

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE	*	
	*	CASE NO. 05-85627-JEM
RELIABLE AIR, INC., d/b/a	*	
RELIABLE HEATING AND AIR	*	
	*	CHAPTER 11
Debtor	*	
	*	

DANIEL L. JAPE'S OBJECTION TO AMENDED DISCLOSURE STATEMENT

COMES NOW, Daniel L. Jape, by and through his undersigned attorneys and files this Objection to the Debtor's Amended Disclosure Statement and shows the Court as follows:

1.

11 U.S.C. § 1125 requires that the Disclosure Statement provide adequate information that would enable a hypothetical investor of the relevant of the class to make an informed judgment about the plan, including a discussion of the material federal tax consequences to such investor.

2.

The Debtor's proposed Amended Disclosure Statement does not provide adequate information.

3.

Section 5.1(a) of the Amended Disclosure Statement provides that administrative claims are to be paid from the proceeds of ongoing operations and Section 5.1(b) provides that priority tax claims are to be paid from the operating revenues over a period of five years. Assuming that proceeds from ongoing operations is the same as operating revenue, the Amended Disclosure Statement does not explain how these claims will be paid when the last income statement (See

Exhibit A) shows a negative net income. Additionally, the Debtor's monthly operating reports do not disclose whether the Debtor is current with its post-petition tax payments.

4.

Section 5.2 of the Amended Disclosure Statement provides for unsecured creditors holding allowed claims in Class 5 to be paid thirty days after the effective date of the plan and then in three consecutive years, unless the Debtor's net revenues are ten percent (10%) or more below the Debtor's projections for the twelve (12) month period immediately preceding the distribution date. In that event, the Debtor may elect to defer one or more distributions for a period of up to six (6) months from the scheduled distribution date. The Amended Disclosure Statement does not provide for what will happen if the Company is unable to make a distribution after a deferral or if there is a limit to the number of deferrals the Company can elect to take.

5.

Section 1.28 of the Amended Plan of Reorganization provides for the Debtor to make an initial payment to the distribution fund of \$75,000.00 on or before the effective date. The source of these funds, according to Section 5.1 of the Plan and 6.8 of the Disclosure Statement is the proceeds from the sale of the real property, operating revenues and capital contributions. The Debtor is to make three additional annual payments in the amounts of \$50,000.00, \$50,000.00, and \$60,000.00 respectively, for a total contribution of \$235,000.00. However, the Amended Plan provides that the payments to the distribution fund shall not exceed 25% of the total of the total aggregate amount of all allowed unsecured claims in Classes five and six. This provision means that if the allowed unsecured claims are less than \$940,000.00, the Debtor can contribute less than \$235,000.00 to the distribution fund. The Debtor should be required to contribute the agreed amount even if it increases the dividend to unsecured creditors to something above 25%.

6.

Section 6.2 of the Amended Disclosure Statement provides for an infusion of \$25,000.00 of capital in the reorganized Debtor by the Debtor's participating senior management. There is no disclosure of the individuals that comprise the senior management, how many of them there are or what their salaries are. In fact, there is no disclosure of individual salaries in the monthly operating reports filed by the debtor; only a lump sum total of salaries paid is listed. In addition, Section 6.2 provides that Mrs. Jape will not participate in the initial purchase of the stock by the Debtor's senior management. However, Section 9.4 provides that Ms. Jape shall be designated agent to vote on behalf of all the stock held by the collateral trust as long as the Debtor is not in material default under the plan. This allows Ms. Jape to have control over the Company post confirmation without any investment or contribution of new value to the Company. Additionally, there is no definition of what constitutes "material default", who determines that the Debtor is in material default or what the consequences of a material default might be.

7.

Section 6.3 provides that Ms. Jape's salary will be \$156,000.00 per year post confirmation, with any increases during the term of the plan not to exceed the consumer price index for the applicable year. Ms. Jape's salary was \$8,000.00 per month pre-petition. Now she proposes a substantial increase in her salary to \$13,000.00 per month, when the last month the Company earned a profit was in August of 2006.¹ Section 6.3 also provides that the shareholders are to meet and elect a Board of Directors, but the list of shareholders is not disclosed. Additionally, Ms. Jape will have the opportunity and obligation to purchase 25% of the outstanding stock contingent on the Debtor satisfying its obligations under the plan and as such

¹ Since the Debtor's operating reports for March and April 2007 do not contain an income statement or balance sheet, it is impossible to determine whether the company has sustained a profit or a loss for those months.

stock is released from the collateral trust. Ms. Jape is to pay \$25,000.00 each year she receives 25% of the outstanding stock of the Debtor. It appears that the substantial salary increase proposed by this Amended Disclosure Statement and Amended Plan would allow Ms. Jape to purchase the stock at no cost to herself. The Disclosure Statement does not reveal the salaries of any other management employees other than Ms. Jape. In fact, Debtor last identified Mr. David Keener as the General Manager and he resigned in March 2007. Further, the Sales Manager, Mr. Bobby Loebel resigned in January 2007.

8.

Section 9.4 of the Amended Disclosure Statement provides for all issued stock in the reorganized Debtor to be pledged under a Collateral Trust Agreement and provides that the Collateral Agent has a lien on the pledged securities that enables him to assert to control if the Debtor is not in substantial conformity with the plan requirements. There is no disclosure of who the collateral agent will be nor how he or she is to be chosen. There is no definition of the requirements for substantial conformity with the plan nor is there a provision explaining what will take place if the Debtor is not in substantial conformity.

9.

There is no mention of whether a 2006 tax return has been filed by the Debtor and there is no explanation of the tax consequences.

10.

Exhibit A to the Amended Disclosure Statement contains the identical information as provided in the original Exhibit A to the Disclosure Statement. There is attached a Schedule of Receipts and Disbursements from the U.S. Trustee's Reports from July 1, 2006 through February 28, 2007. However, this information is not helpful in that the categories listed in both Exhibits A

and B are different from those in the U.S. Trustee's Reports, makes a comparison of the figures impossible and renders the information meaningless.

11.

Exhibit B is the same as it was on the original Disclosure Statement and shows an increased profit in each subsequent post confirmation year. While taking into account that these figures are projections, the numbers seem to have little basis in reality. The figures are only through June 30, 2006. Since the information submitted for July 1, 2006 through February 28, 2007, does not correlate with the categories in Exhibit A or B, it is hard to understand what figures were used to reach these projections and therefore it is impossible to the feasibility of the Plan from this information.

12.

As shown in Exhibit A to this Objection, Reliable Air showed a profit in only five of the fourteen months for which the information was available from the Monthly Operating Reports.

13.

The Amended Disclosure Statement, as filed, does not provided "adequate information" as required by Section 1125 of the Bankruptcy Code. The Debtor is in sole possession of this information which would benefit creditors, would not be costly for the Debtor to provide, and which is not available from any other source. Additionally, the information provided makes it impossible to determine if the Debtor can successfully fund a Plan of Reorganization.

WHEREFORE, Daniel L. Jape prays that the Court sustain his objection to the Amended Disclosure Statement; and issue such Order ending Debtor's exclusivity period, and allow other parties in interest to propose a plan; and for such other and further relief as is just and proper.

This 30th day of May, 2007.

Respectfully submitted,

HOWICK, WESTFALL, McBRYAN &
KAPLAN, LLP

/s/

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ATLANTA DIVISION

IN RE

RELIABLE AIR, INC., d/b/a
RELIABLE HEATING AND AIR

Debtor

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CASE NO. 05-85627-JEM

CHAPTER 7

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Daniel L. Jape's Objection to Amended Disclosure Statement by depositing in the United States Mail a copy of the same in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

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This 30th day of May, 2007.

Respectfully submitted,

HOWICK, WESTFALL, McBRYAN &
KAPLAN, LLP

/s/

Virginia B. Bogue, Georgia Bar No. 065695

Reliable Heating and Air Total Revenue

Month Reported	Current Month Total Revenue	YTD	Current Month Net Income	YTD	Payroll	Payroll Taxes
December 2005	\$ 276,590.99	\$ 2,652,745.10	\$ (55,956.71)	\$ (129,139.70)	\$ 139,420.68	\$ 8,114.38
January 2006	\$ 209,851.92	\$ 2,864,111.97	\$ (94,080.83)	\$ (221,705.58)	\$ 92,184.48	\$ 15,360.00
February 2006	\$ 215,047.65	\$ 3,079,159.62	\$ (1,706.68)	\$ (223,412.26)	\$ 54,747.73	\$ 6,788.77
March 2006	\$ 359,463.75	\$ 3,438,623.37	\$ 31,346.67	\$ (192,168.05)	\$ 89,604.26	\$ 8,279.70
April 2006	\$ 464,070.52	\$ 3,904,318.89	\$ 50,205.37	\$ (140,337.68)	\$ 99,714.56	\$ 9,035.22
May 2006	\$ 412,974.44	\$ 4,317,293.33	\$ 49,241.35	\$ (91,096.33)	N/A	N/A
June 2006	\$ 468,328.34	\$ 4,786,057.67	\$ (12,628.29)	\$ (103,288.62)	\$ 164,573.42	\$ 13,160.50
July 2006	\$ 589,402.50	\$ 589,402.50	\$ 70,863.08	\$ 70,863.08	\$ 73,461.20	\$ 30,731.64
August 2006	\$ 410,911.69	\$ 842,627.19	\$ 24,050.70	\$ 80,796.02	\$ 76,981.15	\$ 32,653.24
September 2006	N/A	N/A	N/A	N/A	\$ 72,789.38	\$ 29,196.87
October 2006	\$ 246,707.75	\$ 1,359,830.66	\$ (30,243.30)	\$ 34,093.17	\$ 66,120.27	\$ 25,162.25
November 2006	\$ 258,812.13	\$ 1,618,977.79	\$ (43,864.96)	\$ (9,436.79)	\$ 70,804.33	\$ 26,471.77
December 2006	\$ 138,303.12	\$ 1,757,280.91	\$ (88,621.46)	\$ (98,058.25)	\$ 100,731.63	\$ 31,878.98
January 2007	\$ 176,847.48	\$ 1,934,476.39	\$ (53,671.02)	\$ (151,951.24)	\$ 52,344.22	\$ 20,210.88
February 2007	\$ 184,093.41	\$ 2,118,569.80	\$ (4,353.65)	\$ (156,304.89)	\$ 50,786.54	\$ 14,098.99

EXHIBIT "A"