IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	)	Chapter 11
GROEB FARMS, INC.	)	Case No. 13-58200
Debtor.	)	Hon. Walter Shapero

DEBTOR'S OMNIBUS REPLY TO THE OBJECTIONS TO THE DEBTOR'S DISCLOSURE STATEMENT

Groeb Farms, Inc. (the "Debtor"), by and through its attorneys Foley & Lardner LLP, hereby files this reply (the "Reply") to the objections (the "Objections") to the Debtor's disclosure statement filed by the Groeb family, and the Potential Class Representatives (collectively the "Objectors")[1] and respectfully states as follows:

Introduction

On November 6, 2013, shortly after the Objections were filed, the Debtor filed amended versions of the Disclosure Statement and Plan. As described in more detail below, the Debtor respectfully submits that those amendments—which are the product of constructive negotiations between the Debtor and its key creditor constituents, including the official creditors committee, concluding with the agreements embodied in the Amended Plan—address substantially all of the Objections, thus rendering them moot for purposes of the Disclosure Statement hearing. Nonetheless, to the extent the Objectors maintain that certain additional information should be included in the Disclosure Statement, the Debtor remains open to working with them to resolve their concerns, in the interest of providing such disclosure as the Court deems appropriate. What

[1] The Groeb Objection may be found at Dkt. No. 178, and the Class Objection may be found at Dkt. No. 182.

the Debtor is not open to—and what the law does not permit—is turning the Disclosure Statement hearing into a mini-confirmation hearing. Neither Objector has claimed that the current Plan, which has the support of the Committee and the Debtor's Senior Lender, is patently unconfirmable. The Objectors should not be permitted to delay the steady progress of this largely consensual reorganization by asserting confirmation objections in the context of the Disclosure Statement hearing.

A. The Requirements of Section 1125(a) of the Bankruptcy Code

It is well established that the central determination to be made by a court in connection with the approval of a disclosure statement is whether the disclosure statement contains adequate information to enable a hypothetical investor to make an informed judgment to accept or reject the related chapter 11 plan, with such adequacy being evaluated on a case by case basis. *See* 11 U.S.C. § 1125(a); *see also In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (finding that the adequacy of a disclosure statement "is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties"). To comply with the mandate under 11 U.S.C. § 1125(b) to provide a disclosure statement containing "adequate information," the debtor, at a minimum, must provide the following information: a description of the business; a history of the debtor prior to filing; financial information; a description of the plan; how the plan is to be implemented; a liquidation analysis; a description of management retained and the compensation of the personnel retained; a projection of operations; a description of litigation; transactions with insiders; and tax consequences. *In re Malek*, 35 B.R. 443, 443-46 (Bankr. E.D. Mich. 1983).

Accordingly, the purpose of a disclosure statement hearing is not to determine the confirmability of a proposed Chapter 11 plan but, rather, the adequacy of the information set forth in the disclosure statement. *In re Dow Corning Corp.*, 227 B.R. 111, 119 (Bankr. E.D. Mich. 1998) (observing that "the drafters were mindful that a debtor in chapter 11 does not enjoy the financial ability to provide a detailed prospectus" and reasoning that "in determining what constitutes adequate information, . . . a compromise or balance had to be struck between supplying the necessary information to creditors, while at the same time recognizing the unique status of a chapter 11 debtor").

Thus, any challenges to a debtor's plan are procedurally improper at a disclosure statement hearing, and should be deferred to a hearing to consider confirmation of the plan in accordance with the process governing the confirmation hearing.[2] *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988) (finding that "[i]f the creditors oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan's confirmability will await the hearing on confirmation"). Significantly, parties may not circumvent the plan confirmation process by raising confirmation issues under the guise of adequacy of information objections to a debtor's proposed disclosure statement. Indeed, the disclosure statement approval process cannot be used as a strategic mechanism to delay a debtor's plan confirmation efforts or further an objecting party's litigation position. *In re Waterville Timeshare Grp.,* 67 B.R. 412, 413 (Bankr. D.N.H. 1986) (finding that objections designed to "delay and hobble the efforts of the [plan proponent] to put a plan before the court" are improper under section 1125(a) of the Bankruptcy Code).

[2] Generally, courts will consider confirmation issues at a disclosure statement hearing only where the proposed Chapter 11 plan is patently not confirmable. *See In re Quigley Co., Inc.,* 377 B.R. 110, 115-16 (Bankr. S.D.N.Y. 2007) (overruling objections to, and approving, the Debtor's disclosure statement since it contains "adequate information," and did not describe a plan that is unconfirmable as a matter of law).

B. Response to Objections

The Disclosure Statement clearly satisfies the disclosure requirements under section 1125 of the Bankruptcy Code. The Disclosure Statement stands at 64 pages, over half of which are devoted to summarizing the Plan, treatment of Claims under the Plan, and potential tax consequences associated therewith. In addition, the Disclosure Statement walks through the best interests test and provides detailed liquidation analysis in connection therewith. It also provides a detailed overview of the Debtor's business, financial projections, a summary of events in this chapter 11 case to date, and a thorough description of the voting process contemplated by the solicitation procedures. Nevertheless, in an effort to continue the progress to date in this case, the Debtor proposes to supplement the Disclosure Statement with additional language to the Disclosure Statement to assuage the Objectors' concerns with adequacy of disclosure, as set forth below.

a. Disparate Treatment

One Objector claims that the Disclosure Statement "fails to provide a meaningful explanation for the proposed disparate treatment among unsecured creditors" in classes 5A, 5B, and 5C. In the interest of trying to resolve the Objection through disclosure, the Debtor proposes to add the additional language contained in Exhibit 1 hereto.

b. Valuation of the Litigation Trust

The information the Debtor believes is sufficient to address this Objection may be found in Article 5, paragraphs 7 and 8 of the Amended Disclosure Statement. However, the valuation of the Litigation Trust cannot yet be determined because of ongoing settlement negotiations with certain creditor constituencies, including each of the Objectors.

c. Valuation of the Reorganized Debtor and Secured Claim Positions

The Groeb Objectors claim that the value of the Reorganized Debtor is not adequately described. The Debtor would propose to add the additional language to the Amended Disclosure Statement as outlined in Exhibit 1 attached hereto to address the Groeb Objectors' concern regarding valuation of the Reorganized Debtor:

The Groeb Objectors also claim that it is not clear whether the Class 3 and Class 4 secured claims are over or undersecured. As shown by the Liquidation Analysis filed on October 1, 2013, in a liquidation scenario, both classes would be undersecured, and there would be no distribution to any class of unsecured creditors. In any event, this is a confirmation issues which need not be further addressed in the Amended Disclosure Statement.

d. Releases

The Objectors each raised concerns regarding the information regarding releases in the Disclosure Statement.[3] This information is contained in the Amended Disclosure Statement at Article 11, and the definition of Released Parties is located in Article 1.117 of the Amended Plan. The Debtor believes that this new information adequately addresses the concerns raised by the Objectors as to the adequacy of information regarding the release provisions of the Plan.

Conclusion

The Debtor believes that the issues raised by the Objectors can be satisfied by the new information provided in the Amended Disclosure Statement and by the information the Debtor has already offered to include, as described herein. Therefore, the Debtor respectfully requests that this Court approve its Amended Disclosure Statement and order such other relief as is just and proper under the circumstances.

[3] The Class Objectors signed a Restructuring Support Agreement ("RSA") before this case was filed in which they agreed they would take no action to impede the Plan. The Debtor believes that the filing of the Class Objection was designed to impede the Plan by delaying confirmation, and that the Class Objectors are in violation of their obligations under the RSA.

Date: November 7, 2013

FOLEY & LARDNER LLP

By: */s/ Tamar N. Dolcourt*

Judy A. O'Neill (P32142)
John A. Simon (P61866)
Tamar N. Dolcourt (P73425)
500 Woodward Ave., Ste. 2700
Detroit, MI 48226
313.234.7100
joneill@foley.com
jsimon@foley.com
tdolcourt@foley.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit 1: Proposed Additional Language for Disclosure Statement

The Debtor proses to insert language similar to the following to address certain Objections. The Debtor provided similar language to counsel for the Groeb Objectors on November 7, 2013, but received no response.

a. Disparate Treatment

Article 2 would be revised to include this language:

> The Claim treatment described [in Classes 5A, 5B, and 5C] reflects the negotiations between the Debtor, the Committee, and the Secured Lender to best balance the competing interests of creditors and to address the Debtor's present and future business needs. As more fully discussed below in Article 3.C.4., the Debtor faced significant difficulties with its trade creditors during the period preceding this case. The treatment afforded to Class 5A Claims is designed incentivize vendors to provide goods and related services to restore the Debtor's depleted inventory. Without these goods and services, the reorganization will not be possible. The treatment afforded to Class 5C ensures that the numerous small claims against the Debtor will be satisfied with minimal administrative expense to the estate.

In turn, Article 3.C.4. would be revised to include, in part, the following:

> Certain vendors required the Debtor to pay old invoices as well as cash-on-delivery for new deliveries, further exacerbating the Debtor's liquidity issues. The Debtor's inventory has also been strained by the competition for the limited supply of honey in the marketplace. Vendors have multiple avenues for sale of their product, and due to the Debtor's limited ability to pay for product, vendors can and have chosen not to sell to the Debtor when there are other willing customers.

b. Valuation of the Reorganized Entity

The Amended Disclosure Statement would be revised to include this language:

Pursuant to the Plan, upon the Effective Date, the Reorganized Debtor is projected to have the following capitalization:

A. Exit Facility Revolver with approximately $15 million of funded debt;
B. $5 million Exit Facility Term Loan;
C. $3 million of New Subordinated Notes;
D. An obligation of $4.8 million to holders of Class 5A Trade Claims that have entered into a New Trade Agreement with the Debtors (to the extent if that the full amount is not payable to holders of Class 5A Claims, such excess will be drawn on the exit

facility and funded into the General Unsecured Claims Litigation Trust pursuant to the Plan); and

E. Equity interests resulting from the conversion of DIP Facility Claims and Senior Loan Claims in a total amount of $10 million.

In total the capitalization of the Reorganized Debtor is forecast to be approximately $37.8 million. In addition to the above items, the Plan contemplates the distribution of additional equity related interests from both the New Warrants and the Management Incentive Plan. The Plan contemplates that the Debtor's Secured Lender, who is funding this reorganization, will receive the majority of the equity of the Reorganized Debtor. As part of the Plan negotiations, the Secured Lender determined that $10 million of equity is the appropriate balance between debt and equity for the ongoing capitalization of the business.