

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF DELAWARE
WILMINGTON DIVISION

IN THE MATTER OF:

CASE NO. 09-12074

BUILDING MATERIALS
HOLDING CORPORATION, et al
DEBTORS.

CHAPTER 11
Hearing: Dec. 10, 2009 at 11:00 a.m. (ET)

Local Texas Tax Authorities' Objection to Confirmation of Joint Plan of Reorganization

To The Honorable Court:

NOW COME Bexar County, Cypress Fairbanks ISD, Fort Bend County, Harris County, Coppell, Coppell ISD, Dallas County, and Tarrant County (jointly the "Local Texas Tax Authorities" or "Tax Authorities"), and Object to the Confirmation of the Debtor's Joint Plan of Reorganization. In support of their objection the Local Texas Tax Authorities would show the Court as follows:

I.

The claims of the Tax Authorities are treated in the class of claims described as Other Secured Claims (Secured Tax Claims).

II.

The secured claims of the undersigned are impaired under the Plan, and the Local Texas Tax Authorities have not accepted the plan within the time fixed to do so.

III.

The Plan provisions which deal with the secured claims of the Tax Authorities fail to provide fair and equitable treatment to the secured claim as required by 11 U.S.C. §§ 1129(b)(1) and (2)(A) in that:

- A. The Tax Authorities are entitled to express retention of all property tax liens, at the priority they now hold, until all taxes, penalties and interest protected by those liens have been paid, and they object to any priming of their statutory lien position by, or subordination to, any Exit Financing;

- B. The Tax Authorities are entitled to interest from the petition date through the Effective Date under 11 USC §506(b), as well as from the Effective Date until paid in full, both at the statutory rate of 1% per month as required by 11 USC § 511, and Texas Property Tax Code § 33.01(c).
- C. The Tax Authorities object to Plan section 4.4.2 Treatment of Other Secured Claims which provides that the tax claims will be paid over five years from the Effective Date. Pursuant to 11 U.S.C. § 1129(a)(9)(C)(ii), the Tax Authorities are entitled to payment over a period ending not later than five years from the Petition Date.

IV.

These claims arise from property taxes for the tax year 2009 due on the Debtors' property described as real and business personal property located in these tax jurisdictions. The laws of the State of Texas, Texas Property Tax Code, Section 32.05(b), give the tax liens securing the property taxes a superior claim over any other claim or lien against this property. This state priority for tax liens is retained in the Bankruptcy Code giving these claims a superior position over all other claims against this property. 11 U.S.C. § 506; Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987); Universal Seismic Associates, Inc., 288 F.3d 205 (5th Cir. 2002); and In Re Winn's Stores, Inc. 177 B.R. 253 (Bkcty W.D. Tex 1995).

V.

WHEREFORE, these Texas Ad Valorem Tax Claimants object to confirmation of the Plan due to noncompliance with the provisions of § 1129(b)(1) and (2)(A) of the Bankruptcy Code, and further request other and such relief as is just and proper.

Dated: November 23, 2009

Respectfully submitted,

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

BY: /s/ Elizabeth Weller
Elizabeth Weller (Tex. Bar No. 00785514)

2323 Bryan St. #1600
Dallas, TX 75201
469/221-5075 Phone
469/221-5003 Fax
Email: bethw@publicans.com

Attorneys for the Local Texas Tax Authorities

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the above Objection to Confirmation of the Plan of Reorganization to be served upon the following parties by First Class U.S. Mail or by electronic mail, as indicated below, and to those parties listed on the Court's Notice of Electronic Filing by Electronic Notification on November 23, 2009.

/s/ Elizabeth Weller
Elizabeth Weller

Building Materials Holding Corporation
720 Park Boulevard, Suite 200
Boise, ID 83712
Attn: Paul S. Street

Young, Conaway Stargatt & Taylor LLP
Attn: Sean M. Beach and
Robert F. Poppiti
sbeach@ycst.com
rpoppiti@ycst.com

Benesch, Friedlander, Coplan & Aronoff LLP
Attn: Bradford J. Sandler
bsandler@beneschlaw.com

Richards, Layton & Finger PA
Attn: Paul N. Heath
heath@rlf.com

Gibson, Dunn & Crutcher LLP
Attn: Michael A. Rosenthal and
Matthew K. Kelsey
mrosenthal@gibsondunn.com
mkelsey@gibsondunn.com

Arent Fox LLP
Attn: Christopher J. Giaimo Jr. and
Katie A. Lane
lane.katie@arentfox.com

Wells Fargo Bank
Paul Hastings Janofsky & Walker LLP
Attn: Kevin B. Fisher and Seth Mennillo
kevinfisher@paulhastings.com
sethmennillo@paulhastings.com

Office of the US Trustee
844 King Street, Ste 2207
Wilmington, DE 19801
Attn: Joseph McMahon