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 SECOND AMENDED PLAN AND DISCLOSURE STATEMENT

The Securities and Exchange Commission ("SEC") objects to the Second 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 release non-debtor third parties and discharge the Debtor.[1] 11 U.S.C. §§ 524(e), 1125, 1141(d)(3)(A). In support of its objection, the SEC respectfully states as follows:

INTRODUCTION

Responding to the sweeping injunction proposed by the Debtor has turned into a game of Whack-A-Mole. As soon as the Court ordered the removal of one non-debtor (RTS), the Debtor sought to release another (NewCo). At the last disclosure hearing, the SEC objected that the Debtor's proposed plan purported to discharge the Debtor in contravention of Section 1141(d)(3)(A) and enjoin actions against non-debtors that would impermissibly restrict the SEC from pursuing actions for violations of the federal securities laws. This Court ordered that the

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. That the SEC has not objected to adequacy of disclosure should not be construed as a representation as to the validity of the characterizations or factual statements made by Debtor in the Second Amended Disclosure Statement.

Debtor remove non-debtor parties from the injunction. [Court Minutes and Order, Dkt. 137, p.2]. Yet, the Debtor has once again included a provision that would permanently enjoin actions against a non-debtor third party (NewCo) in contravention of Section 524(e) of the Bankruptcy Code and the controlling law of the Seventh Circuit. The Court should reject Debtor's proposal to include NewCo in the injunction for the same reason it ordered RTS removed. Further, the injunction acts as a discharge of the Debtor in contravention of Section 1141(d)(3), and is therefore improper.[2]

DISCUSSION

The Plan includes a broad injunction that operates as a release of non-debtor liabilities. While the Debtor removed Environmental Advanced Reclamation Technology HQ, LLC ("EARTH," a/k/a Reclamation Technology Systems, LLC ("RTS")) from the injunction in Article VII of the Plan upon this Court's order, it added NewCo in its place. NewCo will acquire assets of the Debtor as part of a supposed future waste reclamation and recycling business. Plan, Art. 1.17. In exchange, the Debtor will receive 30% of NewCo's equity. Disclosure Statement, p. 43. Stephen Smith, the managing member of the Debtor, testified at the previous disclosure hearing that NewCo was a new and separate entity from the Debtor. NewCo has not filed its own petition under Chapter 11 and therefore is a non-debtor. Thus, the broad injunctive provision in the Plan is tantamount to a third party release in favor of the non-debtor, NewCo. It is impermissible to restrict governmental actions through injunctive or release provisions in a Chapter 11 plan. The Debtor admitted that it intends to shield NewCo from legitimate actions by

2 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. *See 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).

the SEC.[3] Despite Seventh Circuit precedent, the Debtor once again seeks approval of Plan provisions that permanently enjoin and release claims of creditors against non-debtor third parties.[4] This Court has already ordered that the Debtor remove non-debtor parties from release and injunctions in the Plan. On its face, the injunction is contrary to controlling law and constitutes an impermissible violation of Section 524(e) that renders the Plan unconfirmable.

Further, the Plan injunction discharges the Debtor in contravention of Section 1141 of the Bankruptcy Code. Section 1141 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 should not be permitted to end-run the Bankruptcy Code to secure a discharge through an injunction.

The Debtor is currently not operating a business. Under the Plan, substantially all of the assets of the Debtor will be transferred to NewCo. In a newly added provision to the Plan, the Debtor states that it will retain the Kool Units and undertake to develop and sell the units. This new business plan represents a complete reversal of the Debtor's prior position that it would sell the Kool units on the open market or surrender them to Cliffton Equities, Inc. ("Cliffton"). [First Amended Disclosure Statement, Dkt. 116, p. 34]. It appears that this newfound interest in developing the Kool units is intended to thwart the SEC's objection to the Debtor's discharge by fabricating an ongoing business. The Debtor wholly fails to set forth a workable plan for this self-styled business. Indeed, the Plan provides that Cliffton may elect to take back any piece of its collateral, including the Kool Units. Given that the revenue necessary to make distributions

---

3 The Debtor states that, "Specifically, the Securities and Exchange Commission has been investigating the activities of RVDH and current management has proposed this Plan in order to provide an entity on an ongoing basis that is not liable for any of the debts or offenses of RVDH or his entities." Disclosure Statement, p. 26. Thus, the Debtor intends that NewCo benefit from the Debtor's bankruptcy by estopping the SEC from pursuing appropriate actions for violations of the federal securities laws.

4 *In re Ingersoll Inc.*, 562 F.3d 856 (7th Cir. 2009); *In re Airadigm Commc'ns. Inc.*, 519 F.3d 640 (7th Cir. 2008).

contemplated under the Plan to pay Cliffton the value of the Kool Units is highly speculative, it is likely that Cliffton will demand the return of the Kool Units. Cliffton has already moved for relief from the stay to exercise all of its rights and remedies with respect to the Cliffton collateral. [Motion for Relief from Stay, Dkt. 129]. Cliffton recognizes that it is highly unlikely that a plan can be confirmed that would compensate Cliffton for its collateral. *Id*. at p. 11. Thus, the Debtor's supposed "ongoing business" is unconvincing.

The Bankruptcy Code does not allow for a discharge under these circumstances. Section 1141(d)(3) 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 real motivation behind this Plan is to impermissibly restrict the lawful police and regulatory actions of the SEC, not to engage in a legitimate business.

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
December 12, 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 12th day of December, 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