

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket Nos. 12 and 86

LIMITED OBJECTION OF AMERICAN ART CLAY CO., INC., ACCO BRANDS USA LLC AND MEAD PRODUCTS LLC TO THE DEBTORS' MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(3), 364(D)(1), 364(E) AND 507, (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 OBLIGATIONS INTO POSTPETITION SECURED OBLIGATIONS

American Art Clay Co., Inc. ("AMACO"), ACCO Brands USA LLC ("ACCO") and Mead Products, LLC ("Mead", and together with AMACO and ACCO, the "Objectors"), by and through their undersigned attorneys, hereby submit this limited objection (the "Objection") to the Debtors' *Motion for Entry of Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) and 507, (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*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811); Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassrooDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939).



Converting the Prepetition Secured Obligations into Postpetition Secured Obligations [Docket No. 12] (the “**Motion**”). In support of this Objection, the Objectors respectfully state as follows:

BACKGROUND

1. On January 28, 2013 (the “**Petition Date**”), the Debtors each filed before this Court a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors continue to remain in control of their properties and operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. After a hearing on January 30, 2013, the Bankruptcy Court entered an Interim Order on January 31, 2013 [Docket No. 86] (the “**Interim Order**”), granting certain interim relief requested in the Motion.²

3. Pursuant to paragraph 32 of the Interim Order, a Final Hearing on the Motion is scheduled for February 25, 2013, at 11:00 a.m., and objections to the entry of a Final Order on the Motion are required to be filed no later than February 15, 2013, at 4:00 p.m. (prevailing Eastern time).

4. In footnote 2 on page 2 of the Motion, the Debtors indicated that they will provide a proposed Final Order on the Motion “upon appropriate notice in advance of the Final Hearing.” To the best knowledge of the Objectors, no proposed form of a Final Order has yet been filed in the Chapter 11 Cases.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Interim Order.

BASIS FOR OBJECTION AND RESERVATION OF RIGHTS

5. The Objectors each supplied goods and/or services on an unsecured basis to one or more of the Debtors, and hold substantial claims in the Chapter 11 Cases which arose prior to the Petition Date.

6. There is no authority under the Bankruptcy Code or any case law that allows the Final Order to alter or affect any rights, claims or defenses of the Objectors, whether they be based on reclamation, setoff or recoupment (collectively, the “**Recovery Rights**”), and any such alteration would be contrary to the principles of due process, fairness and equity.

7. Therefore, the provisions in the Final Order need to be tailored to avoid any impingement on the Recovery Rights of the Objectors. With the Recovery Rights preserved, any disputes as to the priority of claims or relative rights between the Objectors and the parties to the ABL DIP Facility or the Bayside DIP Facility (collectively, the “**Lenders**”) may later be determined when appropriate upon specific pleadings, and after notice and hearing.

8. Although perhaps unintended by the Debtors and the Lenders, certain provisions in the Interim Order – if they were carried over to or repeated in the Final Order – could literally or potentially be read or applied too broadly so as to adversely affect the Objectors’ Recovery Rights. *See, e.g.*, paragraph 14(a) on page 28,³ and paragraph 22(e) on page 42⁴ of the Interim Order.

³ Paragraph 14(a) of the Interim Order states: “All DIP Collateral shall be free and clear of all liens, claims and encumbrances, except for those liens, claims and encumbrances expressly permitted under the DIP Documents or this Interim Order.”

⁴ Under paragraph 22(e) of the Interim Order, no payment from the Cash Collateral, Prepetition Priority Collateral or DIP Collateral of “any amount on account of any claims arising prior to the Petition Date” is permitted “without the prior written consent of the Prepetition Agents,” or unless “(i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreements.”

9. To avoid such a result, Objectors respectfully submit that the Final Order should contain the following language:

Nothing herein shall alter or affect any right, claim or defense of any creditor or party to an executory contract constituting or based upon reclamation, setoff or recoupment.

10. Since a proposed Final Order has not yet been filed in the Chapter 11 Cases or otherwise been distributed to them, the Objectors hereby respectfully reserve the right later to supplement or amend this Objection, including at the Final Hearing.

11. The undersigned counsel for the Objectors has separately conveyed the above concerns and the proposed protective language to counsel for the Debtors, and hopes to resolve this Objection prior to the Final Hearing.

CONCLUSION

12. For the reasons set forth above, the Objectors respectfully request that the record related to and the contents of any Final Order entered with respect to the Motion preserve and protect the Recovery Rights of the Objectors by the inclusion of the following or comparable provision:

Nothing herein shall alter or affect any right, claim or defense of any creditor or party to an executory contract constituting or based upon reclamation, setoff or recoupment.

WHEREFORE, AMACO, ACCO, and Mead respectfully request that (I) any Final Order preserve their Recovery Rights as set forth hereinabove, and (II) they be granted such other and further relief as may be just and proper.

Dated: February 15, 2013

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