

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re:

GREEN BOX NA GREEN BAY, LLC,

Debtor.

Case No. 16-24179

Chapter 11

**DEBTOR'S OBJECTION TO UNITED STATES TRUSTEE'S MOTION TO DISMISS
OR CONVERT JOINED IN BY ABILITY INSURANCE COMPANY**

NOW COMES the Debtor, Green Box NA Green Bay, LLC, by its attorneys, Steinhilber Swanson LLP, by Paul G. Swanson, and hereby objects to the United States Trustee's Motion to Dismiss or Convert the case to Chapter 7, as joined in by Ability Insurance Company. As grounds for such Objection, the Debtor asserts as follows:

INTRODUCTION

1. The Debtor is, as has been explained in open court and at the Section 341 hearing, a repository of certain assets which are intended to be utilized in a "roll up" of several entities into a new company (hereinafter "New Co"), which will engage in the recycling of materials which would otherwise be landfilled. Specifically, New Co will have the ability to recycle 85-90% of solid waste which would otherwise go into landfills. Such solid waste is comprised of, to a large extent, paper and paper products as well as plastics.
2. The Debtor, as has been explained, was an operating entity until approximately the

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end of June 2015, when a receiver was appointed by certain creditors who had petitioned the Brown County Circuit Court for relief. At that time, the receiver did not have the ability to operate the business and employees were “spun off” or transferred to another related entity who resumed the business that had been the Debtor’s. It was important to continue the business in order to demonstrate the feasibility and operational ability of the New Co component that the Debtor formed, which was basically, at that time, converting recycled tissue into consumer products such as tissues, toilet paper, and paper toweling.

3. The Debtor’s principal, Ron Van Den Heuvel, as well as other investors, continued to work on the “roll up” into New Co over the next year, but were hampered by the fact that in July 2015, a search warrant was executed and all of the books and records of all of the entities were seized by the Brown County Sheriff. Those records were not returned until well after this bankruptcy proceeding was commenced, and even at that, were neither complete nor organized.
4. This bankruptcy proceeding was filed in order to give the Debtor a chance to propose a Plan which would incorporate the assets and claims of the Debtor into the overall New Co operation. New Co consists of a much larger business which receives a waste stream, sorts the same, processes the waste into pulp and plastic, pelletizes the plastic and other organic waste, and uses the pulp to manufacture tissue, which is then converted into consumer products. The plastic and other organic stream is pelletized and incorporated into several other products or processes.
5. The commercial viability of the overall New Co process had been independently confirmed by outside engineering firms as well as underwriters for Piper Jaffrey who

were taking an offering to market just prior to the receivership in June 2015.

6. As a result of the receivership and subsequent seizure by law enforcement of the records of the Debtor, the offering went nowhere.
7. It is no secret, nor has it been since the initial filing in this case, that the Debtor's assets would be rolled into New Co and various creditors' claims would be dealt with either in the form of payment of cash or, in the case of unsecured claims, payment over time. Additionally, some creditors are also equity holders in one or more of the entities related to the Debtor which, if the Plan is successful, will generate significant returns for such holders.

ARGUMENT

8. Generally speaking, the assertions made by the U.S. Trustee in its Motion to Convert or Dismiss are irrelevant or untrue. Among other things, the Debtor-in-Possession disputes the assertion that Ron Van Den Heuvel ("RVDH") has anything to do with the ongoing operation of the Debtor or, for that matter, any of the related entities. Additionally, RVDH's past conduct has nothing whatsoever to do with this "roll up" Plan, although he does have an equity interest in the companies, which will be rolled into New Co along with the assets. It should be pointed out that RVDH has personal guaranties on many of the claims in this case and any interest he may have in New Co and the attendant profits made therefrom simply serve to fund any allowed deficiency claim against him by many of the creditors of this debtor.
9. Contrary to the U.S. Trustee's assertion that the Debtor has no property, the Debtor has property which does serve as collateral. New Co will be seeking approximately \$174 Million in the capital markets in a combination of debt and equity, which is

similar to what was projected prior to the receivership by Piper Jaffrey. Out of a portion of this, claims will be paid in this case pursuant to a Plan which will be filed in order to “roll up” the assets of the Debtor into the New Co operation.

10. The various assets of the Debtor, including the Kool units, will be dealt with in the Plan of Reorganization and claims against them addressed therein. Indeed, the Kool units are not absolutely necessary to New Co, but the value of them, if incorporated into New Co, is substantially greater than if they are surrendered to the secured creditor. Creditors would benefit from the utilization of all of the Debtor’s assets, if indeed they are rolled into New Co as the use value is asserted to be greater than scrap value.
11. The U.S. Trustee asserts that Schedule F is not complete. The Debtor-in-Possession is currently reviewing the documentation returned by the Brown County Sheriff (22 pallets of bankers boxes). The two unsecured creditors, Ferrellgas and Evoqua Water Technologies, LLC, which are alleged to have filed Proofs of Claim, are not creditors of the Debtor-in-Possession, but rather, of other entities related thereto and the Debtor will file Objections to those claims.
12. The Debtor is not misusing estate assets. Assets are being preserved for the forthcoming roll up into New Co and the Debtor asserts that the value which New Co will pay is higher than the net liquidation value of the various assets of the Debtor, thus promoting the highest and best return to the creditors.
13. The Debtor will pose a confirmable Plan which will be feasible. Absent the receivership and attendant difficulties which it caused, it is likely that New Co would be funded by this time. Substantially, the business model has not changed, the

demand for this type of product and service has only gotten greater, and the technology has been further proven. The Debtor-in-Possession believes that it can successfully complete the Plan which it will propose.

14. The Debtor categorically denies that there is any continuing loss or diminishment of the estate assets and, indeed, as stated above, asserts that creditors and equity holders will receive the highest return if the assets can be rolled into New Co as was initially contemplated at the outset and inception of the obligations to the various creditors.
15. The Debtor asserts that it has complied with its statutory duties to complete Schedules and the Statement of Financial Affairs to the best of its ability. Lacking any kind of records until late August 2016, and given the state of the records which were returned, the Debtor has done the best it can. As a practical matter, the assets which the Debtor-in-Possession has disclosed are what it has and the value of the same is as set forth. The Debtor has been working on its Plan as opposed to “make work” which would add nothing to the overall understanding of the creditors of what will be proposed in the Plan.

CONCLUSION

The U.S. Trustee has been an impediment in this case. The creditors in this case are secured to a large extent and have sophisticated counsel. It is almost incomprehensibly to understand the rationale for the efforts put forth by the U.S. Trustee. It is clear that assets are not being wasted, but rather, preserved. The Debtor’s principals have been working tirelessly towards putting together an overall business plan for not only the assets of the Debtor-in-Possession, but many other valuable assets and processes which can be assembled and utilized very profitably to provide a service which will do much both for the environment and for taxpayers of the various municipalities which will

utilize the technology, which is proven. There are many other constituencies to the overall roll up into New Co, all of which would be adversely affected by a dismissal of this case.

WHEREFORE, the Debtor respectfully requests that the Court deny the Motion of the U.S. Trustee to Dismiss or Convert this case, and allow it proceed to Plan confirmation.

Dated: September 14, 2016.

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Attorneys for the Debtor

By:



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