

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

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In the Matter of:

In Bankruptcy No.  
16-24179-BEH 11

**GREEN BOX NA GREEN BAY, LLC,**

Debtor.

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**WISCONSIN ECONOMIC DEVELOPMENT CORPORATION'S  
BRIEF IN SUPPORT OF CONVERSION TO CHAPTER 7**

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Wisconsin Economic Development Corporation (“WEDC”), a creditor and party-in-interest, in support of conversion of this case to Chapter 7, rather than dismissal, respectfully represents to and requests from the Court as follows:

**INTRODUCTION**

WEDC has been asked to provide specific facts demonstrating the basis for one or more claims or assets, including fraudulent transfer claims, that may be owned by the Debtor, Green Box NA Green Bay, LLC (“Debtor”), as of the date of the filing of this case on April 27, 2016, and administered by a hypothetical Chapter 7 trustee for the benefit of creditors.

As more particularly described below, these facts consist of, for example:

- The marked difference between the Debtor’s previously-disclosed assets and the Debtor’s currently-disclosed assets;

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- The undercapitalization of the Debtor, combined with the commingling of assets between the Debtor and several related entities, and common management of the Debtor and the same related entities; and
- The Debtor’s management, which: (a) previously included a Chairman, Ronald Van Den Heuvel (“RVDH”), now both guilty and federally indicted in two separate cases, the latter of which directly implicates his actions occurring during his management of the Debtor in this case; (b) currently necessarily admits a lack of understanding of certain relevant pre-petition transactions; and (c) for the purposes of this case, is a new Manager, Stephen Smith (“Smith”), who is also the President and CEO of GlenArbor Capital, a major creditor of the Debtor.

Any one of these categories of facts would be sufficient to compel the conversion of this case to Chapter 7.

### **ARGUMENT**

#### **I. THE DEBTOR’S PRE-PETITION AND POST-PETITION DISCLOSURES DEMONSTRATE THE TRANSFER, MISCHARACTERIZATION, AND/OR NON-DISCLOSURE OF NUMEROUS VALUABLE ASSETS.**

Attached to the Affidavit of Brian Nowicki filed herewith are three documents. The first attached document, a Balance Sheet for the Debtor as of June 30, 2014, for example, shows:

1. Patents & Intellectual Property—not just licensed to the Debtor, but owned by the Debtor;
2. Ownership of a “TAK Case”, or Case No. 14-CV-01203-WGC (E.D. Wis.), Tissue Technology LLC, Partners Concepts Development Inc, Oconto Falls

Tissue & Tissue Products Technology Corp v. TAK Investments LLC & Sharad Tak (trial held September 18, 2017 and September 19, 2017, and pending decision following post-trial briefing);

3. Ownership of 50% of “WFRT”, an unknown company or asset; and
4. Ownership of 60% of “PCDI”, or Partners Concepts Development, Inc.

(*see* Nowicki Aff., Ex. N-1). None of these assets or interests appear on the Debtor’s Petition, Schedules, or Statement of Financial Affairs filed in this case (*see* Docket 14).

The second document attached to the Affidavit of Brian Nowicki is a flowchart of the Debtor’s alleged parent company, E.A.R.T.H. (*see* Nowicki Aff., Ex. N-2). This document, among other things:

1. Confirms the Debtor’s 60% ownership in PCDI; and
2. Further claims the Debtor’s 60% ownership in Patriot Tissue, LLC.

Neither asset or interest is disclosed in Debtor’s Petition, Schedules, or Statement of Financial Affairs filed herein (*see* Docket 14).

The importance of the Patriot Tissue, LLC ownership is demonstrated by the third document attached to the Affidavit of Brian Nowicki—Patriot Tissue, LLC’s Balance Sheet as of December 31, 2014 (*see* Nowicki Aff., Ex. N-3). As evidenced by its Balance Sheet, Patriot Tissue was or is not a minor company. It had combined assets of over \$17 million.

This case should be converted to Chapter 7, if nothing else to investigate the additional assets the Debtor claimed to own within the two (2) years of the filing of this case and have somehow since disappeared.

II. THE DEBTOR IS THE ALTER EGO OF ONE OR MORE RELATED COMPANIES.

Whether an entity is the alter ego of another requires examination of the three (3) factors outlined by the Supreme Court of Wisconsin in *Consumers Co-Op of Walworth County v. Olsen*. See 142 Wis. 2d 465, 484, 419 N.W.2d 211 (1988). Those factors are:

1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
2. Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and
3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

*Consumers Co-Op*, 142 Wis. 2d at 484 (citation omitted).

In this instance, the Debtor testified at least two times through RVDH prior to the filing of this case. On the first occasion, RVDH testified regarding an equipment list combined the assets of not less than ten (10) RVDH-related companies (*see* Thill Aff., Ex. T-3). According to RVDH, “We create this list daily. . . . Every time we move or sell equipment, the list changes” (*see id.*, Ex. T-1 at 13:9 & 11-12). When asked who has used the equipment, RVDH testified, “All four of those entities [PCDI, Green Box NA Green Bay, TPTC, and now Eco Hub]” (*see id.*, Ex. T-1 at 26). Indeed, employees of the Debtor itself operated and maintained machines allegedly owned by E.A.R.T.H. for not just E.A.R.T.H, but “For Glen Arbor or Quotient . . . or RVDH” (*see id.*, Ex. T-1 at 57-58). Even the payments for the Debtor’s Utica leases were paid by five different entities—PCDI, Green Box NA Green Bay, TPTC, Eco Hub, and RVDH Development (*see id.*, Ex. T-1 at 30-31).

This is because for the Debtor, an alleged \$277 million company, “There was only one bank account, ever” (*see id.*, Ex. T-1 at 27:24). When pressed about current location and ownership of equipment, RVDH refused to answer and stated, “I have criminal investigations you’re well aware of, and I am not going to go into every company and where everything is owned today . . . ” (*see id.*, Ex. T-1 at 43:16-18).

Just two (2) days after giving the above testimony, RVDH pled the Fifth Amendment to virtually every question asked, including the following:

- Being an officer, director, or manager of the Debtor and numerous related entities (*see id.*, Ex. T-2 at 124-126);
- Removing two (2) computers containing information regarding the Debtor from his possession (*see id.*, Ex. T-2 at 126-127);
- Having no documents to confirm the ownership or liens listed on the joint equipment spreadsheet (*see id.*, Ex. T-2 at 127);
- Transferring a Kool unit out of state without the receiver’s permission (*see id.*, Ex. T-2 at 129);
- Destroying computer records (*see id.*, Ex. T-2 at 141);
- Failing to disclose the location of the Debtor’s assets (*see id.*, Ex. T-2 at 154);
- Transferring property within the three (3) years prior (*see id.*, Ex. T-2 at 160);
- Making payments to insiders (*see id.*); and
- Insufficiently capitalizing the Debtor (*see id.*, Ex. T-2 at 164-165).

All of the answers to these questions entitle WEDC to an adverse inference. *See Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551 (1976).

Whether the Debtor is entitled to property of one or more other RVDH-related entities must be examined a Chapter 7 trustee.

III. THE DEBTOR'S PRE-PETITION ACTIVITIES ARE CLOUDED BY ACTUAL OR ALLEGED CRIMINAL ACTIVITY, LACK OF KNOWLEDGE, AND/OR INHERENT CONFLICTS OF INTEREST.

There is a large void in pre-petition information and documentation available to both the Debtor's current management and its attorneys. This has occurred for several reasons. First, it has long been established in this case that the Debtor was previously chaired by RVDH, a man who has now pled guilty to conspiracy to commit bank fraud (*see* Thill Aff., Ex. T-5), and is further charged with more than a dozen counts of wire fraud and unlawful financial transactions involving the Debtor in this case (Docket 330, Ex.). Second, even at the point of the Debtor's plan confirmation, "A substantial portion of the important documents have yet to be returned" (Docket 182:14). Third, Mr. Kolasinski did not join the Debtor until late 2015 (Docket 182:22). Fourth, the Debtor's current Manager, Smith, did not assume that position until April of 2016 at the earliest (Docket 182:12). Accordingly, neither the current attorneys nor management of the Debtor can hardly state with any certainty what exactly the Debtor and/or RVDH did or did not do in the months or years leading up to the filing of this bankruptcy case. Of course those transactions are precisely what a Chapter 7 trustee is charged to investigate.

Additionally, Smith is of course both the current Manager of the Debtor and a principal of GlenArbor Capital, "a significant investor in the project prior to Fall 2015" (Docket 182:10 & 21). This relationship is on its face a conflict. However, outside of the facial conflict, "Indeed, RVDH relied on the advice of GlenArbor as an investor in moving

the project forward . . .” (Docket 182:10). Creditors and a neutral third party are entitled to know exactly what advice GlenArbor provided and what occurred as a result. To the extent the Debtor has any claims against GlenArbor and GlenArbor is ostensibly left in charge of the Debtor, it is highly questionable whether those claims would ever be prosecuted, much less reviewed or even considered. These claims would also be assets of the bankruptcy estate as of the date this case was filed.

### **SUMMARY**

This case should be converted to one under Chapter 7 of the Bankruptcy Code to allow a Chapter 7 Trustee the opportunity to pursue any claims of the Debtor. A Chapter 7 Trustee will have significant guidance in doing so. The above facts recounted by WEDC in this Brief are specific, multiple, and real. They are not fictional or abstract.

### **CONCLUSION**

**WHEREFORE**, WEDC, for the reasons stated herein and on or to be on the record, respectfully requests the Court convert this matter to a case under Chapter 7 of the Bankruptcy Code, and grant WEDC the relief requested herein any other relief in this matter deemed fair and/or equitable, including but not limited to its attorneys’ fees and costs.

Dated this 20th day of November, 2017.

**MURPHY DESMOND S.C.**  
Attorneys for Wisconsin Economic  
Development Corporation

By: /s/ Brian P. Thill  
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