

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: School Specialty, Inc., et al	:	Chapter 11
	:	Case No. 13-10125 (KJC)
Debtor.	:	
	:	
	:	Related to Docket No. 1258
	:	Admin Claims Deadline: July 11, 2013
	:	

**APPLICATION OF THE OHIO BUREAU OF WORKERS COMPENSATION
FOR ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE
CLAIM**

Pursuant to 11 U.S.C. §§ 503(b)(1)(B)(i) and (b)(1)(D) and, 11 U.S.C. §507(a)(2), and in response to the *Notice of (A) Entry of Order Approving Disclosure Statement on a Final Basis and Confirming Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code; (B) Occurrence of the Effective Date of the Plan; and (C) Related Deadline* (Doc 1258), the Ohio Bureau of Workers Compensation (“OBWC”) moves for the allowance and payment of the attached¹ claim as an administrative expense claim in the amount of \$63,646.04 for premiums owed by School Specialty, Inc. (“**Debtor**”), as follows:



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RELIEF REQUESTED

1. OBWC is seeking an order allowing the attached claim as an administrative expense claim because: (i) Debtor has operated post-petition, (ii) the liability claimed represents a time period arising after the petition date of January 28, 2013 and, (iii) as such this liability was incurred by the Debtor in Possession.
2. *Debtor's Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* was confirmed on June 11, 2013² and, at that same time the *Fee Claims Bar Date* was set as July 11, 2013.

JURISDICTION

3. This court has jurisdiction over the subject matter of this application pursuant to 28 U.S.C. §1334(b). This matter is a core proceeding. 28 U.S.C. §157(b)(1), (b)(2)(A).

MERITS OF THE CLAIM

4. The Claim represents Debtor's tax liability for the OBWC premiums due for the period of January 29, 2013 through June 30, 2013, and these premiums are mandated by Ohio Revised Code ("**ORC**") § 4123.35.
5. In the State of Ohio, all employers are required to maintain OBWC coverage through one of two (2) options: "state fund" employer or "self-insured" employer,

¹ See, Exhibit "1", attached hereto.

² See, Order (Doc 1186)

and offers no “private” option. As such, it has been determined that these assessments, State Fund premiums and Self-Insured assessments, are “taxes”.³

6. In this instance, Debtor applied for OBWC coverage on or about December 21, 1987 and was assigned risk account 946682 for the purpose of reporting and remitting premium liability. Subsequently, upon learning of Debtor’s bankruptcy petition, OBWC assigned risk account 1667753 to Debtor, with the effective date of January 29, 2013
7. State Fund Premiums and Self-Insured assessments are reported and remitted semi-annually. The ***First Half*** for any particular year represents the tax liability owed from January 1 through June 30 of that same year, with “***payroll reports***” and the corresponding remittance being first due, without penalty, on or before August 28 of that same year. The ***Second Half*** for that particular year represents the tax period of July 1 through December 31 of that same year, and its reports and remittance is then first due, without penalty, on or before February 28 of the following year.
8. In this instance, OBWC has prorated the first half of 2013 from January 29 through June 30, 2013. As such, payroll reports and remittance is not due until August 28, 2013, but due to the July 11, 2013 deadline, OBWC estimated and

³As there is “no opt out”, the Sixth Circuit has determined that OBWC premiums are “taxes” pursuant to 11 USC §507(a) (8). *Yoder v. Ohio Bureau of Workers' Compensation (In re Suburban Motor Freight, Inc.)*, 998 F.2d 338 (6th Cir. 1993) (“*Suburban I*”) and *Ohio Bureau of Workers' Compensation v. Yoder (In re Suburban Motor Freight)*, 36 F.3d 484 (6th Cir. 1994) (“*Suburban II*”). In so doing, it elaborated on the Supreme Court’s rule in *City of New York v. Feiring*, 313 U.S. 283, 61 S. Ct. 1028, 85 L. Ed. 1333 (1941), in which the Court held that, for the purposes of federal bankruptcy law, “taxes” are “those pecuniary burdens laid upon individuals or their property, regardless of consent, for the purpose of defraying the expenses of government or of undertakings authorized by it.” *Id.* at 285.” *In re Belden Locker Co.*, 2008 Bankr. LEXIS 849, 7-8 (Bankr. D. Ohio 2008)

submitted this administrative expense claim out of abundance of caution, to preserve OBWC ability to preserve the State Fund.

9. Keeping the foregoing in mind, as well as the fact that Ohio's worker's compensations system is "voluntary" and relies, in large part, upon the good faith reporting of the State's employers, OBWC, pursuant to 11 U.S.C. § 502(c), so as not to "*unduly delay the administration of the case*" has estimated this claim and, pursuant to 11 U.S.C. § 503(a), timely filed its claim for these administrative expenses based on the information then available and, with such being the case, OBWC submits that the claim may be imperfect.

THE OBWC CLAIM IS AN ADMINISTRATIVE EXPENSE

10. Taxes that arise post-petition are necessary for the operation, liquidation or winding down of debtor's business and should be granted administrative expense priority.⁴ Further, 28 U.S.C. §§ 959 and 960 requires Debtors to pay all state and local taxes that become due during the reorganization process. The purpose of these sections is to equalize the competitive situation of operating businesses in or out of bankruptcy by affirming the tax liability of those operated under court supervision.⁵
11. The common view of the interplay between 28 U.S.C. § 960 and the Bankruptcy Code is that it is a companion to §503(b)(1)(B) and that taxes incurred by the estate are administrative expenses.⁶

⁴ See, e.g., *In re Hillsborough Holdings Corp.*, 156 B.R. 318 (Bankr. M.D. Fla. 1993); *In re Fairchild Aircraft Corp.*, 124 B.R. 488 (Bankr. W.D. Tex. 1991).

⁵ See, *Palmer v. Webster and Atlas Nat'l Bank*, 312 U.S. 156 (1941).

⁶ See, *Matter of Woodland Builders, Inc.*, 87 B.R. 774 (Bankr. D. Conn. 1988).

12. If the Debtor/Debtor in Possession had not been able to operate its business interests in Ohio during the pendency of this Plan, the value of the estate's assets would have been reduced resulting in a loss to the estate and to creditors.
13. Based on the foregoing, OBWC is entitled to have its claim paid as an administrative expense pursuant to 11 U.S.C. §§ 503(b)(1)(B)(i) and 507(a)(2) or, in the alternative, as this Claim is not yet due, OBWC is entitled to have its claim allowed as an administrative expense, with the specific amount to be amended to reflect actual reports and, payment made immediately, thereafter.

WHEREFORE, OBWC respectfully requests an Order allowing its claims as an administrative expense claim in the amount of \$63,646.04, ordering its immediate payment or, immediate payment upon the effective date of the confirmed Plan or, immediate payment upon the Debtors filing the First Half of 2013 payrolls and those reports being accepted by OBWC and, ordering any other relief as this Court deems equitable.

Respectfully submitted,

Michael DeWine (0009181)
Attorney General of Ohio

/s/ Robert L. Doty
Robert L. Doty (0047216)
Assistant Attorney General
One Government Center, Suite 1240
Toledo, Ohio 43604-2261
(419) 245-2550; (877) 626-9294 facsimile
robert.doty@ohioattorneygeneral.gov

Attorney for Ohio Bureau of Workers Compensation.

Certificate of Service

I hereby certify that on July 1, 2013, a true and accurate copy of the above *Application of the Ohio Bureau of Workers Compensation for Allowance and Payment of an Administrative Expense Claim* was electronically filed via ECF and true and accurate copies of the foregoing were served via ECF to all those entitled to so receive such notice and via ordinary, postage prepaid, US Mail upon the following:

School Specialty, Inc.

W6316 Design Drive
Greenville, WI 54942

Pauline K. Morgan

Maris J. Kandestin

Morgan L. Seward

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

Alan W. Kornberg

Jeffrey D. Saferstein

Lauren Shumejda

Ann K. Young

Paul, Weiss, Rifkind, Wharton, &
Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064

Richard L. Schepacarter

Office of the United States Trustee
U. S. Department of Justice
844 King Street, Suite 2207
Lockbox #35
Wilmington, DE 19801

Albert Kass

Kurtzman Carson Consultants, LLC
2335 Alaska Ave
El Segundo, CA 90245

Laura S Bouyea

Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD (410) 244-7400

/s/Robert L. Doty

Robert L. Doty (0047216)
Assistant Attorney General

Administrative Expense Claim M E M O R A N D U M

To: Bankruptcy File
From: Legal, Bankruptcy Unit

Policy No. 1667753
Name of Debtor School Specialty Inc
Date: 6/20/2013

	<u>Amount</u>
<u>Post-Petition Premium Billings:</u>	
Estimated premium 1/29/13-6/30/13	\$ 63,646.04
<i>Total Post-Petition Premium Billings:</i>	\$ 63,646.04
<u>Post-Petition Penalties:</u>	
<i>Total Post-Petition Penalties:</i>	\$ -
Misc. Credits:	
Total Credits:	\$ -
 Grand Total:	 \$ 63,646.04 =====

BWC**Estimated****Payroll Report (DP-21)**

School Specialty Inc

Policy #

1667753

Federal ID #

Report #

Reporting Period

1/29/13-6/30/13

NCCI CLASSIFICATIONS

A. Manual #	B. Manual Description	C.Total Employees	D. Payroll (to nearest dollar)	E. Rate	F. Premium
8810			1682208	\$.002758	\$4,639.53
8742			284196	\$.003909	\$1,110.92
8018			1223310	\$.047327	\$57,895.59

1. TOTAL PREMIUM (Total column F)

(1) \$63,646.04

2. TOTAL DUE (If line 1 is less than \$50, enter \$50.00 minimum administrative cost)

(2) \$63,646.04

CERTIFICATION TO BWC

I hereby certify that the payroll reported herein is correct as to the classification and amount for the period stated. I understand that misrepresentation of payroll for premium purposes could lead to penalty of 10 times the amount of premium underreported, as provided by § 4123.25 of the Ohio Revised Code

Certified this _____ day of _____ 2 _____

Business Name:

CHANGES TO ACCOUNT INFORMATION

1. Provide Federal ID or SS # if not correct on front of form _____

2. Address Change _____

3. If coverage is no longer needed: Cancel date: _____

_____ Cancel entire account

_____ Cancel C-116 Elective coverage for sole proprietors/partners only

4. _____ All or _____ part of business sold to Policy # _____

Policy Name _____

Address: _____

5. If Policy/Business name has been changed, please provide: _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: School Specialty, Inc., et al	:	Chapter 11
	:	Case No. 13-10125 (KJC)
Debtor.	:	
	:	
	:	Related to Docket No. 1258
	:	Hearing Date 07/31/2013 @ 10:00 am (ET)
	:	Objection Deadline 07/24/2013 @ 4:00 pm (ET)

**NOTICE OF APPLICATION OF OHIO BUREAU OF WORKERS
COMPENSATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE
EXPENSE**

TO: DEBTOR, DEBTOR'S ATTORNEYS, UNITED STATES TRUSTEE, CREDITORS
AND OTHER PARTIES IN INTEREST

PLEASE TAKE NOTICE that on July 1, 2013, pursuant to 11 U.S.C. § 503, the Ohio Bureau of Workers Compensation electronically filed an Application for the *Allowance and Payment of an Administrative Expense Claim* in the amount of \$63,646.06 representing workers compensation premiums, as owed by School Specialty, Inc. (A copy of the Application is being served contemporaneously with this Notice.)

If you object or have concerns, you are required to file a response on or before 4:00 p.m. on July 24, 2013. Any objection should be filed with the Court:

Clerk of Courts
U.S. Bankruptcy Court
824 North Market Street
3rd Floor
Wilmington, Delaware 19801
(302)252-2900

At the same time, you must also serve a copy of the response upon the Applicant's Attorney, at:

Robert L. Doty (0047216)
Assistant Attorney General
Collections Enforcement, Toledo Regional Office
One Government Center, Suite 1240
Toledo, Ohio 43604-2261
(419) 245-2550; fax (877) 626-9294
robert.doty@ohioattorneygeneral.gov

HEARING ON THE APPLICATION WILL BE HELD ON **July 31, 2013 @ 10:00 a.m. (ET)** BEFORE JUDGE KEVIN J. CAREY

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 1, 2013

/s/ Robert L. Doty
Robert L. Doty (0047216)
Assistant Attorney General
Collections Enforcement, Toledo Regional Office
One Government Center, Suite 1240
Toledo, Ohio 43604-2261
(419) 245-2550; fax (877) 626-9294
robert.doty@ohioattorneygeneral.gov
Attorney for the Ohio Bureau of Workers Compensation

Certificate of Service

I hereby certify that on July 1, 2013, a true and accurate copy of the foregoing *Notice of Application* was filed via ECF, and true and accurate copies of the foregoing were served via ECF upon those authorized to receive such notice and, via ordinary, postage-prepaid, US Mail upon the following:

School Specialty, Inc.

W6316 Design Drive
Greenville, WI 54942

Pauline K. Morgan

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Lauren Shumejda

Ann K. Young

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2335 Alaska Ave
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Baltimore, MD (410) 244-7400

/s/Robert L. Doty

Robert L. Doty (0047216)

Assistant Attorney General

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: School Specialty, Inc., et al	:	Chapter 11
	:	Case No. 13-10125 (KJC)
Debtor.	:	
	:	
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	:	
	:	

ORDER GRANTING APPLICATION
OF THE OHIO BUREAU OF WORKERS COMPENSATION FOR
ALLOWANCE AND PAYMENT OF AN ADMISTRATIVE EXPENSE CLAIM

Pursuant to 11 U.S.C. §§ 503(b)(1)(B)(i) and (b)(1)(D) and, 11 U.S.C. §507(a)(2), the Ohio Bureau of Workers Compensation (“**OBWC**”) moved for the allowance and payment of its claim as an administrative expense claim in the amount of \$63,646.04 for premiums owed by School Specialty, Inc. (“**Debtor**”), for good cause shown and, having found that this Court has jurisdiction over the matter pursuant to 28 U.S.C. §1334(b), and that this matter is a core proceeding. 28 U.S.C. §157(b)(1), (b)(2)(A):

IT IS HEREBY ORDERED that OBWC’s application for allowance and payment of its Claim in the amount of \$63,646.04, as an Administrative Expense is granted, subject to further objection of Debtor or other party in interest.

Dated: July ___, 2013

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE