

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

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In re: Green Box NA Green Bay, LLC,

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

Debtor.

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**UNITED STATES TRUSTEE'S OBJECTION  
TO THE DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT**

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The United States Trustee, by Attorney Amy J. Ginsberg, objects to the approval of the Debtor's First Amended Disclosure Statement ("Disclosure Statement") because it fails to provide adequate information including: (1) facts supporting its *pro forma* financial projections; (2) information related to the \$2.5 million necessary to perform the due diligence before equity investment can be sought on the capital market; (3) information about unpaid real estate taxes in excess of \$450,000; (4) the absolute priority rule; and (5) transactions with insiders. In support of this objection, the United States Trustee states:

***I. Factual Background***

1. This is the Debtor's second attempt to present a Disclosure Statement which provides adequate information to creditors, as required by 11 U.S.C. § 1125. This version of the Disclosure Statement omits the non-disclosure agreement as a condition precedent to receiving financial projections. Yet, the effect on creditors is the same—an absence of factual financial information.

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## **II. *The Disclosure Statement Fails to Provide Adequate Information***

2. 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.

3. 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).

### **A. *The Disclosure Statement Fails to Provide the Facts Underlying its Financial Projections***

4. 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).

5. The Disclosure Statement requires a discussion of the debtor’s future business needs to include detailed analysis of projected revenue, expenses, and surplus funds to pay claims. *In re Cardinal Congregate*, 121 B.R. 760, 767 (Bankr. S.D. Ohio 1990). Merely attaching *pro forma* income calculations is insufficient. *Id.*

6. The Disclosure Statement only includes *pro forma* financials, starting with “Month One.” The Disclosure Statement does not inform the reader of the year in which “Month One” will occur. Nevertheless, the Debtor states that its cash-flow will increase four fold in the first three years. The Debtor fails to provide facts to support the anticipated growth, leaving creditors to speculate how the Debtor will achieve this multi-fold growth. The Disclosure Statement does not provide creditors with sufficient information to independently analyze the Debtor’s projections. Moreover, because the Debtor failed to disclose adequate financial facts, creditors are left an unequal playing field for the confirmation hearing.

**B. When Will the Nationally Recognized Investment Bank Underwrite the Debtor’s Solicitation of Investors, if at all?**

7. In both Disclosure Statements and in Court, the Debtor states that a “nationally recognized investment bank” will underwrite a solicitation for investors to bring the \$176 million in new money necessary pay off the existing creditors, and fund the new paper reclamation project. *See* Disclosure Statement, p. 19.

8. Before the still unnamed investment bank can solicit investors, the Debtor must pay it \$2.5 million to perform “due diligence” is just one of the prerequisites for soliciting new investors from the capital markets. *See* Disclosure Statement, p. 14; p. 19. The Disclosure

Statement glosses over how the Debtor will raise that \$2.5 million. Creditors are asked to take it on faith that Chairman Steve Smith is working to raise the funds. No additional facts are offered for creditors to evaluate this statement. Moreover, the \$2.5 million brings the project to the “next stage.” The “next stage” is not defined. *See* Disclosure Statement, p. 14.

9. The Disclosure Statement does not address how the federal indictment of Ron Van Den Heuvel, the primary equity holder, albeit through various trusts and the like, may affect the length of time necessary for the due diligence process, assuming the Debtor can raise the \$2.5 million. *See* Disclosure Statement, p. 39.

**C. *The Disclosure Statement Fails to Address \$450,000 in Unpaid Property Taxes***

10. On November 9, 2016, Brown County, Wisconsin filed its Proof of Claim for \$458,075 for unpaid property taxes for the years 2013, 2014 and 2015.

11. The Disclosure Statement fails to address unpaid real estate taxes.

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

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

13. The Debtor’s 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). *See* Disclosure Statement, p. 39.

**E. *The Disclosure Statement Still Fails to Value Intellectual Property***

14. According to the Disclosure Statement, “the intellectual property has been previously evaluated by independent consultants, which [sic] have placed significant value on it.” *See* Disclosure Statement, p. 20.

15. The Disclosure Statement should itemize this intellectual property; identify the owner of the intellectual property; a valuation of the intellectual property; and if anyone holds an exclusive license to use any of the intellectual property.

*F. The Disclosure Statement Fails to Address Transactions with Insiders*

16. As discussed more thoroughly in the United States Trustee's Motion to Dismiss, the Debtor failed to disclose transactions with insiders in its Statement of Financial Affairs.

17. Continuing in this vein, the Disclosure Statement fails to address transactions with insiders in the Disclosure Statement.

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: November 17, 2016

PATRICK S. LAYNG  
United States Trustee

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AMY J. GINSBERG  
Attorney for the United States Trustee