed claims of all unsecured creditors, including the unsecured portion of the claims of otherwise secured creditors or priority creditors.

ARTICLE 4

Payment of Administrative Claims

A. **Administrative claims** consist of (1) attorney fees for the debtor's counsel and (2) accounting fees for the debtor's accountant. To the extent allowed by the Court, these will be paid, in cash, on the Effective Date, or as agreed by the claimants.

B. **United States Trustee fees.** The debtor will be responsible for timely payment of fees incurred pursuant to 28 U.S.C. §1930(a)(6). After confirmation, the debtor will file with the Court and serve on the United States Trustee a quarterly disbursement report for each quarter, or portion thereof, until a Final Decree has been entered.

ARTICLE 5

Unimpaired Claims

The claims of _____, secured by the Debtor's exempt homestead at _____, Newton, Kansas, and _____, secured by the Debtor's exempt vehicle are unimpaired. By prior court order, the Debtor has continued to timely pay these claims post-petition, pursuant to the terms of the notes and security agreement/mortgage, and will continue to do so until paid in full. _____ will retain their liens.

ARTICLE 6

Treatment of Impaired/Classified Claims

Class 1. Priority Claims consist of the claims of (a) the Internal Revenue Service for _____ year income taxes and _____ withholding taxes, and (b) the Kansas Department of Revenue for _____ withholding taxes. The tax and interest on tax portion of these claims will be paid in full in equal monthly payments, beginning thirty (30) days after the Effective Date, including interest at the applicable statutory rate, for a period of 5 years after [the Effective Date][the Filing Date]. Any “penalty” portion of such claims, which are in addition to tax and interest on tax, will be an unsecured claim under Class 5. [Add (c) DSO explication if needed.]

Class 2. Consists of Bank of _____, which holds a mortgage on the Debtor’s business real estate located at _____. The claim of Bank of _____ is in the amount of \$_____, as of the Filing Date. The value of the business real estate is _____. Bank of _____ will be paid in full. However, the note and mortgage will be modified to provide [_____][Credit given for adequate protection payments] Bank of _____ will retain its lien.

Class 3. Consists of Economic Development Group, Inc. (“EDG”), which holds a second mortgage on the business real estate. The claim is in the amount of \$_____, as of the Filing Date. The value of the business real estate is _____, which is less than the combined claims of the Bank of _____ (Class 2) and EDG. EDG holds a second mortgage. EDG will be paid \$_____ as a secured claim, payable as _____ [_____]. The balance of the EDG claim will be treated as an unsecured claim under Class 5.

[Credit given for adequate protection payments] EDG will retain its lien only to the extent of its secured claim as defined herein.

Class 4. _____ Bank holds a security interest in the Debtor's business equipment, inventory, and accounts. The claim of _____ Bank is in the amount of \$_____ as of the Filing Date. The value of the equipment, inventory, and accounts is \$_____, which is less than the claim of _____ Bank. _____ Bank will be paid \$_____ as a secured claim, payable as follows [_____]. The balance of the claim of _____ Bank will be an unsecured claim under Class 5. [Credit given for adequate protection payments] _____ Bank will retain its lien only to the extent of its secured claim as defined herein.

Class 5. Unsecured Claims consist of (a) all unsecured claims deemed filed and allowed pursuant to Code §1111(a); (b) all allowed unsecured timely claims filed by creditors (which will supercede any deemed filed claim); (c) the unsecured portion of any secured or priority claim as may be specifically referenced under Classes (1) – (4) above; or (d) as determined by the Court in the event of an objection to the claim. Unsecured claims will be paid [the balance of the Debtor's projected disposable income for 5 years, as determined by Appendix B to the Disclosure Statement, less the amounts needed for administrative, priority, unimpaired, and secured creditors (to the extent not already accounted for in the projected disposable income calculation as set out above) for a period of 5 years from the Effective Date][\$_____ per month for a period of 5 years from the Effective Date].

A Claims Summary of claims deemed allowed, or separately filed by creditors, as of the date of the Plan, is attached to the Disclosure Statement as Appendix "C." If no objections or amendments are filed, and if the Debtor's proposed treatment of otherwise

secured creditors is adopted, unsecured creditors can expect a dividend of _____%.
Creditors are cautioned that this is only an estimate at this time.

ARTICLE 7

Executory Contracts and Unexpired Leases

A. Assumed Executory Contracts/Leases. The Debtor assumes the following
executory contracts/unexpired leases upon the Effective Date [List]

B. Rejection/Damages. Any executory contracts or unexpired leases not assumed
pursuant to the above, or by any amendment of the listed contracts/leases, by the
Confirmation Date, will be deemed rejected. Any claim for damages based on such
rejection will conclusively be presumed to be a pre-petition claim. Any proof of claim for
such damages must be filed no later than _____ days after the Confirmation Date
[pursuant to Court Order of _____].

ARTICLE 8

Implementation of the Plan

The Debtor will continue operating [his/her] business [professional practice] post-
confirmation. Payments and distributions under the Plan will be funded from the Debtor's
Projected Disposable Income as calculated in Appendix B of the Disclosure Statement.
[The Debtor will also sell _____ and distribute the proceeds _____].

The Debtor will remain in possession of all property [of the Estate][not otherwise
surrendered or sold]. The secured claims of _____ will be modified as set out in Article
6 above. [No insiders are dealt with or involved in the Plan].

ARTICLE 9

General Provisions

A. **Retention of Jurisdiction**. The Bankruptcy Court shall retain jurisdiction for the following purposes:

i. To rule on the allowance of claims and to hear any objections thereto;

ii. To consider adversary proceedings or contested matters which may be brought by the Debtor, including avoidance actions. The Debtor preserves any such action and reserves the right to bring such actions notwithstanding any other reference in this Plan thereto, at any time prior to the Final Decree or the limitation period provided by the Bankruptcy Code, whichever occurs first;

iii. To allow and approve or disapprove the payment of any administrative expense not previously allowed;

iv. To determine and resolve questions concerning the existence of default under the Plan;

v. To modify the Plan pursuant to §1127 of the Code;

vi. To correct any defect, to cure any omission, or to reconcile any inconsistency in the Plan or Order of Confirmation, as may be necessary to carry out the purposes and intent of the Plan; and

vii. To issue any order necessary to carry out the Plan.

B. **Modification**. The Debtor may submit modifications of the Plan to the Court at any time prior to confirmation pursuant to Code §1127(a) or after confirmation

pursuant to §1127(b) or (e). Other parties in interest may submit modifications after confirmation pursuant to § 1127(e).

C. **Default/Grace Period.** If any payment required under this Plan is not paid on or before the date specified, the Debtor or any obligee under the Plan, will have a thirty (30) day grace period to make such payments before being considered in default.

D. **Exculpation / Releases.** Neither the Debtor, nor any of [his/her/their] respective present or former employees, advisors, professionals (including attorneys and accountants) and agents, shall have or incur any liability to any holder of a claim or any other party in interest, or any of their respective agents, employees, representatives, advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, negotiation, or implementation of the Disclosure Statement and the Plan and related agreements, including without limitation, pursuit of confirmation of the Plan, confirmation of the Plan, consummation of the Plan, or the administration of the Plan or property to be distributed under the Plan. Confirmation of the Plan will constitute an order releasing such parties from any such asserted liability.

E. **Claims Allowance.** The Debtor may object to any claim, notwithstanding Confirmation, at any time consistent with the Code or Court Order. If any such objections are filed, the Allowed amount of the claim will be determined by the Court.

F. **Property of the Estate.** [Confirmation of the Plan will vest all property of the estate in the Debtor, individually, subject to the terms of the Plan] [Notwithstanding Confirmation, property of the estate will not vest in the Debtor, individually, until the Debtor has been discharged and entry of a Final Decree].

G. **Avoidance Actions.** The Debtor, as Debtor-in-Possession, has the rights and power of a trustee under Chapter 5 of the Code. This includes avoidance actions such as preferences. The Debtor may bring such actions as may appear, or assert such actions as defenses to any claim.

ARTICLE 10

Discharge/Final Decree

A. Discharge. The Debtor will be discharged upon completion of all payments under the Plan. See Code §1141(d)(5)(A). The discharge will apply to all claims or debts, other than those excepted under Code § 527, which arose, occurred, or grew out of acts performed by the Debtor before the Confirmation Date, and of all claims/debts of any kind, including those specified in Code §502(g)(h) or (i), whether or not a proof of claim is filed or allowed, or the holder of the claim accepts the Plan. See also sub-part B, below.

B. Final Decree. [Upon substantial consummation, see Code § 1101(2), the Debtor will file an application for final decree, even if all payments under the Plan have not been completed. Notwithstanding entry of a final decree on such notice, the Debtor will subsequently file a “Notice of Completion of Plan Payments and Request for Entry of Discharge” when all payments have been completed. Such “Notice” will be served on all parties in intent. If no objections are filed within 21 days, the case will automatically be re-opened without a fee and a discharge order may be entered.] [Once the estate has been fully administered, see Fed. Rule Bankr. Proc. 3022, the Debtor will file an application for final decree to close the case.]

Debtor

Attorney for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:

Case Number: :
Chapter : 11

Debtor(s)

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

Notice is hereby given that the Debtor has filed a Disclosure Statement Dated _____ and a Chapter 11 Plan Of Reorganization, Dated: _____.

The Honorable Robert E. Nugent, United States Bankruptcy Judge, has directed that all creditors listed and those not listed but filing claims herein, and the United States Trustee be noticed and supplied a copy of the Disclosure Statement, and Chapter 11 Plan Of Reorganization.

Separate evidentiary hearings will be held on _____ beginning at _____ before the United States Bankruptcy Court, 150 U. S. Courthouse, 401 N. Market, Wichita, Kansas. A hearing on the Disclosure Statement will begin at _____ on that date. Should the Disclosure Statement be approved, a confirmation hearing may be immediately convened.

Based upon a preliminary review, the Court has approved the Disclosure Statement, subject to objections as hereinafter provided. All objections to the Disclosure Statement should be in writing and filed with the Clerk of the Bankruptcy Court, 167 U. S. Courthouse, 401 N. Market, Wichita, Kansas 67202 on or before _____ and served upon counsel for the Debtor. If no objections to the Disclosure Statement are timely filed or received, the Disclosure Statement may be approved without further hearing.

All objections to the Chapter 11 Plan Of Reorganization should be filed with the Clerk of the Bankruptcy Court, 167 U. S. Courthouse, 401 N. Market, Wichita, Kansas 67202 on or before _____; and served upon counsel for the Debtor.

There should be mailed to all parties in interest, or parties required to receive notice by the Code, on or before _____ a copy of this Notice and appropriate forms for the acceptance or rejection of the Plan. _____ is fixed as the last day for receipt of acceptances or rejections of the Chapter 11 Plan Of Reorganization. All ballots must be received by _____ prior to _____ p.m. on that date to be counted.

DATED AT WICHITA, KANSAS THIS _____ DAY OF _____

s/ Robert E. Nugent
United States Bankruptcy Judge

