

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re: **Green Box NA Green Bay, LLC,**  
  
**Debtor.**

**Case No. 16-24179-beh**  
**(Chapter 11)**

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UNITED STATES TRUSTEE'S OBJECTION  
TO THE DEBTOR'S DISCLOSURE STATEMENT

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The United States Trustee, by Attorney Amy J. Ginsberg, objects to approval of the Debtor's Disclosure Statement because it requires creditors, other parties in interest, and the United States Trustee to sign a non-disclosure agreement in order to obtain its financial projections. In addition, the Disclosure Statement fails to address fundamental financial information such as: (1) the conditions precedent for obtaining financing for NewCo; (2) a timetable for completing tax returns; (3) conditions necessary to obtain new capital; and (4) the absolute priority rule. In support of this objection, the United States Trustee states:

*Factual Background*

1. After almost a year in receivership, the Debtor, Green Box NA Green Bay, LLC, filed its petition for relief under chapter 11 of the United States Bankruptcy Code on April 27, 2016. *See* Docket Entry #1.
2. Five months later, on September 26, 2016, the Debtor filed its Plan and Disclosure Statement. *See* Docket Entries #81 and #82.
3. The Debtor's primary assets are a paper conversion facility in DePere, Wisconsin, and two Kool units. One Kool unit, used for tire recycling, is assembled and located in DePere,

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and the other, disassembled, is located in Easley, South Carolina, and is subject to a Joint Venture Agreement with Advanced Resources Materials. See Docket Entry #14.

4. According to the Plan and Disclosure Statement, the Debtor will transfer its assets to NewCo. In turn, NewCo will combine the Debtor's assets with assets of other non-debtor entities creating a "roll up," known in the Disclosure Statement as NewCo. Docket Entry #81, pp. 12 and 17. Next, assuming NewCo can obtain the necessary patents, anticipated sometime in 2017, an investment bank will bring NewCo's plan to reclaim food-contaminated paper waste to the capital markets. Docket Entry #81, p. 13.

5. Once NewCo raises roughly \$130 million from the capital markets from stock and bond sales, NewCo will build a new facility to reclaim food-contaminated paper waste. Docket Entry #81, page 17. Only after NewCo receives funds from the stock and bond sales will it pay creditors. Docket Entry 81, p. 22. The Disclosure Statement does not project when payments will commence.

6. According to the Disclosure Statement, the FDA approved the paper recycling process. However, although the process may be *feasible*, the Debtor has not provided any evidence that the process is *profitable*.

7. The Disclosure Statement provides that the patent for the technology needed to process food-contaminated waste was filed in 2011 but has not yet been approved. The Debtor states that approval of the process patent is not expected until 2017. Docket Entry #81, p. 7.

8. In addition to waiting for patent approval, the Debtor will not operate its paper reclamation business for another 18 months after confirmation because it needs to build a new plant. Docket Entry # 81, p. 18.

**The Debtor Cannot Require Creditors, the United States Trustee,  
and Other Parties in Interest to Enter Into a  
Non-Disclosure Agreement in Order to Obtain Financial Projections**

9. In order to confirm a plan of reorganization, the United States Bankruptcy Code requires the Debtor to disclose adequate information that would provide the hypothetical investor with enough information to make an informed judgment about the proposed plan. 11 U.S.C. § 1125.

10. An oft-cited case discusses the relevant factors for evaluating the adequacy of a disclosure statement:

(1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

*In re Metrocraft Pub. Services, Inc.* 39 B.R. 567, 568 (Bank. N. D. Ga. 1984).

11. In addition to the above-listed factors, a disclosure statement must provide the factual basis for its conclusions. “[W]ithout factual support, statements of opinion or belief are entirely inappropriate in Disclosure Statements. The Disclosure Statement is intended to be a source of factual information upon which one can make an informed judgment about a

reorganization plan.” *In re Egan*, 33 B.R. 672, 675-676 (Bankr. N.D. Ill. 1983). In addition, a disclosure statement “must contain factual support for any opinions contained therein since opinions alone do not provide parties voting on the plan with sufficient information upon which to formulate decisions.” *In re Budd*, 550 B.R. 407, 412 (Bankr. N.D. Ill. 2013).

12. Disclosure of financial projections remains one of the fundamental disclosures required in a disclosure statement. *In re Malek*, 35 B.R. 443, 444 (Bankr. E. D. Mich. 1983).

13. The Debtor’s Disclosure Statement omits fundamental financial facts. Creditors want to know how much they will be paid and when they will be paid. Without financial projections, creditors cannot assess whether the Disclosure Statement relies on hard facts.

14. The Debtor admitted that it failed to provide financial projections in its Disclosure Statement and justifies the omission arguing that such projections are (1) not available yet; and (2) only for creditors who will sign off on a non-disclosure agreement. *See* Docket Entry #81, p. 23.

15. Next, the Bankruptcy Code requires debtors to provide adequate financial information to all creditors, not just some creditors. 11 U.S.C. § 1125. According to the Disclosure Statement, detailed financial projections are *only* offered to “creditors on the basis of enforceable non-disclosure agreements being signed once such financial projections are finalized and approved by the Investment Bank.” Docket Entry #81, p. 23. The Debtor also claims that financial projections are proprietary and therefore cannot be disclosed. Docket Entry #81, p. 22.

16. The Debtor’s requirement for a non-disclosure agreement in order for creditors to receive financial projections flies in the face of the requirement for a debtor to provide adequate disclosure of its finances and is contrary to law. 11 U.S.C. §§ 107(a) and 1125(b). The Disclosure Statement needs to contain financial projections and hard financial data. This

Court should not allow the Debtor to shield its true financial prospects from creditors. *In re Metrocraft Pub. Services, Inc.* at 568.

17. In addition, not only creditors, but the public is also entitled to information about the Debtor's financial projections. *See Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 7 (1st Cir. 2005) (quoting *Ferm v. United States Trustee (In re Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999) ("Unrestricted access to bankruptcy records 'fosters confidence among creditors regarding the fairness of the bankruptcy system.'"))

18. Finally, financial projections should also explain what the Debtor means that it has "[s]ignificant contracts for inputs of raw materials" and "sale of output." Docket Entry #81, p. 18. It is unclear whether these materials and output relate to the Debtor's operating paper recycling facility or the unbuilt paper reclamation facility.

**The Disclosure Statement Fails to Address Conditions Precedent  
for Investment Bank to Underwrite NewCo's Search for New Capital**

19. According to the Disclosure Statement, Ron Van Den Heuvel has been trying to fund this food-contaminated paper reclamation project since 2012. Docket Entry #81, p. 8.

20. Five years later, the Debtor's financial position has not improved. Facts demonstrating the Debtor's worsening financial condition include: (1) creditors forced the Debtor into receivership; (2) the chapter 11 bankruptcy filing; (3) the Debtor's lack of cash; and (4) the tenant's inability to pay rent and its reliance on Steve Smith to fund its operations. *See* Docket Entry #81, p. 13.

21. The Disclosure Statement implies that the "Investment Bank" will be ready, willing and able to go the market in the first quarter of 2017 to obtain new capital investment. *See* Docket Entry #81, p. 18. The Disclosure Statement also provides that Glen Arbor has put in

place many of the prerequisites for the Investment Bank to go to the capital market. Docket Entry #81, p. 13.

22. From this statement it is apparent that NewCo or another entity must meet certain prerequisites to obtain funding on the capital market, but these prerequisites are not identified in the Disclosure statement. The conditions precedent to capital funding should be addressed in the Disclosure Statement so creditors can evaluate them. In addition, the Disclosure Statement does not identify the Investment Bank, anticipated investment bank fees, how the fees will be paid, the conditions precedent for the investment—which have been met or which are still outstanding. The Disclosure Statement does not state how much cash NewCo can contribute until the new investors purchase stocks and bonds.

**The Disclosure Statement Fails to Address the Debtor's Tax Liabilities**

23. Upon information and belief, the Debtor has not filed any tax returns. The Disclosure Statement fails to address when the Debtor's tax returns will be filed.

24. The Plan cannot be confirmed unless tax liabilities are paid in full. 11 U.S.C. § 1129(a)(9).

**The Disclosure Statement Fails to Address the Absolute Priority Rule**

25. The Absolute Priority Rule provides that all creditors must be paid in full before equity holders can maintain their stake in the debtor.

26. The Debtors' Disclosure Statement violates the absolute priority rule in that it allows the equity holders to retain property without paying unsecured creditors in full. 11 U.S.C. § 1129(b)(2)(B).

27. Although the Disclosure Statement provides that equity holders' interests will be canceled, the equity holders will receive at least a 60% ownership in NewCo. The Debtor's

equity holders receive their new share in NewCo from their interest in the Debtor. See Docket Entry #81, p. 22. As such, the Debtor has not satisfied the requirements of section 1129(b)(2)(B)(i) and therefore cannot receive or retain an interest in property of the estates.

**The Disclosure Statement Fails to State the Value of Intellectual Property**

28. According to the Disclosure Statement, “the intellectual property has been previously evaluated by independent consultants, which [sic] have placed significant value on it.” Docket Entry #81, p. 19.

29. The Disclosure Statement should itemize this intellectual property, identify the owner of the intellectual property, the valuation of the intellectual property and if anyone holds an exclusive license to use it.

WHEREFORE, the United States Trustee requests that this Court deny approval of the Debtor’s Disclosure Statement. The United States Trustee does not intend to file a brief in connection with this pleading, but reserves the right to file a responsive brief or pleading if necessary.

Dated: October 18, 2016.

PATRICK S. LAYNG  
United States Trustee

**AMY  
GINSBERG**

Digitally signed by AMY GINSBERG  
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Debtor.

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CERTIFICATE OF SERVICE

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I hereby certify that on June 20, 2012, I electronically filed the **UNITED STATES TRUSTEE'S OBJECTION TO THE DEBTOR'S DISCLOSURE STATEMENT** with the Clerk of Bankruptcy Court using the ECF system which will send notification of such filing to:

Attorney Paul G. Swanson

and further, that I mailed a copy of the pleading, via first-class U.S. mail, to the following party:

Green Box NA Green Bay, LLC  
2107 American Boulevard  
DePere, WI 54115



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Mary Jo Malone, Paralegal Specialist  
Office of the United States Trustee