UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In the Matter of:

GREEN BOX NA GREEN BAY, LLC,

Debtor.

Case No. 16-24179-BEH

ABILITY INSURANCE COMPANY'S OBJECTIONS TO DEBTOR'S DISCLOSURE STATEMENT [DOC. 81]

Ability Insurance Company ("Ability"), by and through its undersigned counsel, objects to the *Disclosure Statement Dated September 26, 2016* (the "Disclosure Statement") filed by Debtor. Contrary to the requirements of 11 U.S.C. § 1125(a)(1), the Disclosure Statement fails to provide adequate information that would enable Ability, as an impaired creditor under the Plan, to make an informed decision whether to vote in favor of Debtor's proposed Plan. In support of its Objections, Ability states the following:

OBJECTIONS

The Disclosure Statement fails to answer even the most fundamental and practical questions that creditors pose with respect to Debtor's purported "roll up" with other entities. Specifically:

A. **What assets must be included for a successful "roll up"?** The Disclosure Statement states simply that Debtor's assets will be included in a "roll up" with other entities. The Disclosure Statement implies that by "rolling up" the assets of this non-operating Debtor with other *undisclosed* assets from other *undisclosed* entities, the resulting operating entity ("NewCo") will be more valuable than the sum of its parts. However, the Disclosure Statement does not identify basic information necessary to determine if the "roll-up" can be accomplished in the first instance, such as:

(i) Which other entities are critical to a successful roll up?

(ii) What assets must those other entities contribute to complete the roll up?

(iii) Have the other entities entered into *binding* commitments to participate in the roll up? Or could they refuse to participate?

(iv) Have creditors who may claim an interest in assets belonging to other entities agreed to participate in the roll up?

(vi) Will the attempted "roll up" fail if any of the other entities are unwilling to participate?

Debtor's summary declarations, which omit the "who, what, where, and when" that is necessary to understand the "roll-up," do not approach an answer to any of the specific questions. For example, Debtor only summarily states:

- "… related entities have proceeded with the overall Plan to "roll up" the various assets, including those of the Debtor, into a new company…" (Disclosure Stm., Doc. 81, P. 12).

- "…GlenArbor, through Smith, has entered into agreements with various entities to join these assets in order to effectuate the Plan. He has secured the intellectual property necessary to operate the process. He has and continues to negotiate contracts for both products generated from the process as well as inputs which are necessary to fuel the process." Id.

- Debtor's plan is to solicit investors "assuming that this Plan can be confirmed and the other constituent agreements can be negotiated and agreed to contractually." (Disclosure Stm., Doc. 81, P. 13).

- "Significant commitments for inputs of raw material into the process, as well as the sale of the output, have been secured and committed." (Disclosure Stm., Doc. 81, P. 18).

- The pulp plant owner has agreed to terms, as have some of the entities and creditors that have interests in the balance of the converting machinery and equipment. Id.

- Licensing of the patent and intellectual property will, upon confirmation, be transferred to RTS, LLC, and the project will be the beneficiary of all such agreements for the operation of the systems developed. (Disclosure Stm., Doc. 81, P. 22).

Debtor's unsupported statements that its purported "roll up" is possible and feasible do not make it so. Debtor must be required to provide more specific information necessary to

answer creditors' fundamental questions so that creditors can intelligently vote on the proposed Plan.

B. **Where will payment to creditors come from?** There is no dispute that Debtor has no cash and no ability to get cash. (Disclosure Stm., Doc. 81, P. 13). Therefore, any payments made to creditors must necessarily come from either capital contributions from existing members, cash flow of the "rolled-up" entity ("NewCo"), or financing arrangements made by NewCo. Debtor has not disclosed adequate information regarding any source of cash that will be used for payment to creditors.

First, Debtor admits that it is surviving on funds received from Glen Arbor, which is being provided on an "as needed basis." (Disclosure Stm., Doc. 81, P. 13). Even the minimal[1] adequate protection payments to Ability of approximately $10,000 per month are being advanced by Glen Arbor. (Disclosure Stm., Doc. 81, P. 13). The Plan is void of any suggestion that Glen Arbor or other members are committed and able to make future contributions as may be needed to fund the Plan. Accordingly, Debtor's life-line is dependent on the will of third parties.

Second, with respect to NewCo's future cash flow, Debtor provides no projections to suggest that NewCo will have sufficient cash flow to pay creditors under Debtor's Plan. Debtor has conditioned further disclosures of information (the adequacy of which cannot be determined, in part, because the financial information is not even complete yet)[2] upon the execution of a non-disclosure agreement. (Disclosure Stm., Doc. 81, P. 23). In addition to the fact that the financial projections admittedly do not exist, Debtor's unilateral limitations on providing even basic financial information should not be allowed by this Court.

Finally, with respect to NewCo's financing arrangements, Debtor claims that it has "managed to contractually secure a nationally recognized Investment Bank who has been

[1] "Minimal" in comparison to the estimated $179 million in cash Debtor will need to acquire.

[2] *See* Disclosure Statement, p. 18, 22.

engaged in taking the entire project forward." See Disclosure Statement, P. 13, ¶ 1. Debtor then summarily states that "Glen Arbor has managed to put in place many of the prerequisites for the Investment Bank to go to the capital markets to privately place the debt…" Id. Debtor, however, has refused to disclose the identity of this investment bank, nor has Debtor been able to produce any commitment from any investment bank or investor identifying any of the prerequisites that Glen Arbor has allegedly satisfied (or what prerequisites may remain outstanding). If Debtor has identified an investment bank willing to invest its time and resources in Debtor's future, all creditors should know and understand the extent of the bank's involvement.

C. **Is the "roll up" fair and equitable to Ability?** Ability is impaired under the Plan. Debtor purports to pay Ability $7.6 million from undisclosed sources, leaving the deficiency balance as an unsecured Class 8 Claim to receive a 0% distribution. At the same time, existing equity owners of Debtor (such as Reclamation Technology Solutions, LLC f/k/a EARTH ("RTS")) will obtain a significant ownership interest in NewCo which will, in turn, own all the assets of Debtor. RTS alone will own 60% of NewCo. (Disclosure Stm., Doc. 81, P. 17). This outcome appears to evade the competitive bidding process required by In Re Castleton Plaza, LP, 707 F.3d 821 (7th Cir. 2013), as well as the absolute priority rule set forth in 11 U.S.C. § 1129(b), leaving open the danger that the Plan will divert assets of Debtor to existing equity holders and insiders to the detriment of the creditors.

1. Lack of Competitive Bidding. The Plan purports to sell Ability's collateral to NewCo in exchange for $7.6 million, with Ability retaining those sale proceeds in full satisfaction of its secured claim. The Plan evades any competitive bidding process wherein Ability could make a credit bid for the amount Debtor owns, or wherein other bidders could submit a bid for more than $7.6 million. This structure is contrary to established law in this Circuit, which requires competitive bidding to "prevent the funneling of value from lenders to insiders…" See In re Castleton Plaza, LP, 707

F.3d at 824. It is not fair or equitable for Ability to be stripped of its collateral without first testing the market and without giving Ability the opportunity to credit bid.

2. Violation of Absolute Priority Rule. Because the Plan would pay Ability less than its contractual entitlement (leaving an unsecured Class 8 Claim), 1129(b)(2)(ii) (the "Absolute Priority Rule") provides that current owners of Debtor (such as RTS) cannot retain any equity interest on account of its old investment absent a showing of some new value injected into the reorganized debtor. The Disclosure Statement provides no information on what "new value" RTS or any other existing equity owner is contributing in exchange for their continued equity position. RTS is presumably not the borrower of any loans (NewCo would be), nor does the Disclosure Statement say that RTS will invest any new money of its own into NewCo. If that is true, the only reason that existing equity holders of Debtor will retain ownership in NewCo is by virtue of the existing equity holder's ownership of Debtor. It is not fair or equitable for current equity holders to retain ownership in NewCo based solely on their ownership of Debtor, while unsecured creditors receive nothing on their Class 8 claims.

D. **Would a vote against the Plan possibly yield more payment to creditors?** Debtor has an incestuous relationship with numerous insiders, each of whom will benefit from the Plan. Creditors are entitled to information regarding the possibility of recovery from these related entities *outside* a reorganization plan.

First, Debtor's largest account receivable (more than $1 million) is due from Patriot Tissue, LLC ("Patriot Tissue"), a related entity. The Disclosure Statement incorrectly states that Patriot Tissue has ceased operations when, in fact, Steve Smith testified that it is still operating. Debtor says that the account is "deemed uncollectible" but provides no information or analysis for that conclusion. (Disclosure Stm., Doc. 81, P. 15). If this account receivable can be collected by a party *that has an incentive to collect it* (i.e. an unrelated party), that recovery would go far to pay unsecured creditors' claims.

Second, Debtor makes no attempt to identify or quantify transfers to related entities that could be recovered for the benefit of creditors. For example, Debtor's SOFA states that Ron Van Den Heuvel took various payments from Debtor during the one year before filing the Petition, but summarily states the value as "unknown." If money or assets were in fact transferred to Ron Van Den Heuvel (or other related parties) during the preference period, the value of those assets could be recoverable for the benefit of creditors. This missing information is relevant to Ability's decision to vote for the Plan.

Third, Debtor's analysis of why this Plan is in the best interest of non-related creditors is perfunctory, at best. For example, in its liquidation analysis, Debtor identifies three main items of equipment – all of which will be transferred to related entities -- and then, in terms of valuation, summarily states the following:

a. With respect to the PC Kool Unit, the "salvage value of the unit is unknown." (Disclosure Stm., Doc. 81, P. 15).

b. With respect to the After Dryers, other than use by NewCo, they are "probably scrap." (Disclosure Stm., Doc. 81, P. 16).

c. With respect to the sorting lines, other than use by NewCo, they are worth "considerably less" than the $600,000 scheduled. (Disclosure Stm., Doc. 81, P. 16).

Debtor then states that "…[t]he relevant information relating to the valuation of Debtor's assets is the value that will be paid for them in the "roll up" into NewCo for use in the overall reclamation project…" (Disclosure Stm., Doc. 81, P. 17). Stated differently, the only valuation disclosed with respect to any of Debtor's assets is that value allocated by Debtor for the proposed sale to NewCo. But, as argued in Section C, that valuation proposed by Debtor to affiliated parties lacks any attempt to otherwise sell any collateral via a public sale that could yield a higher price, and leaves creditors no opportunity to credit bid.

Finally, the Disclosure Statement states that it will be necessary for certain non-debtor insiders (i.e. RTS) to be released form any direct payment obligation to creditors. That release includes the guaranty executed by RTS in favor of Ability. Debtor fails to detail why creditors should agree to such a release (other than Debtor's claim that it is "crucial to maintain the timeline" of the roll up), or whether the non-debtor insiders will contribute any consideration to support such a release. Absent a release, Debtor may be able to collect some or all of its debt from RTS.

SUMMARY

Debtor's Disclosure Statement fails to provide "adequate information" that would enable Ability to make an informed judgment whether to accept or reject Debtor's proposed Plan, as required by 11 U.S.C. § 1125(a)(1). Ability respectfully requests that the Court deny Debtor's request for approval of the Disclosure Statement.

Dated this 18th day of October, 2016.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
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CERTIFICATE OF SERVICE

I, Michele M. McKinnon, certify that I caused a copy of the foregoing Ability Insurance Company's Objections to Debtor's Disclosure Statement to be served upon the following individuals by electronic filing through ECF or U.S. Mail on October 18, 2016:

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