

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

GREEN BOX NA GREEN BAY, LLC,

Debtor

Case No. 16-24179

**OBJECTION OF CROSSGATE PARTNERS, LLC AND ADVANCED RESOURCE
MATERIALS, LLC TO ENTRY OF ORDER APPROVING DISCLOSURE
STATEMENT DATED SEPTEMBER 26, 2016**

Crossgate Partners, LLC (“Crossgate”) and Advanced Resource Materials, LLC (“ARM”), as creditors and parties in interest, by and through their counsel, Godfrey & Kahn, S.C., hereby object to the entry of an order approving the disclosure statement dated September 26, 2016 [Dkt. No. 81] (the “Disclosure Statement”) filed by Debtor Green Box NA Green Bay, LLC (the “Debtor”). To the extent that the objections, in whole or in part, contained herein are deemed to be an objection to confirmation of the Plan of Liquidation dated September 26, 2016 [Dkt. No. 82] (the “Plan”) rather than, or in addition to, an objection to the adequacy of the Disclosure Statement, Crossgate and ARM reserve the right to assert such objection, as well as any other objections, to confirmation of the Plan.

Crossgate and ARM respectfully state as follows:

I. PROCEDURAL BACKGROUND

1. On April 27, 2016, the Debtor filed a 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.

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2. 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.

3. On September 26, 2016, the Debtor filed its Plan and Disclosure Statement. A hearing to consider approval of the Disclosure Statement is currently scheduled for October 19, 2016.

II. OBJECTION

a. The Disclosure Statement Fails to Provide Adequate Information Under Section 1125 of the Bankruptcy Code.

4. Section 1125 of the Bankruptcy Code prohibits the solicitation of votes on a reorganization plan prior to court approval of a written disclosure statement (after notice and a hearing) which contains “adequate information.” *See* 11 U.S.C. § 1125(a)(1). The “adequate information” requirement is designed to help creditors in their negotiations with debtors over the plan. *See Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988); *In re Ferretti*, 128 B.R. 16, 18 (Bankr. D.N.H. 1991) (the purpose of a disclosure statement is to provide “adequate information” to creditors to enable them to determine whether to accept or reject a proposed plan). Adequate information is defined by the Code 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 records, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan.

See 11 U.S.C. § 1125(a)(1).

5. Courts have held that an acceptable disclosure statement must contain “simple and clear language delineating the consequences of the proposed plan on [creditors’] claims and the possible [Bankruptcy] Code alternatives so that [creditors] can intelligently accept or reject

the Plan.” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988). Some of the factors that courts consider when determining whether a disclosure statement contains adequate information include: (i) a complete description of the available assets and their value; (ii) information regarding the 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, 142-43 (Bankr. D. Minn. 1989).

6. Here, the Disclosure Statement fails to adequately disclose information regarding claims by Crossgate and ARM against the estate. These claims arise from the extension of \$700,000 in credit to the Debtor or its affiliates. The Debtor granted Crossgate security interests in a Kool unit on September 2, 2014, when Crossgate provided Green Box NA Green Bay, LLC, the Debtor, and Ronald Van Den Heuvel, the Debtor’s principal, a loan for \$200,000. Crossgate perfected its security interest in the Kool unit by filing a UCC financing statement with the Wisconsin Department of Financial Institutions on September 3, 2014. Crossgate agreed to extend credit on these terms after an attorney representing the Debtor at that time provided an opinion to Crossgate on August 29, 2014 that the Kool unit was the property of Green Box NA Green Bay, LLC, the Debtor, and was free and clear of all liens.

7. On March 18, 2015, ARM wired \$500,000 to the Debtor under the terms of an Operating Agreement for GB-ARM, LLC, an entity in which Crossgate’s affiliate, ARM, and the Debtor had an interest.

8. The Disclosure Statement and Plan note the existence of two Kool units, and allege that creditor Clifton Equities, Inc.’s (“Clifton”) claim is secured in part by these two

units. While it appears that Cliffton did file a financing statement on June 19, 2014 covering “any tire or pellet liquefaction thermal degradation units purchased from Kool Manufacturing Company using Loan proceeds,” Cliffton did not advance funds to the Debtor for the purchase of any Kool unit until November 13, 2014, after the recording of Crossgate’s interest. The actual amount of the funds Cliffton advanced to the Debtor for purchase of the Kool units in which Cliffton claims a security interest was \$300,000. Thus, the Disclosure Statement contains an apparent misstatement concerning the extent of Cliffton’s interest in the Kool units.

9. The Disclosure Statement and Plan ignores the Debtor’s obligations to Crossgate and Crossgate’s security interest in the Kool units. Crossgate therefore objects to the Disclosure Statement for failing to provide necessary information concerning the claims against the estate.

III. RESERVATION OF RIGHTS

10. This Objection is not meant to be all-inclusive of the Objectors’ concerns with the Disclosure Statement and Plan. The Objectors reserve the 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 Objectors 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 the Objectors may be justly entitled.

Dated this 18th day of October, 2016.

/s/ Jonathan T. Smies _____

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