

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
SCHOOL SPECIALITY INC. <i>et al</i> ,	:	Bankruptcy No. 13-10125(KJC)
	:	
	:	Hearing Date: January 30, 2013 @ 9:00 a.m.
Debtor.	:	Objection Deadline: N/A

**OBJECTION AND RESERVATION OF RIGHTS OF THE UNITED STATES TRUSTEE
TO THE DEBTORS MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1),
364(E) AND 507 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11
U.S.C. § 363, (C) TO GRANT PRIMING LIENS AND SUPERPRIORITY CLAIMS TO
THE DIP LENDERS, (D) TO PROVIDE ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND
364, AND (E) TO REPAY IN FULL AMOUNTS OWED IN CONNECTION WITH THE
PREPETITION SECURED LOANS OR OTHERWISE CONVERTING THE
PREPETITION SECURED OBLIGATION INTO POSTPETITION SECURED
OBLIGATIONS (D. I. 12)**

In support of the U. S. Trustee's Objection and Reservation of Rights to the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) to Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) to Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, and (E) to Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligation into Postpetition Secured Obligations; (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(a) and (c); and (III) Granting Related Relief (D. I. 12) ("Motion"), Roberta A. DeAngelis, the United States Trustee for Region 3 ("U. S. Trustee"), by and through her undersigned counsel, states as follows:

1. This Court has jurisdiction to hear the above-referenced Objection and Reservation of



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Rights.

2. Pursuant to 28 U.S.C. § 586, the U. S. Trustee is charged with the oversight of the administration of Chapter 11 cases.

3. Pursuant to 11 U.S.C. § 307, the U. S. Trustee has standing to be heard with regard to the above-referenced Objection and Reservation of Rights.

4. On January 28, 2013, (the “Petition Date”), the Debtors herein filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

5. The U. S. Trustee has not yet appointed a statutory committee of unsecured creditors in these cases. However, a meeting to consider the formation and the appointment of an Official Committee of Unsecured Creditors is scheduled for February 5, 2013.

6. On January 28, 2013, the Debtors filed the present Motion seeking Debtor-in-Possession (“DIP”) financing subject to certain terms and conditions and the entry of an interim order concerning DIP financing (“Interim Order”). The DIP financing includes lending by certain asset-based lenders (the “ABL Lenders”) with Wells Fargo Capital Finance, LLC, as the ABL Lenders administrative agent and Bayside Finance, LLC (“Bayside”).

7. The U. S. Trustee does not object to relief that provides for DIP funding to the extent actually necessary to stabilize the Debtors’ business pending a final hearing and the ability of a Committee to respond to the Motion.

8. However, the U. S. Trustee does object to the Interim Order as proposed, especially where it attempts to provide the lenders with a vehicle to convert pre-petition secured debt to post-petition secured debt with additional “superpriority” administrative expense status (*i.e.*, a “Roll-up”).

9. In the present case, and as more fully set forth in the Motion, the Bayside DIP Facility¹ provides for a \$50 million DIP loan facility with availability of up to \$25 million in the interim. The Bayside DIP Facility, upon the entry of a final order, provides for a complete Roll-up of Bayside's pre-petition debt due Bayside of approximately \$94.67 million which amount includes a \$25 million pre-petition make-whole penalty. The ABL DIP Facility provides for an availability of up to \$175 million with a complete and immediate Roll-up of the ABL pre-petition debt of approximately \$47.62 million. Under the Debtors' budget, it is anticipated that by the end of February (week No. 4 of the Debtors' budget) only \$8.98 million of the ABL DIP Facility will be utilized.

10. Aside from the Roll-up, the fees and expenses, especially as set forth in paragraph 6(b) of the Interim Order related to the Bayside DIP Facility, appear to be excessive.

11. This Court should not permit the roll-up of any pre-petition secured debt upon the entry of the Interim Order and should not approve the fees and expenses that are being requested.

12. Accordingly, given the expedited scheduling of the hearing on the Motion, the U. S. Trustee continues to review the Motion and other documents filed in these cases and therefore reserves any and all of her rights, remedies, duties and obligations found under law, equity or otherwise, to assert any other and further objections at tomorrow's hearing, and to, *inter alia*, conduct discovery, and modify, amend, supplement or augment this Objection and take whatever other actions that may be deemed necessary and appropriate.

¹ Any capitalized terms not otherwise defined herein are ascribed the same meaning herein as set forth in the Motion.

WHEREFORE the United States Trustee requests that this Court grant relief consistent with this Objection and Reservation of Rights and/or grant such other relief that this Court may deem appropriate and just.

**ROBERTA A. DEANGELIS
UNITED STATES TRUSTEE**

By: /s/Richard L. Schepacarter
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Dated: January 29, 2013

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SCHOOL SPECIALITY INC. <i>et al</i> ,	:	Bankruptcy No. 13-10125(KJC)
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CERTIFICATE OF SERVICE

I certify that on January 29, 2013, I caused to be served a copy of the United States Trustee's Objection and Reservation of Rights to the Debtors Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Post-petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) to Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) to Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, and (E) to Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligation into Postpetition Secured Obligations (D. I. 12) to be served *via* email to the following persons:

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