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

OBJECTION OF LITTLE RAPIDS CORPORATION
TO 1st AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 9, 2016

Little Rapids Corporation (the "Objector"), creditor and party-in-interest in the above-captioned Chapter 11 bankruptcy case (the "Bankruptcy Case"), filed by Green Box NA Green Bay, LLC (the "Debtor"), files this *Objection of Little Rapids Corporation to 1st Amended Disclosure Statement dated November 9, 2016* [Docket No. 116] (the "Disclosure Statement"), and in support thereof respectfully states as follows:

I. PRELIMINARY STATEMENT

The Debtor's Disclosure Statement should not be approved by this Court because it provides inadequate information regarding a plan[1] that is unconfirmable and is not in the best interests of the Debtor's creditors.

1. As an initial matter, the Disclosure Statement is a continuing tale of great ideas, attempted funding, and unsubstantiated promises of future events. The short version of the relevant events presented reveals that some entity (defined only as "NewCo" - an entity that will acquire assets from Debtor and other entities, Plan, Section 1.17) has a plan to raise money for

[1] Specifically, the 1st Amended Plan of Reorganization dated November 9, 2016 [Docket No. 117], filed contemporaneously with the Disclosure Statement (the "Plan").

DRAFTED BY:
Carla O. Andres
GODFREY & KAHN, S.C.
200 S. Washington Street, Suite 100
Green Bay, WI 54301

the Project (also defined as the "Roll Up" or the intended acquisition of assets by NewCo from Debtor and others for use in an operating company, Plan, Section 1.23). However, before NewCo can raise any capital for the Project, Glen Arbor or Mr. Smith need to secure $2.5 million (the "Preliminary Funding"), Disclosure Statement, p. 14. After the Preliminary Funding is secured, the Investment Bank or New Investment Bank (both capitalized and apparently used interchangeably but without definition) will raise either $130 million or $176 million, Plan, pp. 14, 19 (the "Project Funding") by March 31, 2017. The Project Funding will be used to pay the secured and administrative claims, and the Debtor will receive a membership interest in NewCo. Disclosure Statement, p. 38. Distributions paid to Debtor as a result of earnings on the Project will be used for unidentified operating expenses of Debtor, with any remaining amounts to be paid as distributions to Debtor's equity holders, except that any distribution that would go to an RVDH entity will not be paid to such entity but will be used to pay unsecured creditors. Disclosure Statement, pp. 38-39.

2. The Disclosure Statement does not reveal whether NewCo is an existing entity, the identity of the other members or shareholders, or whether Debtor incurs any liability as an equity holder in this new venture.

3. The definition of the Project is inadequate to support any meaningful evaluation of the likelihood of success of raising well in excess of $100 million, and all references to contracts that will be part of the Project are vaguely defined without dates, identification of parties, or specific financial detail.

4. The assurances that the Preliminary Funding and Project Funding will even occur are supported solely by summary statements of confidence and optimism, without any

substantiation in the form of letters of intent, expressions of interest, or contingent participation agreements.

5. Debtor acknowledges that the Preliminary Funding must be raised prior to confirmation for the Plan to be feasible, Disclosure Statement, p. 40, and that confirmation is necessary for the Project Funding to occur. *Id.* Nonetheless, there is insufficient detail to support a finding at this time that the Plan can be confirmed or that Project Funding has any likelihood of occurring.

6. The Debtor's Plan and Disclosure Statement inherently acknowledge that there is no source of payment for administrative expenses if the Preliminary Funding and Project Funding do not occur. Debtor's ongoing use of warehouse space at 821 Parkview Road in Ashwaubenon, Wisconsin, subsequent to the termination of the lease continues to be as expense to the estate. Objector has not received any administrative rent payments during these proceedings.

7. The Disclosure Statement inconsistently provides that Objector obtained relief from stay in these proceedings to terminate a lease for the warehouse located at 821 Parkview Road in Ashwaubenon, Wisconsin (the "Parkview Lease"). Disclosure Statement, p. 30, and that the Parkview Lease was terminated by agreement of the Receiver and Objector prior to the Petition Date, Disclosure Statement, p. 15.

8. The Disclosure Statement states that NewCo has negotiated for warehouse space with Little Rapids to address continued occupancy. Disclosure Statement, p. 38. This is misleading. Objector reached a tentative agreement with representatives of Debtor, but discussions stalled when it became clear that Debtor would not have funds to pay past due post-petition rent and there have been no further discussions.

9. For the reasons stated herein, Objector respectfully objects to the Court's approval of the Debtor's Disclosure Statement.

II. PROCEDURAL BACKGROUND

10. On April 27, 2016 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), thereby initiating this Bankruptcy Case.

11. The Debtor remains in possession of its assets and continues to operate its affairs as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

12. On September 26, 2016, the Debtor filed its initial Plan and Disclosure Statement relating thereto. At the hearing to consider approval of the initial Disclosure Statement on October 19, 2016, Debtor stated an intention to amend the Plan and Disclosure Statement.

13. The amended Plan and Disclosure Statement were filed on November 9 and the hearing to consider approval of the Disclosure Statement is scheduled for November 21, 2016.

III. OBJECTION

A. A Facially Unconfirmable Plan Requires Denial of the Disclosure Statement as Containing Inadequate Information.

14. The Objector objects to the approval of the Disclosure Statement and would show that the Plan contains such fatal defects that the costs and delays associated with solicitation of the Plan is not in the best interests of the estate.

15. When it is clear that a plan of reorganization cannot be confirmed, a bankruptcy court should decline to approve the disclosure statement in order to avert the unreasonable waste of time and estate assets. *In re Century Inv. Fund VII Ltd. P'ship*, 114 B.R. 1003, 1005-06 (Bankr. E.D. WI 1990); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) (where plan is so fatally flawed that confirmation is not possible, the court should decline to

consider the adequacy of disclosure (*quoting In re Eastern Maine Elec. Co., Inc.*, 125 BR 329, 333 (Bankr. D. ME. 1991)). *See, e.g.*, *In re Filex, Inc.*, 116 B.R. 37, 41 (Bankr. S.D.N.Y. 1990) ("court will not approve disclosure statement for an admittedly unconfirmable plan").[2]

16. A plan of reorganization that is facially unconfirmable constitutes inadequate information and is misleading. *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986). Therefore, when a disclosure statement describes an unconfirmable plan, the disclosure statement should not be approved and the solicitation of votes should not occur. *In re S.E.T. Income Properties, III*, 83 B.R. 791, 792 (Bankr. N.D. Okla. 1988); *In re Pecht*, 57 B.R. at 139.

i. The Plan Fails the Best Interests of Creditors' Test

17. Section 1129(a)(7) of the Bankruptcy Code provides that if the holder of a claim impaired under a plan of reorganization has not accepted the plan, then such holder must "receive … on account of such claim … property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive … if the debtor were liquidated under chapter 7 … on such date." *Bank of America Nat'l Trust and Sav. Ass'n v. 203 North LaSalle Street P'shp*, 526 U.S. 434, 442 n.13 (1999). The best interests valuation is to be based on evidence, not assumptions, but it is not an exact science. *In re Multiut Corp.*, 449 B.R. 323 (Bankr. N.D. Ill. 2011) (c*iting In re MCorp Fin., Inc.*, 137 B.R. 219, 228 (Bankr. S.D. Tex. 1992) (finding the Debtor's valuation methodology used in its liquidation analysis "suspect" because the Debtor provided no independent appraisals or extrinsic evidence to support the valuation). This "best interests" test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan. *Id*. As with all of the requirements of

[2] A court may confirm a chapter 11 plan only when the requirements of section 1129 of the Bankruptcy Code are met. *See Hobson v. Travelstead*, 227 B.R. 638, 650 (Bankr. D. Md. 1998). The Debtor bears the burden of demonstrating, by a preponderance of the evidence, that the Plan meets all requirements of the Bankruptcy Code. *In re Byrd Foods, Inc.*, 253 B.R. 196, 199 (Bankr. E.D. Va. 2000).

Section 1129(a), the proponents bear the burden of establishing that a plan satisfies the dictate of subsection 1129(a)(7). *In re Labrum & Doak, LLP*, 227 B.R. 372, 381 (Bankr. E.D. Pa. 1998); *In re Future Energy Corp.*, 83 B.R. 470, 489 (Bankr. S.D. Ohio 1988).

18. The Debtor's Plan on its face fails to meet the best interests test for the following reasons: it fails to demonstrate that the treatment of creditors under the Plan is at least as favorable as a Chapter 7 liquidation, and it is devoid of any reference to independent appraisals or extrinsic evidence to support the values that are placed on certain assets.

19. Relatedly, the fact that the Debtor is proposing to utilize the Project Funding to pay administrative expense claims against the estate strongly suggests that this Plan is simply not feasible.

ii. The Plan is Not Feasible

20. This Court may sustain objections or deny the approval of a disclosure statement at the hearing stage where the Court determines that the plan is incapable of being confirmed because among other defects, it lacks feasibility. *In re Hirt*, 97 B.R. 981, 982-83 (Bankr. E.D. Wis. 1989).

21. Section 1129(a)(11) of the Bankruptcy Code requires that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11).

22. Under Section 1129(a)(11) of the Bankruptcy Code, this Court has an affirmative duty to examine a proposed plan of reorganization to determine if it is feasible. *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989); *In re Champion Oil Co.*, 13 B.R. 472, 474 (Bankr. S.D. Ohio 1980). The Court should determine that there is a reasonable chance of a plan's success and that it is workable. *In re M&S Associates, Ltd.*, 138 B.R. 845, 848-849

(Bankr. W.D. Tex. 1992); *Future Energy*, 83 B.R. at 503. "The purpose of the feasibility requirement is 'to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.'" *Lakeside Global*, 116 B.R. at 507 (citations omitted). "Where the financial realities do not accord with the proponent's projections or where the proposed assumptions are unreasonable, the Plan should not be confirmed." *Id*. In order to prove feasibility, the plan proponent must show that the plan offers a reasonable assurance of commercial viability. "[T]he bankruptcy judge is required to find the debtor *will be able to make all of its payments under the plan* and to comply with the plan." *In re Sound Radio, Inc.*, 103 B.R. 521, 523 (D. N.J. 1989), *Aff'd*, 908 F.2d 964 (3d Cir. 1990) (emphasis added). The Debtor bears the burden of proving that the Plan is confirmable and meets the requirements of Section 1129 of the Bankruptcy Code.

23. "The court must be reasonably satisfied that the business is likely to perform in the real world as well as the proponent projects it will in the courtroom. Once reorganized, the business must be able to be economically viable under the repayment provisions of the plan." *Lakeside Global*, 116 B.R. at 507. "Income projections offered in support of reorganization plans 'must be based on concrete evidence of financial progress, and must not be speculative, conjectural or unrealistic.'" *M&S Assocs.*, 138 B.R. at 849 (*quoting In re Sound Radio, Inc.*, 103 B.R. at 524). "In addition, the proponent must prove that the debtor will have available credit and the ability to meet capital expenditures." *Id*. "[T]he longer the proposed plan, the more difficult it is for the debtor to prove feasibility." *In re Mallard Pond*, 217 B.R. 782, 785 (M.D. Tenn. 1997) ("[i]t is axiomatic that proof of feasibility is an easier task when the payout is done over a short period of time.").

24. Here, the Plan essentially proposes the transfer of Debtor's assets to NewCo in exchange for payment to secured creditors and an equity interest in NewCo – but only if the Project Financing occurs. There is no detail on the other assets that will be part of the "roll up," no financial projections for NewCo, and no basis for a creditor to evaluate the likelihood of the Project Financing taking place or providing a debt structure that NewCo can support. At a minimum, adequate information within the meaning of Section 1125 must include: (a) substantiation of opinions set forth by the proponent; and (b) the basis for the plan and the data on which the proponents rely. S. Rep. No. 989, 95th Cong., 2d Sess. 120-121 (1978). *See also In re Egan*, 33 B.R. 672, 676 (Bankr. N.D. Ill. 1983).

25. Finally, the Plan is also unconfirmable because the Debtor has provided inadequate information to allow this Court, creditors and parties in interest to evaluate the feasibility of the Plan. Further, the Disclosure Statement does not provide for an adequate explanation of other sources of funding of the Plan.

B. The Disclosure Statement Does Not Contain Adequate Information

26. Section 1125 of the Bankruptcy Code provides that an acceptance or rejection of a plan of reorganization may not be solicited until after a disclosure statement approved by the bankruptcy court as containing "adequate information" has been prepared and distributed. 11 U.S.C. § 1125.

27. Section 1125 of the Bankruptcy Code defines the term "adequate information" as: "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and record, …, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan. …" 11 U.S.C. § 1125(a)(1).

28. Before a creditor votes on a plan of reorganization, the creditor should have information relevant to the risks being taken by them in supporting the proffered plan of reorganization. "The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan." *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987). Some of the factors that courts consider when determining whether a disclosure statement contains adequate information are: (i) a complete description of the available assets and their value; (ii) information regarding claims against the estate; (iii) information relevant to the risks being taken by the creditors; (iv) the actual or projected value that can be obtained from avoidable transfers; (v) the relationship of the debtor with affiliates; and (vi) a disclosure of transactions with insiders. *In re Dakota Rail, Inc.*, 104 B.R. 138, 142-143 (D. Minn. 1989). None of these items are disclosed adequately in the Disclosure Statement.

29. Here, because the Debtor's Plan does not detail the marketing efforts, financial projections, financing proposals, sources of valuations, purchase terms, detailed itemizations and valuations of all available assets, it flatly confounds the ability of this Court and any interested parties to evaluate the feasibility of the Plan and to assess its risks. The Disclosure Statement makes multiple allusions to proprietary knowledge and intellectual property, sometimes owned by Debtor, sometimes controlled by Debtor, but always without specifics. The Plan does not provide for any alternative means to pay creditors in the event that the Roll Up does not occur.

30. At a minimum, by not disclosing the above information, the Debtor's Disclosure Statement is inadequate and should not be approved.

31. As indicated herein, the Debtor's Plan is unconfirmable.

IV. RESERVATION OF RIGHTS

32. This Objection is not meant to be all-inclusive of the Objector's concerns with the Disclosure Statement and Plan. The Objector reserves its 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 Objector respectfully requests that this Court enter an Order denying approval of the Disclosure Statement; and that the Court grant such other and further relief to which it may be justly entitled.

Dated: November 16, 2016

GODFREY & KAHN, S.C.

/s/ Carla O. Andres
Carla O. Andres
State Bar No. 1020997
GODFREY & KAHN, S.C.
200 South Washington Street, Suite 100
Green Bay, WI 54301-4298
Phone: 920-432-9300
Fax: 920-436-7988
Email: candres@gklaw.com

Attorneys for Little Rapids Corporation