

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:)	
)	Chapter 11
)	
Green Box NA Green Bay, LLC)	Case No. 16-24179
)	
Debtor.)	
)	
)	

**OBJECTION OF THE SECURITIES AND EXCHANGE COMMISSION
TO DEBTOR’S PROPOSED PLAN AND DISCLOSURE STATEMENT**

The Securities and Exchange Commission (“SEC”), objects to the First Amended Chapter 11 Plan (“Plan”) and Disclosure Statement (“Disclosure Statement”) filed by Green Box NA Green Bay, LLC (“Debtor” or “GBGB”) because the Plan impermissibly seeks to discharge the Debtor and enjoin the SEC and other governmental entities from pursuing their police and regulatory powers. 11 U.S.C. §§ 1125, 524(e), 1141(d)(3)(A). In support of its objection, the SEC respectfully states as follows:

INTRODUCTION

The Debtor’s Plan is no plan at all but a wish, and its greatest wish is that the SEC and other governmental agencies would go away. The Plan purports to discharge the Debtor in contravention of Section 1141(d)(3)(A) and enjoin actions against the Debtor and non-debtors that would impermissibly restrict the SEC from pursuing actions for violations of the federal securities laws.¹

¹ At this time, the SEC’s objection is limited only to protecting its rights to enforce the federal securities laws and safeguard investors and the markets. The fact that the SEC has not objected to adequacy of disclosure should not be construed as a representation as to the

The SEC is aware that some of these issues may constitute objections to confirmation of the Plan. To avoid the potential waste of time and resources involved in distribution and solicitation with respect to an unconfirmable plan, it is appropriate to raise these objections to the Plan at the disclosure stage of the case. A court may disapprove a disclosure statement if the plan, on its face, does not meet the confirmation standards of Chapter 11. *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012); *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999). As discussed more fully herein, the Plan is facially unconfirmable and therefore the Debtor cannot meet the requirements of Section 1125 with respect to any disclosure statement submitted in connection with the Plan.

DISCUSSION

The Commission objects to approval of the Disclosure Statement because it describes a Plan that cannot be confirmed because it includes a provision that would permanently enjoin actions against the Debtor and non-debtor third parties in contravention of Section 524(e) of the Bankruptcy Code and the controlling law of the Seventh Circuit. Section 524(e) of the Bankruptcy Code provides that only debts of the debtor are affected by the Chapter 11 discharge provisions. Yet, the Plan includes a broad injunction that would benefit non-debtors from the Debtor's bankruptcy by effectively obtaining their own discharges with respect to claims arising from past wrongdoing or negligence and estop the SEC from pursuing actions for violations of the federal securities laws. In addition, the Plan purports to discharge the Debtor in contravention of Sections 1141 of the Bankruptcy Code. Since the Debtor has proposed a liquidating plan, under Section 1141(d)(3)(A), GBGB is not entitled to a discharge. Unless this provision is modified or deleted from the Plan, the Plan cannot satisfy the requirements of

validity of the characterizations or factual statements made by the Debtor in the Disclosure Statement.

Section 1129(a)(1) of the Bankruptcy Code, which requires that a plan shall be confirmed only if it complies with all applicable provisions of Chapter 11. 11 U.S.C. § 1129(a)(1).

I. The SEC is Investigating Whether Ronald Van Den Heuvel or the Green Box-related Entities Violated the Federal Securities Laws.

The SEC is currently investigating whether Ronald Van Den Heuvel, entities he founded or operated, or their officers, directors, owners, or employees, violated the antifraud provisions of the federal securities laws. The Commission is examining, among other things, whether Van Den Heuvel or others, including RTS and GBGB, made misrepresentations to investors in the course of securities offerings, and whether money raised through offerings was misused. Part of this inquiry focuses on whether Van Den Heuvel and his companies, including RTS and GBGB, followed corporate formalities, or if they commingled the assets and liabilities of the various entities.

Van Den Heuvel has been involved in several securities offerings relating to his “Green Box” paper-recycling process since 2012. GBGB and its parent company, Environmental Advanced Reclamation Technology HQ, LLC (“EARTH,” a/k/a Reclamation Technology Systems, LLC (“RTS”)), appear to be responsible for one set of offerings. In addition, another subsidiary of EARTH, Green Box NA Detroit, LLC (“Green Box Detroit”), appears to have participated in a different offering made to investors participating in the EB-5 immigrant investor program administered by the United States Customs and Immigration Service (“USCIS”).² It also appears that EARTH offered several different types of guaranties of the EB-5 investments in Green Box Detroit, including guaranteeing, through Van Den Heuvel, the refund of EB-5

² The Green Box Detroit-related offering was sponsored by an entity called Green Detroit Regional Center, LLC (“GDRC”), a USCIS-designed Regional Center authorized to offer EB-5 investments. Neither Green Box Detroit nor GDRC are parties to GBGB’s bankruptcy case, nor are any of the other Van Den Heuvel-related entities.

investors' \$500,000 investments should their visa application be denied. In addition, EARTH, through Van Den Heuvel, appears to have represented to EB-5 investors that it had pledged up to \$40 million of its assets as security for their investments related to Green Box Detroit.

In April 2016, Van Den Heuvel allegedly stepped down from his role as managing member of RTS and Green Box-related entities. At that time, Stephen A. Smith, an investor in RTS and GBGB, took over the day-to-day management of RTS and its subsidiaries and affiliates. However, Van Den Heuvel maintains indirect ownership of RTS and GBGB through a trust arrangement that Smith claims to have negotiated to remove Van Den Heuvel from control of RTS and related entities.

II. The Plan Impermissibly Discharges the Debtor and Releases Non-Debtors.

Article VII of the Plan contains a broad plan injunction that is tantamount to a third party release and a discharge of the liquidating Debtor. Article VII provides that all actions and claims against not only the Debtor but also the non-debtor, RTS, will be permanently enjoined.³ Since Van Den Heuvel indirectly owns the majority of RTS, the Plan purports to shield RTS and Van Den Heuvel from the SEC's police and regulatory power.

³ Article VII provides:

Commencing on the Effective Date, except as expressly otherwise provided in this Plan, the holders of All Claims shall be enjoined from asserting against the Debtor on RTS, LLC, or their assets and properties, any other or further liabilities, Liens, obligations, or Claims, including but not limited to all principal and accrued and unpaid interest on the debts of the Debtor, based on any act or omission, transaction, or other activity or security interest or other agreement of any kind or nature occurring, arising, or existing prior to the Confirmation Date that was or could have been the subject of any Claim, whether or not Allowed. All legal or other proceedings and actions seeking to establish or enforce liabilities, Liens, Claims or obligations of any nature against the Debtor, RTS, LLC, or assets or properties received or retained by RTS, LLC with respect to debts and obligations, if any, of the estate arising before the Confirmation Date shall be permanently stayed and enjoined, except as otherwise specifically provided in this Plan.

The SEC alerted the Debtor that this provision runs afoul of the Bankruptcy Code and the law of this Circuit and requested that appropriate carve-out language be included in the Plan.⁴ Debtor's counsel assured the SEC that he would include carve-out language and represented to the same to this Court at the original disclosure hearing held on October 19, 2016. However, the SEC was deeply disturbed when the Amended Plan failed to include the negotiated carve-out language. It is clear from representations from Debtor's counsel that the Debtor intends to use the Plan to impermissibly shield GBGB and RTS from the SEC's police and regulatory powers. Email from Paul Swanson to Angela Dodd, dated November 10, 2016. ("We don't want to see that thwarted mid-stream by problems that RVDH may be embroiled in."). Attached hereto as Exhibit 1. The Disclosure Statement further makes clear that the Debtor intends to curtail the rightful powers of governmental entities. Disclosure Statement, pp. 24. (The Plan is intended to "provide for a clear and level playing field *without external threats* due to the prior actions of management of the Debtor or any of its related companies.") (emphasis added).

Section 1141(d)(3) of the Bankruptcy Code provides that a corporate debtor cannot obtain a discharge if it has liquidated all or substantially all of its assets and does not engage in business after confirmation. The Debtor cannot secure a discharge through the injunction provision in Article VII to which it is not entitled under the Bankruptcy Code.

⁴ The SEC requested, and the Debtor agreed, to include the following language:

Notwithstanding any provision herein to the contrary or an abstention from voting on the Plan, no provision of the Plan, or any order confirming the Plan, (i) releases any non-debtor person or entity from any Claim or cause of action of the SEC; (ii) enjoins, limits, impairs or delays the SEC from commencing or continuing any Claims, causes of action, proceedings or investigations against any non-debtor person or entity in any forum; or, (iii) precludes the SEC from commencing or continuing any investigation or taking any action pursuant to its police or regulatory function against the Debtors or Reorganized Debtors, but only to the extent permitted under Sections 362(b)(4), 524 and 1141 of the Bankruptcy Code.

Moreover, it is impermissible to restrict governmental actions through injunctive or release provisions in a Chapter 11 plan. The Seventh Circuit has limited plan provisions that seek to release non-debtors to truly unusual circumstances. *In re Ingersoll Inc.*, 562 F.3d 856 (7th Cir. 2009); *In re Airadigm Commc'ns. Inc.*, 519 F.3d 640 (7th Cir. 2008). The Seventh Circuit cautioned that such releases are not “always - or even normally – valid” and that most will not “pass muster.” *Id.* at 865. The proposed injunction does not grow out of extraordinary circumstances. Despite this clear precedent, however, the Debtor seeks approval of Plan provisions which permanently enjoin and release claims of creditors against non-debtor third parties.

On its face, the injunction is contrary to controlling law and constitutes an impermissible violation of Section 524(e) that renders the Plan unconfirmable. Accordingly, it is not allowable in the Seventh Circuit and renders the Plan unconfirmable and therefore the Debtor cannot meet the requirements of Section 1125 with respect to any disclosure statement submitted in connection with the Plan.

CONCLUSION

WHEREFORE, for the reasons stated above, the SEC respectfully requests that the Court enter an order denying approval of the Disclosure Statement unless the Injunction under Article VII is modified or deleted from the Plan.

Dated: Chicago, Illinois
November 16, 2016

Respectfully submitted,

/s/ Angela D. Dodd

Angela D. Dodd, IL #6201068
Senior Bankruptcy Counsel

COUNSEL FOR SECURITIES
AND EXCHANGE COMMISSION
Chicago Regional Office
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
Telephone: (312) 353-7400
E-mail: dodda@sec.gov

CERTIFICATE OF SERVICE

I, Angela Dodd, do hereby certify that a copy of the foregoing was served on the parties that receive electronic notification in these proceedings on this 16th day of November, 2016.

/s/ Angela Dodd

Attorney for the
Securities and Exchange Commission
175 West Jackson Blvd., Suite 900
Chicago, Illinois 60604
Telephone: (312) 353-7400
E-mail: dodda@sec.gov

From: [Paul Swanson](#)
To: [Dodd, Angela D.](#)
Cc: ssmith@glenarborpartners.com; EKolasinski@pcfibretech.com
Subject: RE: Green Box NA Green Bay, LLC
Date: Thursday, November 10, 2016 10:55:30 AM

Angela,

There are no longer any third party releases in the Plan. I carved out the RVDH equity interests separately so any of the other "innocents" who hold equity hopefully won't be dragged unwittingly into his problems should they arise. We provided a mechanism to pay back those who have advanced into this venture from the profits, should this get off the ground.

Frankly, if we get this confirmed, there will be a tremendous expenditure of time and money to implement the business project roll-up which ultimately gets the people and entities that got sucked into this paid. We don't want to see that thwarted mid-stream by problems that RVDH may be embroiled in.

After due consideration, we felt it better to just reorganize the debtor and provide a mechanism within it to deal with the unsecured claims. Given all the guarantees, we can accomplish this end through the mechanism we have devised for the Plan.

Sincerely,

Paul G. Swanson
Attorney at Law



107 Church Avenue
P.O. Box 617
Oshkosh, WI 54903-0617
Tel. 920.235.6690
Fax. 920.426.5530
E-Mail: pswanson@oshkoshlawyers.com

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From: Dodd, Angela D. [mailto:DoddA@SEC.GOV]
Sent: Thursday, November 10, 2016 10:39 AM
To: Paul Swanson
Cc: amy.j.ginsberg@usdoj.gov
Subject: RE: Green Box NA Green Bay, LLC
Importance: High

Paul – Upon preliminary review of the Plan and Disclosure Statement that was late filed yesterday, the carve out language below has not been included in the Plan as you agreed. I will remind you that you not only agreed orally to me that the carve out would be included in the Plan, but you made the same representation on the record to the Court during the October 19, 2016 hearing. I am deeply disturbed that the Plan does not include the language to which you agreed on behalf of the debtor. I expect you to file an amended Plan and Disclosure Statement by the close of business today with the following carve out language:

Notwithstanding any provision herein to the contrary or an abstention from voting on the Plan, no provision of the Plan, or any order confirming the Plan, (i) releases any non-debtor person or entity from any Claim or cause of action of the SEC; (ii) enjoins, limits, impairs or delays the SEC from commencing or continuing any Claims, causes of action, proceedings or investigations against any non-debtor person or entity in any forum; or, (iii) precludes the SEC from commencing or continuing any investigation or taking any action pursuant to its police or regulatory function against the Debtors or Reorganized Debtors, but only to the extent permitted under Sections 362(b)(4), 524 and 1141 of the Bankruptcy Code.

Please confirm that you will file the amended Plan and Disclosure Statement by close of business today.

Angie Dodd

From: Dodd, Angela D.
Sent: Friday, October 14, 2016 10:38 AM
To: Paul Swanson
Subject: RE: Green Box NA Green Bay, LLC

Paul – As per our conversation this morning, please confirm that the Debtor will include the carve-out language below in its pending plan. Thank you,

Angie

From: Dodd, Angela D.
Sent: Thursday, October 06, 2016 4:39 PM
To: 'Paul Swanson'
Subject: RE: Green Box NA Green Bay, LLC

Paul – Thank you for taking the time to touch base with me this afternoon. I am including some standard carve out language below. We routinely request such language in cases where there are third party releases included in a Plan.

Notwithstanding any provision herein to the contrary or an abstention from voting on the Plan, no provision of the Plan, or any order confirming the Plan, (i) releases any non-debtor person or entity from any Claim or cause of action of the SEC; (ii) enjoins, limits, impairs or delays the SEC from commencing or continuing any Claims, causes of action, proceedings or investigations against any non-debtor person or entity in any forum; or, (iii) precludes the SEC from commencing or continuing any investigation or taking any action pursuant to its police or regulatory function against the Debtors or Reorganized Debtors, but only to the extent permitted under Sections 362(b)(4), 524 and 1141 of the Bankruptcy Code.

I look forward to hearing from you.

Angie

Angie Dodd
Senior Bankruptcy Counsel
Securities and Exchange Commission
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7400 (direct)
Fax: (312) 353-7398
dodda@sec.gov

From: Paul Swanson [<mailto:PSwanson@oshkoshlawyers.com>]
Sent: Thursday, October 06, 2016 3:43 PM
To: Dodd, Angela D.
Subject: Re: Green Box NA Green Bay, LLC

I am at a conference at LSU and tied up but will try to return your call(I presume you are the SEC message). Break soon.

Sent from my iPhone

On Oct 6, 2016, at 11:46 AM, Dodd, Angela D. <DoddA@SEC.GOV> wrote:

Paul – I am contacting you concerning the pending disclosure hearing scheduled for October 19, 2016. I have concerns regarding the plan and disclosure statement that I would like to discuss. Are you planning on going forward with the October 19 hearing? I look forward to speaking with you.

Angie

Angie Dodd
Senior Bankruptcy Counsel
Securities and Exchange Commission
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7400 (direct)
Fax: (312) 353-7398
dodda@sec.gov