

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF DELAWARE

In re:	§	CASE NO. 13-10125(KJC)
SCHOOL SPECIALTY, INC.,	§	CHAPTER 11
Debtor	§	Joint Administration Request

LIMITED OBJECTION OF CAMERON INDEPENDENT DISTRICT AND MILAM COUNTY, TEXAS AD VALOREM TAXING ENTITIES, TO DEBTOR'S MOTION FOR ENTRY OF AN INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) AND 507, AND (B) UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (C) GRANT PRIMING LIENS AND SUPERPRIORITY CLAIMS TO THE DIP LENDERS, (D) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364, AND (E) REPAY IN FULL AMOUNTS OWED IN CONNECTION WITH THE PREPETITION SECURED LOANS OR OTHERWISE CONVERTING THE PREPETITION SECURED OBLIGATIONS INTO POSTPETITION SECURED OBLIGATIONS, (II) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c) AND GRANTING RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Cameron Independent School District and Milam County, secured creditors and parties in interest (the "Texas Taxing Entities") file this Limited Objection to Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) AND 507 (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (C) Grant Priming Liens and Superpriority Claims to the DIP Lenders, (D) Provide Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 AND 364, and (E) Repay in Full Amounts Owed in Connection with the Prepetition Secured Loans or Otherwise Converting the Prepetition Secured Obligations into Postpetition Secured Obligations, (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (III) Granting Related Relief(the "DIP Financing Motion")(doc. # 0012) and respectfully show as follows:



Background

1. The Texas Taxing Entities are political subdivision of the State of Texas, authorized and required by the Texas Constitution and laws to levy and collect taxes on taxable property within their boundaries, in order to operate and discharge their public purposes.
2. The Taxing Entities hold secured pre-petition tax claims for the 2012 and 2013 tax years¹, secured by tax liens on the tangible business personal property of the Debtor.
3. The Taxing Entities' tax liens are superior to any other secured claim in this case as provided by Article VIII, Section 15 of the Texas Constitution, and Sections 32.01 and Section 32.05(b) of the Texas Property Tax Code, including but not limited to the interests of Wells Fargo Capital Finance, LLC, the ABL Lenders, and Bayside Finance, LLC. See also Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987); Universal Seismic Associates, Inc. 288 F.3d 205 (5th Cir. 2002); In Re Winn's Stores, Inc. 177 B.R. 253 (Bkcty W.D. Tex. 1995).
4. The Certain Texas Taxing Entities filed proofs of claim on or about January 29, 2013 for \$40,606.75 (Cameron Independent School District) and \$\$39,485.12 (Milam County) plus interest at the applicable non-bankruptcy rate from the petition date.²

Post-Petition Funding Liens

5. On January 31, 2013 the Court signed an Interim Order granting post-petition financing and other relief, and setting a final hearing on the Post-Petition Financing Motion for February 25, 2013 at 11:00 a.m. (ET) (doc. # 0086).

¹ The 2013 tax assessment is not complete at this time, although the tax lien attached on January 1, 2013 as provided under Section 32.01(a) of the Texas Property Tax Code.

² The amount claimed by Texas Taxing Entities for tax year 2013 is estimated since the assessment process is not complete at this time.

6. The DIP Financing Motion and the Interim Order grant broad superpriority liens in all pre and postpetition property of the Debtors. And while these documents appear to subordinate the DIP Financing Liens to “valid, perfected and unavoidable liens in existence immediately prior to the Petition Date” the Texas Taxing Entities are unable to determine with certainty that their liens are not improperly subordinated. Paragraph 12(b), *Liens Priming Prepetition Secured Parties’ Liens*, of the Interim Order provides that the DIP Liens are a “valid...first priority senior priming security interest in and lien upon all pre-and postpetition property of the Debtors...” The Texas Taxing Entities object to any characterization of the DIP Liens as superior to the Texas Taxing Entities’ prepetition liens without providing adequate protection of those liens.

6. In light of the complexity of the DIP Financing Motion, and for the avoidance of doubt, the Taxing Entities file this objection to the DIP Financing Motion. To the extent the DIP Financing Motion does not request that the Taxing Entities’ pre-petition tax liens be subordinated to the DIP Financing, the Taxing Entities do not object to this aspect of the DIP Financing Motion.

Limited Objection to Post-Petition Financing

7. In light of the uncertainty engendered by the various provisions of the DIP Financing Motion, the Interim Order, and the agreements of the Debtors with the DIP Lenders and other creditors, the Taxing Entities are compelled to object to the entry of a Final Order to the extent that it alters the priority of their pre-petition tax liens as provided under Texas law by improperly subordinating the pre-petition tax liens to the post-petition financing requested by the Debtor.

8. 11 U.S.C. § 364(c)(1) does not provide for the granting of superpriority post-petition financing liens as to pre-petition secured Texas property tax claims.

9. Further, 11 U.S.C. § 364(d)(E) authorizes superpriority liens only when the holder of the lien is adequately protected. The Taxing Entities objects to the DIP Financing Order to the extent they not adequately protected.

10. The Texas Taxing Entities object to the DIP Funding Motion and the Interim Order to the extent that it seeks to elevate the priority of pre-petition debt that is subordinate to its tax liens to post-petition debt with priority over its pre and/or post-petition taxes.

11. The Texas Taxing Entities object to the payment of proceeds from the sale of their collateral to any party whose interest is inferior to their tax liens, unless and until they are adequately protected.

12. The Taxing Entities object to the use of their cash collateral unless until they are adequately protected.

13. The Texas Taxing Entities request adequate protection in the form of sufficient funds to pay their claims plus interest at the applicable non-bankruptcy rate set aside in a segregated account for the sole purpose of paying their claims. The Texas Taxing Entities further request that the Court enter an order that such funds shall not be paid to any other party until the Taxing Entities' claims have been paid in full, that the Taxing Entities' 2012 tax claims be paid as soon as practicable together with interest at the applicable non-bankruptcy rate, and that the Taxing Entities' 2013 and subsequent taxes, if any, be paid in the ordinary course without further order of the Court.

WHEREFORE, the Cameron Independent School District and Milam County respectfully request that the Court require the Debtors set aside sufficient funds in a segregated account for the sole purpose of paying its pre- and post-petition claims, if any, pay the 2012 taxes together with interest at the applicable non-bankruptcy rate as soon as practicable, pay the 2013 and subsequent taxes in the ordinary course, and grant them such other and further request other relief as is just and proper.

Dated: February 15, 2013.

Respectfully submitted,

PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.
Attorneys for Claimants Cameron Independent Taxing Entities,
1235 North Loop West, Suite 600
Houston, Texas 77008
(713) 862-1860 (phone)
(713) 862-1429 (fax)

/s/ Owen M. Sonik
Owen M. Sonik
Texas State Bar No. 18847250
Elizabeth Calvo Banda
Texas State Bar No. 24012238

and

McCREARY, VESELKA, BRAGG & ALLEN, P.C.
Attorneys for the County of Milam, Texas
P. O. Box 1269
Round Rock, Texas 78680
Telephone: (512) 323-3200
Facsimile: (512) 323-3205

/s/Lee Gordon
Lee Gordon
State Bar Number 08212500

CERTIFICATE OF SERVICE

I hereby certify that I have placed a copy of the above Objection to the to the Interim DIP Financing Order to the following parties by facsimile and to those parties listed on the Court's Notice of Electronic Filing by Electronic Notification on February 15, 2013.

/s/Lee Gordon

Lee Gordon

Alan W. Kornberg, Jeffrey D. Saferstein and
Elizabeth R. McColm
Paul Weiss Rifkind Wharton Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Fax : 212-492-0347

Pauline K. Morgan and Joel Waite
Young, Conaway, Stargatt & Taylor
Rodney Square
1000 North King Street
Wilmington, DE 19801
Fax : 302-571-1253

Michael Stamer, Stephen Kuhn &
Meredith Lahaie
Akin, Gump, Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Fax: 212-872-1002

David Stratton and David Fournier
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 Market Street
Wilmington, DE 19801
Fax: 302-421-8390

Randall Klein and Jeremy Downs
Goldberg Kohn
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603-5792
Fax: 312-332-2196

Paul Heath
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Fax: 302-651-7701

Carmen Lonstein
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601
Fax: 312-861-2899

Richard Shepacarter and Juliet A Sarkessian
US Trustee's Office
844 King Street, Suite 2207
Wilmington, Delaware 19801
Fax: 302-573-6497