**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE EASTERN DISTRICT OF TENNESSEE**

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| In re<br><br>CAM-PLEK OF VIRGINIA<br>IQ CONVERTING DIVISION,<br>INC., d/b/a IQ PAPER,<br>EI #54-1023994,<br><br>Debtor. | No. 96-21367<br>Chapter 11 |

**M E M O R A N D U M**

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**MARCIA PHILLIPS PARSONS**
**UNITED STATES BANKRUPTCY JUDGE**

This chapter 11 case is before the court on two competing chapter 11 plans, one proposed by debtor Cam-Plek of Virginia IQ Converting Division, Inc. d/b/a IQ Converting (“Cam-Plek”) and the other proposed by an unsecured creditor, Coronet Paper Products, Inc. (“Coronet”). The court having concluded that the debtor’s plan is not feasible as required by 11 U.S.C. § 1129(a)(11), confirmation thereof will be denied. The objections to confirmation of Coronet’s plan will be overruled and the plan of Coronet confirmed. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(L).

## I. **FACTUAL BACKGROUND**

The debtor was formed by Charles “Pat” Quillen II and Lowell K. Ison in August 1976 as a school supply company in Nickelsville, Virginia. In November 1983 Mr. Quillen was seriously injured in an automobile accident and became disabled for a year. His oldest son, Charles “Skip” Quillen III stepped in to run the business and bought Mr. Ison’s one-half interest in the debtor. At the time Skip Quillen joined Cam-Plek, it was 1.3 million dollars in debt, without any inventory and unable to meet an immediate $6,000.00 payroll. Skip Quillen invested $4,000.00 in the business, let several employees go, and switched product lines from school supplies to paper converting whereby the debtor purchased large rolls of paper and then cut, trimmed and packaged the “converted” paper into sheets for sale to printers who applied ink, *etc.*, to make a finished product.

Skip Quillen testified that the debtor was able to make a profit for 1985 and thereafter, but because of accumulated debt, was forced to file chapter 11 in July 1987 in the Western District of Virginia.  A reorganization plan was confirmed and the case closed in May 1992.

Due to increased product demand the debtor expanded into a 50,000 square foot warehouse in Tennessee in 1990, having outgrown its 15,000 square foot plant in Nickelsville, Virginia. Deciding that it wanted to consolidate its plant and warehouse operations under one roof, the debtor purchased land and a shell building from the City of Kingsport, Tennessee in the Kingsport Regional Industrial Park in January 1992.  In that year and the following, the debtor began diversifying into the waste recycling business due to a sharp downturn in paper demand. Skip Quillen testified that waste recycling was a good fit for the debtor because it generated material through the conversion process that needed to be recycled.

In addition to recycling its own paper waste, Cam-Plek began post-consumer recycling whereby it contracted with various offices and industries to collect their waste paper on a routine basis. Cam-Plek would then grade and bale the paper for resale to paper mills to be repulped and reprocessed into new paper items. By 1995, waste recycling constituted 80% of the debtor's business and paper converting only 20%, such that the debtor contemplated completely phasing out its converting business.

However, a dramatic downturn in the recycling market in late 1995 and early 1996 caused prices to plummet and resulted in monthly losses by the debtor in the range of $35,000 to $40,000. Cam-Plek's suppliers began to demand cash-on-delivery or cash-in-advance terms for all purchases, taxing authorities began levying on its bank accounts, and other creditors commenced suits to recover on past-due accounts. When a secured creditor threatened to repossess a key piece of equipment, the debtor, having little cash, no credit, inadequate inventory and few receivables, filed the present chapter 11 case on June 24, 1996, listing assets of $1,019,133.00 and liabilities of $3,154,172.00. Cam-Plek has continued to operate its business as a debtor-in-possession since the bankruptcy filing.

## II. <u>PROCEDURAL HISTORY</u>

A summary of the procedural history of this case should be presented in order to understand the context in which the confirmation issues are to be decided. The debtor filed its first disclosure statement and plan of reorganization on February 25, 1997. To respond to numerous objections, the debtor over the succeeding months filed a first amended disclosure statement, then a first amended disclosure statement as supplemented, then an addendum to the first amended disclosure statement as supplemented, and finally a clarification of the addendum. Thus, it was October 15, 1997, before an order was entered approving the debtor’s disclosure statement. Because various portions of the debtor’s plan were contained in several documents as a result of the numerous modifications, the court directed the debtor to file a second amended plan which incorporated all the changes made by the addendum, the supplement, and the clarification. This second amended disclosure statement and plan of reorganization was filed on October 27, 1997.

In the midst of these events on August 28, 1998, Coronet filed its disclosure statement and plan of reorganization which similarly was met with objections. After subsequent modifications resolving those objections, Coronet’s second amended disclosure statement was approved by order entered November 10, 1997. Thereafter, the debtor’s and Coronet’s proposed plans were placed on the same track for confirmation.

The sole shareholder, president, and chief executive officer of Coronet is David Kossman. An individual retirement account owned by Mr. Kossman, David Kossman, I.R.A., holds a deed of trust on the debtor's Kingsport real property securing debt in the amount of $428,825.00 as of the bankruptcy filing. On September 29, 1997, David Kossman, I.R.A. moved for relief from the automatic stay with respect to the real property pursuant to 11 U.S.C. § 362(d)(2) on the basis that there was no equity in the property and the property was not necessary for an effective reorganization as the debtor allegedly had no reasonable possibility of reorganizing. By agreed order entered October 31, 1997, the hearing on the motion for relief was consolidated with the confirmation hearing on the debtor's and Coronet's proposed plans.

An initial hearing on confirmation and stay relief was conducted on December 16, 1997. After numerous objections to confirmation of both plans were filed, the plan proponents were provided an opportunity to amend their plans to address those objections. On January 9, 1998, Coronet and Cam-Plek filed amendments to their second amended plans. Subsequently, Coronet filed another amendment to its plan on January 16, 1998, and the debtor filed a modification to its plan on February 9, 1998. These modifications cured all of the objections to both plans with the exception of the objections by the debtor and the U.S.

trustee to Coronet’s plan and the objections of Coronet, David Kossman, I.R.A., the U.S. trustee, and the Tennessee Department of Revenue to the debtor’s plan. What was contemplated as the final hearing on confirmation and on David Kossman, I.R.A.’s stay relief motion was conducted on February 10 and 11, 1998. The U.S. trustee withdrew her objection to Coronet’s plan upon the conclusion of that hearing. Because counsel for the Tennessee Department of Revenue did not attend the confirmation hearing to prosecute its objection, the court entered an order striking that objection on February 25, 1998.

On March 3, 1998, while the confirmation issues were under advisement by the court, the debtor filed a notice withdrawing its objection to the motion for relief from the automatic stay of David Kossman, I.R.A., stating it no longer opposed the relief sought by that creditor. Since no other entity had voiced any opposition to the automatic stay motion, the court entered an order granting David Kossman, I.R.A. stay relief on March 18, 1998.

Thereafter on March 23, 1998, “Debtor’s Modified Plan Relative To Claims Secured or Affected by Debtor’s Real Estate at the Kingsport Regional Industrial Park” was filed. In the modified plan the debtor proposed to move its business operations from its present location at the Kingsport Regional

Industrial Park to a leased building ten miles away, noting that David Kossman, I.R.A. had been granted stay relief and that it expected the creditor to schedule and conduct a foreclosure sale on the industrial park real property. Debtor anticipated that such a sale would result in payment of the property tax claims, the claim secured by the first deed of trust held by Premier Bank, and all but $17,000.00 of the claim of David Kossman, I.R.A. Based on this assumption, the debtor modified its plan of reorganization to change the treatment of all creditors having an interest in the real property which included the City of Kingsport and Sullivan County, Tennessee for unpaid property taxes, Premier Bank, David Kossman, I.R.A., the Internal Revenue Service which had filed a levy against all the debtor's property, and Ol' Hickory Paper Company who had taken a deed of trust to secure payment of accumulated factoring charges.

In light of this modification, the court on March 26, 1998, entered an order pursuant to 11 U.S.C. § 1127(d) affording holders of claims and interests an opportunity to change their previous rejection or acceptance of the debtor's plan and to request an additional confirmation hearing if they believed one was necessary. On April 15, 1998, the Internal Revenue Service filed a rejection and objection to confirmation of the debtor's proposed plan, as modified, which relegated its secured claim to unsecured status. Similarly, Sullivan County, Tennessee, through its delinquent tax attorney, filed on April 24, 1998, a rejection of the debtor's proposed modified plan and objected to its confirmation. The debtor responded with a request for a confirmation hearing on its modified plan of March 23 and one was scheduled by the court for May 7, 1998.

Meanwhile, the debtor filed on March 25, 1998, a motion to approve new commercial lease agreement in which it requested authority to enter into a three-year lease with Claude Cain for the lease of a warehouse building in Church Hill, Tennessee at a rental of $3,600.00 per month. The debtor also requested that it be given sixty days to vacate the premises it currently occupies in the Kingsport Regional Industrial Park so it could relocate without interrupting its business operations.[1] Objections to both motions were filed by the U.S. trustee, Coronet, and David Kossman, I.R.A. on the ground, *inter alia,* that such actions would be premature until the court ruled on the competing plans. After a hearing on the motions on April 14, 1998, both were denied without prejudice by order entered

[1]Similar motions had been filed by the debtor respectively on March 12 and 3, 1998, and denied without prejudice by order entered March 18, 1998. No basis was set forth in the March 3 motion requesting a sixty-day time period to vacate the premises. The March 12 motion for authority to enter into the lease had not been served upon all creditors and parties in interest.

April 20, 1998.

At the confirmation hearing on May 7, 1998, debtor’s counsel and counsel for the Internal Revenue Service announced that an agreement had been reached with respect to the IRS’s objection. No one appeared at the hearing to pursue the objection of Sullivan County, Tennessee. Nonetheless, the debtor presented evidence at that time as to the feasibility of its modified plan of March 23, 1998. Counsel for Coronet and David Kossman, I.R.A. also participated in the hearing.

Subsequent to that May 7 hearing, while the confirmation issues were under advisement for a second time, the debtor filed on May 12, 1998, two additional modifications to its plan. One, entitled “MODIFICATION OF DEBTOR’S PLAN RELATIVE TO THE CLAIMS OF THE UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE AND PREMIER BANK,” recited that the debtor modifies its plan to surrender its interests in the Kingsport real property to Premier Bank in full satisfaction of all claims. The modification also set forth the agreement between the debtor and the IRS which had been announced in open court on May 7, 1998.

The second modification filed by the debtor on May 12, 1998, was entitled “MODIFIED PLAN RELATIVE TO CITY OF KINGSPORT AND SULLIVAN COUNTY, TENNESSEE AND DAVID KOSSMAN IRA’S MORTGAGE CLAIM.” While the March 23 modification provided no treatment for the claims of the City of Kingsport and Sullivan County, Tennessee for past due *ad valorem* taxes based on the assumption that these claims would be paid in full upon the anticipated foreclosure by David Kossman, I.R.A., the May 12 modification provided a repayment schedule for real property taxes which have accrued postpetition. The modification was signed by Michael Billingsley, city attorney for Kingsport, to indicate his acceptance of the modification. A signature line was also provided on the modification for the signature of Paul A. Harr, Sullivan County Tax Attorney, but had not been executed by him. The modification also stated consistent with the March 23 modification that David Kossman, I.R.A. would receive no payment under the plan since the debtor had withdrawn its opposition to the creditor's stay relief motion, effectively surrendering its interest in the Kingsport real property collateral. In light of the court's conclusion as set forth below that debtor's plan is not feasible, it is unnecessary to provide either Sullivan County, Tennessee or David Kossman, I.R.A. an opportunity to object to its treatment under the new May 12 modifications.

## III. DEBTOR'S PLAN

Class 1 of the debtor's plan consists of priority claims allowed pursuant to 11 U.S.C. § 507(a)(1). These claims will be paid by set off or in full on the effective date of the plan. The only claim in this class which will require cash payment is that of Jesse Clevinger in the amount of $990.00.

<u>Class 2</u> comprises all priority claims allowed pursuant to 11 U.S.C. § 507(a)(8). <u>Class 2(A)</u> provides for the priority claim of the IRS in the amount of $279,902.00. This amount plus 9% interest will be paid in monthly installments of $3,874.00 over six years beginning upon the effective date of the plan which is defined in the plan as the first business day after the confirmation order is final.

<u>Classes 2(D)</u> and <u>(E)</u> consist of the real property tax claims of Sullivan County and the City of Kingsport, Tennessee which constitute liens on the real property. The plan provides no treatment for the prepetition taxes owing to these entities, presumably based on the assumption they will be paid at foreclosure by David Kossman, I.R.A. However, the postpetition *ad valorem* taxes in the amount of $20,264.00, which constitute an administrative expense under 11 U.S.C. § 503(b)(1)(B), will be paid in 48 equal monthly installments of $422.17 beginning on the 15th day of the first full month after the month the plan is confirmed. In addition, the debtor will pay any additional interest or penalty until the tax is paid in full. The plan further provides that if the taxes are paid by any entity or

individual other than the debtor, then such entity or individual will be accorded the treatment provided for unsecured nonpriority creditors in Class 18. Class 2(F) is the claim of the Virginia Department of Taxation in the amount of $8,123.66 for prepetition employer withholding taxes. The debtor proposes to pay this amount plus 9% interest in 72 monthly installments of $146.47 beginning on the fifteenth day of the month following the month of the effective date of the plan. Class 2(G), which includes the claim of the Tennessee Department of Employment Security in the amount of $5,286.14, will be paid in full plus interest at 9% in 48 monthly installments of $131.57. The claim of the Tennessee Department of Revenue for franchise and excise taxes in the amount of $8,369.79 in Class 2(H) will be paid in full plus 9% interest in 48 monthly installments of $208.32.

Class 4 contains Premier Bank who holds the first deed of trust on the real property and a second lien on debtor’s inventory and equipment to secure a debt of $209,645.00. The debtor’s plan surrenders the debtor’s interest in the real property to Premier Bank in full satisfaction of its claim.

Class 5 comprises the claim of David Kossman, I.R.A. in the amount of $475,438.00 secured by second and third deeds of trust on the debtor’s real property and a first priority lien on all of the debtor’s equipment, machinery, inventory, accounts receivables and general intangibles. The debtor’s plan recites that no treatment will be provided for this claim since the debtor has withdrawn its objection to David Kossman, I.R.A.’s stay relief motion.

Class 6 includes the IRS with a fourth position lien on the debtor’s real property to secure a debt of $216,842.23. Because the secured claim of the Internal Revenue Service will be rendered unsecured by the expected foreclosure, its claim is relegated to unsecured priority status and is provided for under Class 2(A).

Class 7 contains the claim of Ol’ Hickory Paper Co. in the amount of $853,233.00 secured by a fifth place deed of trust. Since it is anticipated that the secured status of Ol’ Hickory Paper Co. will be extinguished by the foreclosure, its claim will be treated as unsecured and paid in accordance with the other unsecured nonpriority claims in Class 18.

The claim of David Kossman, I.R.A. which was acquired from NationsBank is in Class 8. The sum of $52,302.00, which is the balance owing on this claim as of August 1, 1997, is secured by a lien on the debtor’s equipment, machinery, inventory, accounts receivables and general intangibles. The debtor proposes to pay this claim in full plus 9% interest in 120 monthly payments of $662.66.

Class 9 contains the claim of Farmers and Miners Bank in the amount of $44,635.00 fully secured by two trailers, a truck, and a sports utility vehicle. On March 4, 1997, an agreed order was entered providing for monthly adequate protection payments to Farmers and Miners Bank beginning December 1996. The debtor's plan proposes to continue monthly payments of $1,272.69 for 36 months which will pay the creditor $44,101.79.[2]

Class 10 includes the claim of Navistar in the amount of $65,729.00, fully secured by a 1994 International truck and a 1994 International tractor-trailer. The debtor's plan incorporates language in an agreed order entered September 4, 1997, specifying that Navistar's claim will be paid in full with 10% interest by a downpayment of $1,400.00 on July 1, 1997, and 60 monthly installments of $1,355.62 beginning August 1, 1997.

Class 11 consists of the secured claim of First Union National Bank. Payment of this claim is bifurcated such that $11,000.00 secured by a 1994 Chrysler Concord will be paid in full plus 10% interest in 60 monthly installments of $233.75 and

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[2]Notwithstanding the statement in the debtor's plan that the monthly payments of $1,272.69 to Farmers and Miners Bank commenced by agreement in December 1996, the March 4, 1997, agreed order specified monthly installments of $1,390.00. Furthermore, 36 payments of $1,272.69 equal $45,816.84 rather than $44,101.79 and there is no provision in the plan for the payment of interest to this creditor although the agreed order stated that the creditor's claim would be paid in full plus 10% interest.

$7,500.00 of First Union's claim which is secured by a 1995 Plymouth Acclaim will be paid at 10% interest in 60 monthly payments of $159.38 each. Both sets of payments will begin the fifteenth day of the month following the month of the effective date of the plan. First Union National Bank's unsecured claim will be paid with those claims in Class 18.

General Motors Acceptance Corporation's secured claim is provided for in Class 12. The value of $11,700.00 plus 10% interest, secured by a 1995 GMC Ventura, will be paid in 60 monthly installments of $248.63 beginning the month following the effective date of the plan. The unsecured portion of GMAC's claim will be paid in accordance with the terms of Class 18.

Class 13 comprises the $22,000.00 claim of Bobby Griffin which is secured by a lien on a paper shredder. The debtor proposes to pay this claim along with 9% interest in monthly payments of $456.72 over 60 months.

Class 15 consists of claims arising out of lease obligations of the debtor, with Class 15(B) addressing the claims of Associates Leasing, Inc. The debtor's plan notes that by agreed order entered November 18, 1997, the debtor assumed the unexpired leases on three forklifts and one lift truck. The plan incorporates the provisions of that agreed order, including the requirement that the debtor make all lease payments until the leases are paid in full, and provides that all attorney fees incurred by Associates will be paid in full by the debtor within four months of confirmation. Under Class 15(C), the debtor recites that it has rejected a lease on a photocopier and returned it to Eaves Leasing. The plan provides that the debtor will pay as an administrative expense the postpetition prerejection rent payments totaling $650.64 within 30 days of plan confirmation. Class 15(D) specifies that on the effective date of the plan, Navistar will be paid the sum of $8,630.76 as an administrative claim arising out of the surrender of a leased 1993 International truck.

Class 18 includes allowed unsecured nonpriority claims which total approximately $2.3 million. Debtor proposes to issue one share of preferred stock in the corporation for each $1.00 of debt held by unsecured claimants. These preferred stock shareholders will receive each November beginning in 1998 an annual 1% dividend with this dividend to accumulate if not paid in any particular year. In addition, holders of preferred stock will elect two out of the four members of the debtor's board of directors, with this number to increase to three, a majority, if the debtor sustains an operating loss in two consecutive quarters of any fiscal year. The debtor's two common stock shareholders, Pat Quillen and Skip Quillen, will receive no dividends until all the preferred shares of stock have been redeemed by the corporation.

Class 19 consists of claims by or against the debtor’s insiders. The plan states that Pat Quillen holds a prepetition claim against the debtor in the amount of $155,337.72 and a postpetition claim for a loan advanced on August 8, 1996, in the amount of $17,780.41. According to the plan, Mr. Quillen has agreed to receive no payments on these claims except upon approval of the preferred stockholders and only after all plan payments, current taxes and current debts have been paid. The plan notes that Mr. Quillen is liable with the corporation on the debts to the IRS and the states of Virginia and Tennessee and that liquidation of the corporation may cause him to seek personal bankruptcy relief. Skip Quillen is not a creditor of the debtor but he is personally liable on many of the debtor’s obligations and the plan similarly recites that liquidation of the debtor will likely lead to his personal bankruptcy.

Andrew Quillen, the son of Pat Quillen and the brother of Skip Quillen, is employed by the debtor as director of sales. The plan states that prior to the filing of this chapter 11 case, Andrew Quillen established a business known as Mid Atlantic Paper to provide the debtor a source of outside financing for the purchase of paper products. Investors in this new company were Andrew Quillen in the amount of $3,700.00, Lisa Quillen, the wife of Skip Quillen, in the amount of $10,000.00, and Paul Bellamy in the amount of $5,000.00. The plan recites that Mid Atlantic Paper has purchased and resold $564,566.35 worth of paper to the debtor enabling the debtor to resale the paper at a profit. Mid Atlantic Paper has also factored accounts on occasion with no charge to the debtor. As of January 8, 1998, the debtor owed Mid Atlantic Paper the sum of $29,076.11.

Administrative expenses are not listed in any particular class but are addressed in section VII. of the plan. This section provides that the debtor's attorney fees and the postpetition claims of Navistar and Eaves Leasing discussed above will be paid on the effective date of the plan.

## IV. CORONET'S PLAN

Coronet is a Florida corporation with its principal place of business in Miami, Florida. Like the debtor, Coronet's business is paper converting and waste recycling. Through Murray Kossman, the vice-president of Coronet and the son of David Kossman, the owner of Coronet, Coronet has formed a new corporation, Coronet Paper Products of Tennessee, Inc. ("Coronet Tennessee"), for the purpose of acquiring the debtor's assets and assuming certain of its liabilities. Under Coronet's plan, the debtor will convey all of its assets to Coronet Tennessee free and clear of all liens except those held by Premier Bank and David Kossman, I.R.A., which liens the new corporation will assume. Coronet Tennessee will operate from the debtor's current business location and will be capitalized by Coronet which will sell to it inventory of $500,000.00 and equipment of $100,000.00. In exchange, Coronet Tennessee will execute a note in favor of Coronet in the amount of $600,000.00, which note will bear interest at 9.5% payable monthly, with the principal to be paid in ten years provided all plan obligations have been satisfied. The note will be secured by the purchases and all of the assets of Coronet Tennessee. Murray Kossman is the sole shareholder of Coronet Tennessee and will manage the new entity, although he does not plan to relocate to Tennessee. The day-to-day operations of Coronet Tennessee will supervised by John Leon, the current warehouse manager of Coronet's paper division, who will be moving to Tennessee.

Coronet's plan divides the claims of creditors into six classes. Classes One and Two, which consist of administrative claims and other priority claims under 11 U.S.C. § 507(a)(1) and (3) respectively, will be paid in full on the effective date of the plan. Class Three comprises the priority claims under 11

U.S.C. § 507(a)(8). Real property taxes owing to the City of Kingsport and Sullivan County, Tennessee and withholding taxes owed to the Virginia Department of Taxation will be paid in full with interest of 7% in monthly installments over 72 months. Unemployment, franchise and excise taxes owed to the State of Tennessee will be paid in full plus interest of 9% in 48 monthly installments. The secured claim of the Internal Revenue Service will be paid in full with 9% interest in monthly installments over ten years, with the amount of the claim in excess of $154,244.58 to be established by the court postconfirmation at an 11 U.S.C. § 506(a) valuation hearing. The IRS's priority claims will be paid in full with 9% interest in monthly installments ranging from 48 months to 66 months depending on the date of assessment.

Class Four consists of the claims of the secured creditors. The claim of Premier Bank in the amount of $209,645.00 which is fully secured by the debtor's real property will be amortized over twenty years with a ten-year balloon and paid in monthly installments of $12,886.81 which includes interest of 9%. The claim of David Kossman, I.R.A. in the amount of $475,438.00 as of August 18, 1997, will retain its lien on the real property and will be paid in full plus 9% interest as a fully secured creditor in monthly payments of $3,859.43 amortized over twenty years with a ten-year balloon. The secured claim of Ol’ Hickory Paper Company will be disallowed and voided under 11 U.S.C. § 506(d) and the claim paid as unsecured. The claim of David Kossman, I.R.A. as assignee of NationsBank in the amount of $63,645.05 will retain its lien against the debtor’s personalty and will be paid in full with interest of 9% in 120 monthly installments of $771.97. The claims of Farmers and Miners Bank, Navistar, First Union National Bank, and General Motors Acceptance Corporation are secured with liens on various vehicles. Coronet proposes to surrender all of these vehicles with any deficiencies arising therefrom paid as unsecured claims under <u>Class Six</u>. Similarly, the claim of Bobby Griffin will be satisfied by the surrender of the shredder which secures the debt with any deficiency paid as unsecured.

<u>Class Five</u> includes executory contracts and unexpired leases. Coronet agrees to comply with all of the terms of the debtor’s lease with Associates Leasing, Inc., which was previously assumed by the debtor. Furthermore, all attorney fees incurred by Associates’ counsel will be paid in full by Coronet within four months of the effective date of the plan.

Unsecured claims are addressed in <u>Class Six</u>. Unsecured claimants will receive five percent of their allowed claims in ten annual installments. The first installment will be paid within 30 days of the effective date of the plan, with subsequent installments paid on September 1 of each year beginning 1998. Additionally, unsecured creditors will receive on a pro-rata basis the net recovery of any preferential transfers or fraudulent conveyances. Equity security holders of the debtor will retain their stock in the debtor but otherwise will receive no distribution.

## V. **REQUISITES OF CONFIRMATION**

Confirmation of a chapter 11 plan is generally governed by 11 U.S.C. § 1129, which provides two paths for obtaining confirmation. One avenue is to satisfy all the requirements under subsection (a) of this provision, including subsection (a)(8) which requires that all impaired classes of claims and interests accept the plan. The second way to obtain confirmation is to satisfy the requirements of section 1129(b), which includes all of the requirements of subsection (a) with the exception of subsection (a)(8) and imposes two additional requirements: that the plan not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired and has not accepted the plan. Because neither the debtor nor Coronet obtained acceptances from all impaired classes and interests, both are seeking approval of their plans under subsection (b), commonly referred to as the "cramdown" alternative.[3] The debtor and Coronet each have the burden of persuading the court that their particular plan is capable of confirmation. *See, e.g., In re Beare Co.*, 177 B.R. 886, 889 (Bankr. W.D. Tenn. 1994)(citing *In re Apple Tree Partners, L.P.*, 131 B.R. 380, 393 (Bankr. W.D. Tenn. 1991)).

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[3]On May 11, 1998, First Virginia Bank, successor in interest to Premier Bank, filed a "REVOCATION OF BALLOT" wherein it "revokes" the ballot it previously cast in favor of Coronet's plan. The document recites that the ballot was mistakenly filed by a bank official who thought he was required to vote for or against each of the plans submitted and that, therefore, he voted in favor of both Coronet's and the debtor's plans. First Virginia Bank also notes that circumstances have changed since the ballots were filed: the debtor has amended its plan to delete payments to this creditor and has ceased adequate protection payments.

In response to this document, the court must note that after the debtor amended its plan to delete the payments to Premier Bank, all creditors were given the opportunity to change their previous votes in light of the modification. They were advised in accordance with 11 U.S.C. § 1127(d) that unless they changed their vote within a certain specified time period, their previous acceptance or rejection of the debtor's plan would stand. No indication was given during the specified period that Premier Bank desired to change its previous acceptance. Furthermore, Fed. R. Bankr. P. 3018(a) provides, *inter alia*, that "for cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection." Thus, absent court approval, the attempted revocation is ineffective. Nonetheless, even if the revocation was deemed valid, the rejection by Premier Bank of Coronet's plan is not fatal to its confirmation, all other requirements of confirmation having been met.

## VI. **ANALYSIS OF DEBTOR'S PLAN**

The U.S. trustee asserts that the debtor's plan is not feasible, a requirement for confirmation under 11 U.S.C. § 1129(a)(11). Coronet and David Kossman, I.R.A. likewise raise the issue of feasibility of the debtor's plan and additionally assert that (1) the debtor's plan has not been proposed in good faith as required by 11 U.S.C. § 1129(a)(3) in light of the debtor's failure to disclose its relationship and transactions with Mid Atlantic Paper and its owner, Andrew Quillen, until after creditors had voted on the debtor's proposed plan; and (2) the "best interests" of creditors requirement of 11 U.S.C. § 1129(a)(7)(A) has not been met.

Section 1129(a)(11) requires a finding that confirmation "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor." The purpose of this provision of the Bankruptcy Code is to "prevent confirmation of visionary schemes which promise creditors more under a proposed plan than that which the debtor can possibly attain after confirmation." *Berkeley Fed. Bank & Trust v. Sea Garden Motel and Apartments (In re Sea Garden Motel and Apartments)*, 195 B.R. 294, 304 (D.N.J. 1996)(quoting *In re Trail's End Lodge, Inc.*, 54 B.R. 898, 903-04 (Bankr. D. Vt. 1985)). To establish feasibility, a proponent must demonstrate that its plan has a reasonable prospect of success and is workable. *See In re Grandfather Mountain Ltd. Partnership*, 207 B.R. 475, 485 (Bankr. M.D.N.C. 1996); *In re Rivers End Apartments, Ltd.,* 167 B.R. 470, 476 (Bankr. S.D. Ohio 1994). The test of whether a debtor "can accomplish what the plan proposes is a practical one and, although more is required than mere hopes and desires, success need not be certain or guaranteed." *In re Grandfather Mountain Ltd. Partnership*, 207 B.R. at 485. "A critical issue in assessing the feasibility of a plan which provides for the debtor's continued operation is whether the debtor can generate 'sufficient cash flow to fund and maintain both its operations and obligations under the plan.'" *In re Trevarrow Lanes, Inc.,* 183 B.R. 475, 482 (Bankr. E.D. Mich. 1995)(quoting *In re SM 104 Ltd.*, 160 B.R. 202, 234 (Bankr. S.D. Fla. 1993)). "Specifically, a plan proponent must show that its projections of future earnings and expenses are derived from realistic and reasonable assumptions and that it has the ability to make the proposed payments." *In re Rivers End Apartments, Ltd.*, 167 B.R. at 476.

In support of its argument that the debtor's plan is not feasible, Coronet asserts that the debtor's historical performance establishes that the debtor can not realistically perform at the projected levels. Coronet points to the fact that this is the debtor's second bankruptcy case in the last ten years, that the debtor emerged from the first chapter 11 in 1992 having discharged some $800,000.00 in unsecured debt and within eighteen months incurred $1.5 million dollars in new debt. Coronet notes that the debtor has paid no *ad valorem* taxes on its Kingsport property since the property was purchased in 1992, that in 1996, the debtor lost $279,523.00 on sales of $2.4 million, and in 1997, sustained a loss of $75,000.00 on sales of $2.182 million. The debtor's December 31, 1997, monthly operating report reflects a loss of $370,551.10 since the debtor commenced this chapter 11 case in June 1996. That report also indicates $30,780.88 in unpaid postpetition payroll taxes and negative cash of $22,817.36.

Coronet asserts that the debtor will be unable to increase its sales and thus generate extra income because it has no operating capital, no prospective investor willing to invest in the company, and no line of credit to increase its inventory. Coronet notes that most of the debtor's sales are cash sales whereby the debtor provides substantial discounts to its customers in order to obtain ready cash to continue operating. Coronet also maintains that the debtor will be unable to reorganize because it has the same management team, one that has twice failed previously as evident by the two chapter 11 filings.

The debtor submitted no *pro formas* to establish that its plan is feasible. Rather, the debtor offered a monthly debt service exhibit setting forth what its monthly adequate protection and lease payments have been thus far in this chapter 11 case and what the total monthly debt service will be after confirmation pursuant to the terms of its plan as modified. To establish that it will be able to meet this debt service, the debtor directed Paul Rhoton, the certified public accountant retained by it in this bankruptcy case, to prepare Exhibit 3 entitled "Projected Funds Available For Debt Obligation Based On Last Six Months of 1997 Statement of Income." In this exhibit, Mr. Rhoton took the net income figure for the last six months of 1997, $510.87, added back to this number non-cash expenses of depreciation and accumulated interest, and debt obligations which are included in the plan, and extraordinary expenses which would not be reoccurring after bankruptcy, to arrive at a figure of $129,970.45, which if divided by six, equals $21,661.75.[4] The debtor asserts that this is the true amount which will be available for plan payments and clearly is an amount large

[4]Depreciation totaled $36,575.88. Extraordinary expenses, consisting of $7,500.00 in U.S. trustee fees and $8,616.75 in accounting fees, totaled $16,116.75. Interest expense, which was the interest which had accrued on prepetition debt, was $77,788.69.

enough to meet the monthly debt service under the plan which payments total $11,660.32 per month.[5]

The debtor also points to certain changes made by it to reduce expenses and enhance its profitability. Most significant, debtor asserts, is its decision to surrender its interest in the Kingsport real property, thereby eliminating the obligations and expenses associated with ownership, *i.e.*, property taxes, insurance, and the monthly debt service to Premier Bank, David Kossman, I.R.A., the Internal Revenue Service and Ol' Hickory Paper Co., the entities holding liens against the property. In January 1998, Cam-Plek substantially reduced its waste recycling division to only 20% of its business since the recycling business has never recovered its previous profitability. By making this change, the debtor was able to reduce its work force by nine employees, thus lowering its gross quarterly payroll from a high of $155,000.39 in the third quarter of 1996 to $128,128.34 in the first quarter of 1998.

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[5]This amount consists of the following monthly payments: $5,012.34 to the Internal Revenue Service; $422.17 to the City of Kingsport and Sullivan County, Tennessee; $146.47 to the Virginia Department of Employment Security; $131.57 to the Tennessee Department of Employment Security; $208.32 to the Tennessee Department of Revenue; $662.66 to David Kossman, I.R.A. assignee of NationsBank; $1,272.69 to Farmers and Miners Bank; $1,355.62 to Navistar; $393.13 to First Union National Bank; $248.63 to General Motors Acceptance Corp.; $456.72 to Bobby Griffin; and $1,350.00 to Associates Leasing, Inc.

Skip Quillen testified at the confirmation hearing on February 10, 1998, that the debtor has increased its contract converting work from three to four loads a month in September and October 1997 to a current eight to ten loads per month, with total revenue on paper converting averaging $15,000.00 to $20,000.00 per month. He also testified that the life insurance premium on his father has been cut by $1,400.00 per month and that his father will retire in April 1998 but will not be replaced, resulting in an additional savings of $2,600.00 per month. The company has moved to less expensive offices (the debtor's business offices are in a separate facility from its manufacturing operations), saving $600.00 per month, and increased its inventory over the last six months of 1997 such that the inventory level in December 1997 was the highest it had been during the company's eighteen months in bankruptcy. At the hearing on May 7, 1998, Skip Quillen testified that in June, July, and August the debtor will not be paying a $4,836.00 monthly insurance premium for workers compensation, liability insurance and vehicle insurance, since coverage for the entire year is paid during the other nine months of the year. As a final note, the debtor cites the personal commitment, dedication, and experience of its management, observing that four members of the Quillen family have committed a good portion of their adult lives to the debtor’s business.

Having carefully considered all of the evidence presented, the court reaches the inevitable conclusion that the debtor’s plan simply will not succeed. First, the debtor does not have the necessary cash required to pay the administrative expenses due upon confirmation and there is no indication that the debtor has an outside source of funds available to it to pay these expenses such as a line of credit or an injection of capital by the shareholders or other potential investors. The debtor’s plan provides for payment of administrative expenses in the amount of $8,630.76 to Navistar, $990.00 to Jessie Clevinger, and $433.76 to Eaves Leasing upon the effective date of the plan.[6] In addition, Skip Quillen testified at the May 7 confirmation hearing that approximately $25,000.00 of 1998 payroll taxes have not been paid. Any unpaid payroll taxes are administrative expenses which must be paid in full on the

[6]Administrative expenses consisting of the debtor’s attorney and accountant fees, which presently total approximately $17,600.00, are also due and owing. However, debtor’s counsel indicated that both claim holders have agreed to await payment until the debtor has sufficient funds to make these payments. Additionally, the debtor’s plan provides for payment in full of the attorney fees incurred by Associates Leasing, Inc. within four months of confirmation. No evidence was offered indicating the amount of these fees.

effective date of the plan.[7] *See* 11 U.S.C. §§ 1129(a)(9)(A), 507(a)(1), and 503(b). The debtor's latest monthly operating report filed on May 4, 1998, which was for the month ending March 31, 1998, indicates a negative cash position of $29,695.19, and the preceding monthly operating reports for at least the previous eight months evidence negative cash balances at the end of every month. During the May 7 confirmation hearing, Skip Quillen testified that as of that date, the debtor had $15,000.00 cash in the bank, but admitted upon cross examination that the debtor was not presently in a position to bring the past-due first quarter 1998 payroll taxes current.

Mr. Quillen also testified at the May 7 hearing, however, that the debtor will soon have the rest of the money needed to pay administrative expenses, noting that the debtor currently has $19,000.00 in accounts receivable and $80,000.00 plus in inventory. Similar future income projections from current receivables and inventory were given by Mr. Quillen at the

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[7]Similarly, postpetition real property taxes are administrative expenses which must be paid in full upon confirmation. The debtor addresses payment of the 1996 and 1997 *ad valorem* taxes in one of its May 12 modifications, proposing that postpetition taxes will be paid in 48 monthly installments. While this treatment has been accepted by the City of Kingsport, there is no evidence before this court that Sullivan County, Tennessee has agreed to deferred payment. Absent such agreement, the plan is not confirmable. *See* 11 U.S.C. § 1129(a)(9).

February 10 confirmation hearing, but these expectations failed to materialize. The debtor's January 1998 balance sheet evidenced accounts receivables of $36,399.32 and inventory at an all-time high of $136,650.13. At the February hearing, Mr. Quillen testified that because of this large amount of inventory the debtor's February sales would produce sufficient amounts to pay the debtor's 1997 property taxes, the 1998 payroll taxes which were past due at that time (they totaled $14,136.07 at the end of January), and all other amounts needed upon plan confirmation. Nonetheless, the debtor ended February with a negative cash balance of $5,172.00 and March with negative cash balance of $29,695.19, and with the 1997 property taxes[8] and 1998 payroll taxes still remaining unpaid.[9] Moreover, the balance of

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[8]After March 1, the 1997 property taxes became past due such that interest and penalties have now begun to accrue. *See* TENN. CODE ANN. § 67-1-701 (property taxes shall be payable the first Monday of each October) and TENN. CODE ANN. § 67-5-2010 (penalty and interest are added beginning March 1).

[9]The February and March reports also indicated that certain 1997 employment taxes were still unpaid even though Skip Quillen testified at the February 10 confirmation hearing that the debtor owed no postpetition payroll taxes for 1996 and 1997, because the taxes indicated as being past due in the December 31, 1997, monthly operating report had been paid by the debtor in January and the first week of February 1998. Mr. Quillen explained at the May 7 hearing that payment for these taxes had been mailed when he testified previously but that subsequently the debtor's bank stopped payment on that check and placed first a five-day and then a ten- day hold on the debtor's deposits after the debtor's bank account became overdrawn in the amount
(continued...)

delinquent payroll taxes has continued to grow, with the unpaid 1998 payroll taxes totaling $26,717.15 at the end of February, and $33,967.46 at the end of March, even though the debtor's certified public accountant testified that a company with a payroll the size of the debtor's was required to deposit its employment taxes with a financial institution within three banking days of each payroll. In light of this bleak financial picture, it is extremely unlikely that the debtor will be able to generate the excess cash necessary to pay the administrative expenses in full upon confirmation.

Furthermore, as the above discussion regarding unpaid payroll taxes vividly illustrates, the debtor is simply unable to fund and maintain its current operations,[10] much less satisfy the obligations which must be met under the plan. The debtor is currently paying $7,780.07 a month in adequate protection and

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[9](...continued)
of $3,400.00. Mr. Quillen testified at the May 7 hearing that he had in his possession for payment that day cashiers checks totaling $20,369.44, representing $12,726.49 in unpaid 1997 payroll taxes, interest of $905.48, and penalties of $6,737.47.

[10]Skip Quillen testified that the reason the debtor was unable to keep current on its 1998 payroll taxes is because it has paid $21,215.00 in attorney fees, accounting fees, and U.S. trustee fees since November. However, even if these fees had not been paid, the debtor would still only be breaking even each month — far short of producing the additional sums which will be needed to meet debt service under the plan, much less pay any attorney fees, accountant fees, and U.S. trustee fees which may be incurred postconfirmation.

lease payments. This amount will increase to $11,660.32 a month upon plan confirmation, plus the debtor will have the additional expense of leasing new facilities at a projected cost of $3,600.00 per month.[11] The net effect is that the debtor will be required to pay an additional $7,480.25 per month if its plan is confirmed.[12]

It is clear that the debtor is not presently capable of generating the profit necessary to pay this sum. An examination of the debtor's cash flow reveals a corporation that continues to disburse more than it takes in even though all current obligations are not being met. The debtor's cash deposits for the past six months, October 1997 through March 31, 1998, totaled $983,530.54, while its cash disbursements for this time period totaled $984,318.83. The debtor's current assets decreased during this time period from $178,803.76 to $151,413.84. A review of the debtor's monthly operating reports for the past three months reveal more than a dozen overdrafts in the debtor's bank checking account and Skip Quillen admitted at the May 7 confirmation hearing that bank overdrafts have almost

[11]Although the debtor no longer has the lease option on the Church Hill, Tennessee property, this facility is still on the market for a rental of $3,600.00 per month.

[12]Excluded from this amount is the proposed annual one percent dividend to preferred stockholders payable in November of each year which the debtor estimates at $23,000.00.

become customary. The debtor has now been under the protection of the bankruptcy court for twenty-three months, yet it only has $15,000.00 in cash, a fact that this court finds most telling of the debtor's inability to meet its plan obligations.

The changes made by the debtor to reduce expenses have not produced the profit needed to reorganize under the debtor's proposed plan. The debtor's curtailment of its waste recycling business and resulting drop in labor costs, the increase in contract converting work, and the reductions in office rent and life insurance premiums had all already taken place by the time of the February 10, 1998, confirmation hearing. Even though some three months have passed since the implementation of these changes, the debtor is still operating at a loss and continues to get deeper in debt. The projected savings of $2,600.00 a month from Pat Quillen's expected retirement[13] along with the anticipated three-month break in certain insurance premiums will somewhat ease the debtor's monthly burden with respect to its current obligations, but will not produce sufficient amounts to satisfy the proposed plan requirements.

Nor will the debtor's proposed surrender of its Kingsport facilities generate the profit needed to fund its plan. The

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[13]This retirement was expected to occur in April 1998. There was no testimony at the May 7 hearing as to whether this retirement took place as scheduled.

debtor contends that it will save $7,777.98 a month in payments to secured creditors and governmental entities for past-due property taxes, less a monthly lease payment of $3,600.00, and save $13,183.16 a year in annual property taxes and insurance. These savings are illusional, however, because they only represent the difference between the debtor's plan which was before the court at the February 10 hearing and the debtor's present plan. They do not reflect actual cash savings between what the debtor is presently paying and what it will pay after the surrender. The only amounts which the debtor has been paying during this bankruptcy case in connection with the Kingsport property is $1,500.00 a month to Premier Bank and some $2,000.00 a year in property insurance, sums totaling less than half the $3,600.00 a month the debtor projects for new facilities.

The debtor has struggled with cash flow problems since completing its first chapter 11 case and purchasing the Kingsport property in 1992. It has been unable to pay any of the real property taxes since that purchase and has routinely failed to meet its employment tax obligations. Although the debtor considers 1994 and 1995 its most profitable years, it failed to pay employment taxes totaling $125,841.02 in those years. In addition, by September 14, 1994, the debtor owed Ol'

Hickory Paper Co. $879,594.37 for factoring charges accumulated in 1992 through 1994.

The debtor's cash flow problems have not abated during this chapter 11 case. Skip Quillen testified that from 1997 forward, the debtor lost $6,000.00 to $8,000.00 a month in the recycling business. At the May 7 confirmation hearing, Mr. Quillen admitted that the bottom line on the debtor's income statement continues to be a negative number.

The court does not envision this cash flow picture significantly improving in the foreseeable future. The debtor continues to be severely undercapitalized; it has very little cash and little credit and there are no prospects for an influx of capital or a source of credit. The debtor's own accountant conceded that Cam-Plek's ability to increase sales is pretty much limited unless it can obtain a line of credit or purchase paper on credit with payment due only after the paper has been resold. The debtor intends to generate additional profits without increasing sales by increasing its profit margin. If sales remain fixed, the only way to increase the profit margin is to reduce expenses or increase the sales price. The court perceives that the debtor has fully minimized its expenses, and from the testimony presented, is unable to increase its sales price since its low cash supply forces it to sell its products at a discount to quickly procure the cash needed to continue operating. Regardless of the intentions of Cam-Plek's management, it is extremely unlikely that the debtor can generate the profit needed to fund its proposed plan.

The court realizes the effect of its decision and its possible adverse consequences, including the potential of personal bankruptcy for members of the Quillen family who depend on the debtor for their livelihood. While the court greatly and sincerely sympathizes with these members, the evidence was overwhelming and the conclusion inescapable that the debtor's plan is simply not workable and does not have a reasonable or realistic prospect for success.

The court also recognizes that for the most part, the creditors in this case favor the debtor's plan over that of Coronet's. However, the preference of creditors is significant only when more than one plan is confirmable. *See* 11 U.S.C. § 1129(c)(if more than one plan satisfies the requirements of subsections (a) and (b), court shall consider preferences of creditors and equity security holders in determining which plan to confirm). The court having concluded that the debtor's plan is not feasible, the predilection of creditors is irrelevant. In light of the court's ruling on the feasibility issue, it will not be necessary to reach the question of whether the debtor's plan satisfies the good faith and best interests requirements of confirmation.

## VII. ANALYSIS OF CORONET'S PLAN

The debtor contends that Coronet's plan does not meet the feasibility requirement of 11 U.S.C. § 1129(a)(11).[14] The debtor notes that Coronet Tennessee has no proven track record of success since it is a new entity and therefore, its projections of income and expense are speculative. The debtor also contends that the *pro forma* income statement submitted by Coronet Tennessee is deficient and thus, unreliable, because it only shows profit before operating expenses and fails to make any estimate of anticipated operating expenses. Accordingly, the debtor maintains that Coronet has failed to establish that Coronet Tennessee can generate the profit needed to meet its

[14]In its objection filed December 9, 1997, as renewed January 20, 1998, the debtor also asserted that Coronet's plan should not be confirmed because: (1) the plan has not been accepted by each holder of a claim or interest in an impaired class as required by 11 U.S.C. § 1129(a)(7); (2) the requirement of § 1129(a)(8) of the Bankruptcy Code has not been met in that certain impaired classes have not accepted the plan; (3) if insiders are excluded, no impaired class has accepted the plan as required by § 1129(a)(10); and (4) the plan does not satisfy the requirement of § 1129(a)(9)(C) that holders of claims entitled to priority under § 507(a)(8) must be paid deferred cash payments equal to the allowed amount of such claim over a period not exceeding six years after the date of the claim's assessment. These grounds were withdrawn by the debtor at the May 7 confirmation hearing.

monthly debt service under the plan and payment of interest to Coronet for the inventory and equipment it will purchase, amounts totaling $17,166.40 per month.

Furthermore, continues the debtor, even if Coronet Tennessee's *pro formas* are accepted at face value, the corporation has no cash to pay administrative expenses and start-up costs and no firm commitment from any source for the necessary cash. The debtor questions the ability of Coronet to help with the new corporation, noting that Coronet experienced net losses of $953,228.00 in 1994, $40,531.00 in 1995, and $371,353.00 in 1996. The debtor also challenges the knowledge and commitment of Coronet Tennessee's management, observing that Murray Kossman has no plans to move to Tennessee and is unable to identify who his salesmen and Tennessee customers will be.

To meet its burden of proving that its plan is feasible, Coronet offered the testimony of Murray Kossman and submitted a *pro forma* balance sheet and income statement for Coronet Tennessee. Mr. Kossman, a fourteen-year employee of Coronet, testified that based on his experience, the projections contained in the *pro formas* were realistic and premised on reasonable assumptions.

The *pro forma* income statement projects monthly paper sales at $150,000.00, waste sales of $20,000.00, cost of goods sold and waste paper at $82,500.00 and $7,000.00 respectively, and labor costs at $36,300.00, to arrive at an estimated gross monthly profit of $44,200.00 for the first few months of operations. The paper sales are based on an average cost of 25¢ per pound, cost of goods and waste paper is premised on an average cost of 25¢ per pound, and labor costs are estimated at 11¢ per pound. After deducting from the estimated gross monthly profit plan payments of $7,897.05 (excluding the IRS), the IRS payment of $4,519.35, and the interest payment of $4,750.00 on the Coronet loan, a projected monthly profit before operating expense of $27,033.60 is produced. Murray Kossman estimated that based on his experience, operating expenses will aggregate fifteen to twenty thousand dollars per month.

The $150,000.00 monthly sales projection in the *pro forma* income statement is predicated on selling the debtor's current production level of 350,000 pounds at an average sales price of 45¢ per pound. Mr. Kossman testified that he expects sales to increase once operations are in full swing because the debtor is operating at less than full capacity. The 45¢ per pound sales price is derived from Coronet's ten-year history of selling its product at 55¢ per pound throughout the southeastern United States including Tennessee. Mr. Kossman testified that although he hopes to sell to Cam-Plek's current customers in Tennessee, he can sell every pound of paper Coronet Tennessee can produce to Coronet’s customers in Miami and still average a sales price of over 45¢ per pound even under a worst case scenario.

The waste sales projection is based on half the debtor’s current sales figure because it is assumed that the new corporation may lose some of the debtor’s customers. Mr. Kossman testified that this projection is substantiated by Coronet’s experience.

With respect to the projection for cost of goods sold, Mr. Kossman testified that he is familiar with the cost of paper nationwide because Coronet buys paper from all parts of the country except the West Coast. According to Mr. Kossman, Coronet conservatively projected Coronet Tennessee’s cost of goods sold at 25¢ per pound even though its own current average cost of goods sold is 21.5¢ per pound and Coronet Tennessee’s freight cost will be less because a great deal of paper will be purchased from companies in the Midwestern United States which are closer to Tennessee than Florida.

Coronet Tennessee’s estimated 11¢ per pound labor cost is based on Coronet’s labor cost of 7¢ per pound plus 4¢ as a buffer. Murray Kossman testified that he is familiar with the cost of labor in Tennessee and that the new equipment which Coronet will sell to Coronet Tennessee will speed up production and reduce labor costs.

With respect to the cash required by Coronet Tennessee to meet administrative expenses and pay start-up costs, Murray Kossman testified that he will personally contribute all of the cash needed to run the new company, noting that he has close to one-half million dollars in his personal account. It was Mr. Kossman’s testimony that his personal income for 1997 was $420,00.00, $350,000.00 in 1996, and $450,000.00 in 1995.

Mr. Kossman also responded to the debtor’s assertions regarding Coronet’s own alleged financial difficulties, explaining that if expenses paid to family members were added back to Coronet’s net loss figures, Coronet would have had substantial net gains. For instance, in 1995 when Coronet sustained a net loss of $40,531.00, Murray Kossman and his father were paid salaries of half a million, rent of $280,000.00 was paid to a partnership owned by David and Murray Kossman, and interest expenses of approximately $250,000.00 were paid to family members. Similarly, in 1996, when Coronet experienced a net loss of $371,000.00, salaries, rent, and interest paid to family members totaled $950,000.00. In 1997, a net gain of $33,000.00 would have increased dramatically if family members had not been paid salaries, rent, and interest of a million dollars.

When questioned as to how Coronet Tennessee, based on the same level of production as the debtor, could generate sufficient funds to maintain its business operations and make plan payments when the debtor allegedly could not, Murray Kossman responded that the difference was the average sales price per pound at which each company sold its product. Skip Quillen testified that the debtor sells paper to printers at 40¢ per pound and to merchants at 30¢ per pound, with merchant sales representing a large percentage of its business. Coronet, on the other hand, sells 90-95% of its product to printers, at an average price of 55¢ per pound, although it assumed an average sales price of 45¢ a pound for purposes of its plan projections. Mr. Kossman opined that the reason the debtor sells to printers at a lower price than Coronet is because the debtor must give cash discounts to sell its product quickly since it can not afford to carry its products for any length of time due to lack of capital. In response, Skip Quillen testified that 40¢ per pound is an average rate to printers in this area, but admitted that this rate is based on a cash-on-delivery basis which as a general rule represents a discounted rate.

The court concludes based on the testimony presented that Coronet's plan is workable and has a reasonable prospect of success. The court is convinced from Mr. Kossman's testimony that he has firmly committed himself to contributing the funds necessary for Coronet Tennessee to commence operations and that he has the capital to backup this commitment. Coronet's projections establish that Coronet Tennessee can generate sufficient cash flow to not only maintain its business operations but also to adequately fund its plan. These projections appear to be derived from realistic assumptions premised on the proven record of a company with substantial paper converting and waste recycling experience in the southeastern United States. The court finds it significant that while the debtor questioned the bases for many of the assumptions on which Coronet's projections are predicated, it offered no evidence challenging these assumptions or contradicting the testimony of Mr. Kossman. By making this observation the court does not mean to suggest that the debtor has the burden of proof on the issue of the feasibility of Coronet's plan, only that absent any countervailing evidence, Coronet has sufficiently met its burden.

## VIII. CONCLUSION

The foregoing constitutes the court's findings of facts and conclusions of law pursuant to Fed. R. Civ. P. 52(a), as incorporated by Fed. R. Bankr. P. 7052. An order denying confirmation of the debtor’s plan and confirming the plan of Coronet will be entered contemporaneously with the filing of this memorandum opinion.

FILED: May 13, 1998

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE