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June 1, 2015

HAND DELIVERED

Honorable Thomas J. Walsh
Brown County Courthouse
100 South Jefferson St.
Green Bay, WI 54301

RE: *Araujo, et al. v. Green Box NA Green Bay, LLC.*
Case No. 15-CV-769

Dear Judge Walsh:

This letter is pursuant to the Court's request for supplemental briefing on the issue of whether a Receiver should be appointed as a result of an execution being returned unsatisfied. We believe that the law strongly supports the appointment of a receiver, especially under the facts of this case.

The appointment of a receiver is a matter resting in the sound discretion of the court. *M&I Marshall & Isley Bank v. Urquhart Corp.* 2005 WI App. 225, ¶ 26, 287 Wis. 2d 623, 706 N.W.2d 335. Wis. Stat. §128.001(1)(b), states that a person is considered insolvent when an execution against the person or their property is returned unsatisfied. Wis. Stat. § 128.08 further states that a Court may appoint a receiver when an execution against a judgment debtor is returned unsatisfied in whole or in part, or when a corporation is insolvent or is imminent danger of insolvency. *See also Adler v. The Milw. Patent Brick Manuf. Co.*, 13 Wis. 57 (1860)(a judgment creditor of the corporation after an execution has returned unsatisfied, may maintain an action in his own behalf and in behalf of such other corporate creditors and a receiver appointed).

Under both prongs of this test, a receiver is appropriate for Green Box NA Green Bay, LLC ("Green Box"). Green Box admits that an execution remains unsatisfied and as a result, Green Box is statutorily insolvent under Wis. Stat. §128.08.

Although we think there is sufficient grounds to appoint a receiver as a result of the unsatisfied execution, we would also like to point out to the Court the following undisputed information contained in the supplemental examinations of Phillip Reinhart, Green Box's Human

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Relations Manager and Mr. Van Den Heuvel, the owner of Green Box. These admissions provide ample support for the necessity of appointing Attorney Polsky as a Chapter 128 receiver to determine what Green Box's assets, in part because these admissions are contradictory and inconsistent with the statements made at the May 28, 2015 hearing. They also give rise to a real and immediate concern that Green Box is attempting to utilize already pledged assets to obtain funds that will disappear and not be used to pay off Green Box's significant debts.

Mr. Reinhart and Mr. Van Den Huevel have testified that:

- According to Mr. Reinhart, Green Box had 47 full time employees and no bank accounts other than a payroll account that money is transferred in to pay payroll (Reinhart Transcript, pp. 12-13; 41-43)¹;
- Mr. Van Den Heuvel testified that Green Box has no employees until it is "capitalized" (Van Den Huevel Transcript, pp. 57-58).
- At the hearing, the Court was told that the employees were licensed through a "temp agency."
- Mr. Van Den Heuvel has no bank accounts and has not filed tax returns for 2010, 2013 and 2014 (Van Den Huevel Transcript, pp. 7-8, 21-22);
- Green Box has not filed any tax returns (see Reinhart Transcript, p. 10);
- Green Box also does not have any intellectual property assets including the FDA approval process; these assets are owned by Van Den Huevel individually but are "contemplated" to be put in at some time (Van Den Huevel Transcript, pp. 55-57; 83-86)²;
- Mr. Van Den Huevel has about 40 judgments (three of which are unsatisfied) against him (Van Den Huevel Transcript, p. 90);
- Some of the equipment pledged to the Plaintiffs is sitting in a rented facility and has not been used for two years and some of it is assembled but in storage (Van Den Huevel Transcript, p. 92; Reinhart Transcript, pp. 45, 48-49);

¹ A full set of the transcripts are being filed today. We are also including the relevant pages as Exhibits 4 and 5.

² The patent application for the waste reclamation process lists the inventor as Ronald Van den Heuvel and Daniel Platkowski, and the assignee as PC Fibre Technologies, LLC, not Green Box. (Exhibit A to Van den Heuvel Transcript.) However, Exhibit 4 of the Reinhart Transcript, a Green Box unaudited financial statement as of December 31, 2013, indicates that Green Box owns the technology, which contradicts the patent application and Mr. Van den Heuvel's testimony.

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- Green Box does not have any accounts receivables, inventory, or motor vehicles; but has computers, laptops, and a copier (Reinhart Transcript, pp. 56-57, 66);

- Any operations are conducted through the converting operation which is a separate entity, Patriot Tissue LLC, which does custom converting work for other companies and makes toilet paper, hardbound towels, dinner and dispenser napkins and is paid for those services (Reinhart Transcript, pp. 40, 66).

- Recent UCC financing statements have been filed against Green Box covering the same collateral that has already been pledged to the Plaintiffs. In connection with one of the filings, a Note was executed by Green Box to Manchester Mortgage and indicates that Green Box received \$1.2 million. Without a bank account, a logical question is where is the money? (See UCC filings and Note attached as Exhibit 1).

Furthermore, the statements regarding the \$400 million of additional funds and the valuation of the company is based on future activity and on a separate entity, EARTH , LLC not Green Box. The valuation given to plaintiff by Defendant (attached as Exhibit 2) also specifically states it cannot be used for purposes of litigation and that as of the date of the analysis, none of the propose Green Box facilities had been constructed nor were they fully operational. Finally, Raymond James has been apparently hired to try to find funding for the future development. (See attached Raymond James engagement letter attached as Exhibit 3.) Thus, it appears that Green Box is not currently functioning and has no real operations.

In addition, despite the statements made to the court, a creditor is also not required to have a judgment before they can petition for a receiver. *See* Wis. Stat. § 128.11 (an action for an appointment of a receiver for the benefit of all creditors may be taken by a creditor although the creditor's demand is not due at the commencement of the action). Finally, the statute does not distinguish between judgments entered after trial from other judgments including judgments entered as a result of discovery abuses.³ None of these proffered arguments justify denying Plaintiffs' motion.

Finally, Green Box may seek to request a bond based on its valuation of its alleged intellectual property and other assets. Wis. Stat. § 128.09 requires a bond sufficient to cover the value of the property likely to come into the receiver's hands. As discussed above, the intellectual property is not Green Box's property so a bond cannot be based on that alleged value.

In addition, secured creditors are not subject to the receivership, so that the receiver only receives unencumbered assets available for distribution under Wis. Stat. §128.17. *See BNP Paribas v. Olsen's Mill, Inc.*, 2011 WI 61, ¶ 44, 335 Wis.2d 427, 799 N.W.2d 792 (2011)

³ The judgment against Green Box was entered into as a result of Green Box's failure to provide financial and accounting information to Dr. Araujo for over a year. Our client, Clifton Equities has also sought financial information pursuant to the terms of its loan agreement and has not received it as well.

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(without the secured creditor's consent, the receiver does not have the power to sell the creditor's collateral free and clear of the creditor's lien). Since it appears that all of the assets are encumbered, and there are no bank accounts, we believe that no bond is necessary. The Receiver would be required to obtain the secured creditors' approval before selling an encumbered asset, so there is no risk of loss to the creditors.

Moreover, Attorney Polsky has acted as a receiver in over 300 cases. He is very experienced in this area and well respected. He also maintains professional liability insurance. He also obtains a bond covering assets that come into his possession unencumbered up to \$10,000, and in the 270 cases he has been discharged as a Receiver after completing his duties, he has never had a bond claim. Therefore there would be no harm in allowing Attorney Polsky to evaluate the collateral without posting a bond in excess of \$10,000.

For all these reasons, which are undisputed, we believe that having Attorney Polsky appointed as a Receiver to investigate the assets and the financial wherewithal of the company is appropriate. If Green Box is operational, under Chapter 128, Attorney Polsky will be able to continue to operate it. If it is not functional, Attorney Polsky will evaluate the best options for all of the stakeholders. And, only after Court approval and approval of the secured creditors that hold liens on the collateral, would Attorney Polsky be entitled to file a motion for the sale of the collateral and have it sold to pay off creditors. The Defendant and other interested creditors can object at that time.

We believe that the Chapter 128 process adequately protects the Defendant and provides a fair outcome for an honest and third-party independent evaluation of the operational status of Green Box.

Very truly yours,

QUARLES & BRADY LLP



Valerie L. Bailey-Rihn

cc: Judge Timothy A. Hinkfuss (via facsimile and U.S. Mail)
Green Box NA Green Bay, LLC (via email)
Attorney John R. Petitjean (via email)
Attorney Jonathan Smies (via email)
Attorney Robert A. Pasch (via email)
Attorney Brian P. Thill (via email)
Attorney Carla Andres (via email)