

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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GREEN BOX NA GREEN BAY, LLC,

Case No. 16-24179

Debtor

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**OBJECTION OF CROSSGATE PARTNERS, LLC AND ADVANCED RESOURCE  
MATERIALS, LLC TO ENTRY OF ORDER APPROVING 1ST AMENDED  
DISCLOSURE STATEMENT DATED NOVEMBER 9, 2016**

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Crossgate Partners, LLC (“Crossgate”) and Advanced Resource Materials, LLC (“ARM”), as creditors and parties in interest, by and through their counsel, Godfrey & Kahn, S.C., hereby object to the entry of an order approving the 1<sup>st</sup> Amended Disclosure Statement dated November 9, 2016 [Dkt. No. 116] (the “Disclosure Statement”) filed by Debtor Green Box NA Green Bay, LLC (the “Debtor”). To the extent that the objections, in whole or in part, contained herein are deemed to be an objection to confirmation of the 1<sup>st</sup> Amended Plan of Reorganization dated November 9, 2016 [Dkt. No. 117] (the “Plan”) rather than, or in addition to, an objection to the adequacy of the Disclosure Statement, Crossgate and ARM reserve the right to assert such objection, as well as any other objections, to confirmation of the Plan.

Crossgate and ARM anticipate that other creditors will outline various gaps in the Disclosure Statement. Crossgate and ARM’s objection relates to the adequacy of the information provided in the Disclosure Statement concerning the PC Kool units, the two pieces of equipment in which Crossgate and ARM have a perfected security interest. Crossgate and ARM state as follows:

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1. Crossgate and ARM's claims against the estate arise from the extension of \$700,000 in credit to the Debtor or its affiliates. The Debtor granted Crossgate security interests in a Kool unit on September 2, 2014, when Crossgate provided Green Box NA Green Bay, LLC, the Debtor, Ronald Van Den Heuvel, the Debtor's principal, and Environmental Advanced Reclamation Technology HQ, LLC ("EARTH") a loan for \$200,000. The Debtor, Ronald Van Den Heuvel and EARTH were co-borrowers on that loan. Crossgate perfected its security interest in the Kool unit by filing a UCC financing statement with the Wisconsin Department of Financial Institutions on September 3, 2014. Crossgate agreed to extend credit on these terms after an attorney representing the Debtor at that time provided an opinion to Crossgate on August 29, 2014 that the Kool unit was the property of Green Box NA Green Bay, LLC, the Debtor, and was free and clear of all liens.

2. On March 18, 2015, ARM wired \$500,000 to the Debtor under the terms of an Operating Agreement for GB-ARM, LLC, an entity in which Crossgate's affiliate, ARM, and the Debtor had an interest.

3. The Disclosure Statement refers to certain "intellectual property related to the process" in which the Debtor contemplated the Kool units would be operated. (Dkt. No. 116 at 16.) The Disclosure Statement fails to identify the nature of these intellectual property rights, and, more importantly, the owner of such rights.

4. Elsewhere in the Disclosure Statement, the Debtor states that it "can supply certain proprietary information on the configuration and operation of both of the units." (Dkt. No. 116 at 34.) The Debtor also claims that it can "cause the proprietary information to be licensed with any purchaser of such unit, at no charge, but only to be used with the unit sold and no others." (Id.) The value of this "proprietary processes" is apparently considerable, as the

Debtor avers that the Kool units are likely to be sold at a lower price without it as “any purchasers would have to engage in significant trial and error in order to utilize” the Kool units “in any effective manner.” (Id. at 43.) The Debtor warns, “The intellectual property does not travel with those units and belongs to a related third party.” (Id.) But who owns this intellectual property? What form does the intellectual property take? Is it a patent, a software license, or a trade secret? The reader is left guessing.

5. The Disclosure Statement leaves too much play in the joints concerning just what intellectual property rights are required to operate the Kool units, and who holds such rights. The purpose of a disclosure statement is to provide a party with sufficient information to determine whether to vote for the plan. A disclosure statement that is confusing is not adequate. If the Debtor does not own the intellectual property rights associated with the operation of the Kool units, how can it cause a third party to provide such intellectual property rights to the purchaser of a Kool unit, should one be sold as contemplated by the Disclosure Statement? What consideration would be provided to the third party for the transfer of these rights? The Disclosure Statement fails to say. Given the apparent reliance on a third party to provide the intellectual property associated with the Kool units, one wonders why the Debtor, in the latest iteration of the Disclosure Statement and Plan, now proposes to sell the Kool units instead of surrendering them, as was contemplated in the Debtor’s prior filings.

6. The Disclosure Statement’s statement that intellectual property rights must be obtained from third parties to operate the Kool units is at odds with the Debtor’s prior undertakings with the Objectors. The Debtor and EARTH executed a Security Agreement in favor of Crossgate on September 2, 2014, which states that the collateral includes all general intangibles relating to or arising from the Kool unit. Further, the Debtor, with ARM, is party to

the Limited Liability Company Operating Agreement of GB-ARM, LLC, which requires the Debtor to deliver to GB-ARM, LLC all intellectual property necessary for the operation of each of the Kool units purchased and installed by GB-ARM, LLC. For the reasons stated above, Crossgate and ARM object to the Disclosure Statement.

7. This Objection is not meant to be all-inclusive of the Objectors' concerns with the Disclosure Statement and Plan. The Objectors reserve the right to amend or supplement this Objection and to lodge additional objections to the Disclosure Statement at the hearing to consider approval of the Disclosure Statement.

WHEREFORE, the Objectors respectfully request that this Court enter an order denying approval of the Disclosure Statement; and that the Court grant such other and further relief to which the Objectors may be justly entitled.

Dated this 16<sup>th</sup> day of November, 2016.

/s/ Jonathan T. Smies \_\_\_\_\_  
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