

Laurie Spindler Huffman, Esq.
Linebarger Goggan Blair & Sampson, LLP
2323 Bryan Street, Suite 1600
Dallas, Texas 75201
(214) 880-0089 Telephone
(469) 221-5002 Facsimile

Attorneys for Dallas County
and Tarrant County

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
TEXAS RANGERS BASEBALL PARTNERS,	§	Case No. 10-43400-DML
	§	
Debtor.	§	

**OBJECTION OF DALLAS COUNTY AND TARRANT COUNTY TO CONFIRMATION
OF SECOND AMENDED PREPACKAGED PLAN OF TEXAS RANGERS BASEBALL
PARTNERS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Come now Dallas County and Tarrant County (collectively, the “Tax Authorities”) and file this, their objection to confirmation of the Second Amended Prepackaged Plan of Texas Rangers Baseball Partners under Chapter 11 of the Bankruptcy Code (the “Plan”) and would respectfully show the Court the following:

1. The Tax Authorities, duly organized governmental units of the State of Texas, are the holders of claims for pre-petition ad valorem business personal property taxes for tax year 2010 assessed against property of the Debtor located within their jurisdictions in the estimated

aggregate amount of \$82,862.38.¹ The Tax Authorities' claims are secured by unavoidable, first priority, perfected liens on all of the Debtor's property pursuant to Texas Tax Code Section 32.01 and 32.05.² *In re Winn's Stores, Inc.*, 177 B.R. 253 (Bankr. W. D. Tex. 1995); *Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc.*, 894 S.W.2d 841 (Tex. App. – Eastland 1995). These liens are *in solido* and attach on January 1 of each year to all property of the property owner and to property subsequently acquired. 11 U.S.C. Section 362(b)(18); *In re Universal Seismic Associates, Inc.*, 288 F.3d 205 (5th Cir. 2002); *City of Dallas v. Cornerstone Bank, N.A.*, 879 S.W.2d 264 (Tex. App.-Dallas 1994). The Debtor's business personal property is jointly and severally liable for the full amount owed to the Tax Authorities. *Universal Seismic Assoc., Inc.*, 288 F.3d 205 (5th Cir. 2002).

2. The Plan's overall treatment of the Tax Authorities claims is dependent upon whether the Purchaser acquires the Tax Authorities' collateral or the Debtor retains it. The Purchaser appears to be acquiring the Tax Authorities' collateral. However, the Tax Authorities will address the treatment of their claims set forth in Section 4.5 (b) and other sections of the Plan from both standpoints.

3. The Tax Authorities do not object to the sale of the Debtor's assets. However, the Tax Authorities object to treatment of their claims in section 4.5(b) of the Plan (whether pursuant to the sale of their collateral or the Debtor's retention of their collateral) that does not result in the payment of year 2010 business personal property ad valorem taxes with interest from the

¹ The estimated amount of ad valorem property taxes owed for tax year 2010 is calculated using the base amount owed for tax year 2009. The actual amount will be determined in October pursuant to Texas law.

² The Tax Authorities' liens attach to all of the Debtor's tangible business personal property which includes, but is not limited to all, furniture, fixtures, equipment, machinery, vehicles, inventory and store merchandise. The proceeds of the sale of the Tax Authorities' collateral is their cash collateral pursuant to 11 U.S.C. Section 363.

petition date through the date of payment at the state statutory rate of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and post effective date of 12% per annum pursuant to 11 U.S.C. Sections 511 and 1129.

4. The Tax Authorities also object to the treatment of their claims as set forth in section 4.5 of the Plan because in the event the purchaser buys the assets that are subject to their liens, the asset purchase agreement apportions the liability for the taxes between the Debtor and the purchaser based on the closing date. Pursuant to section 2.3(f) of the asset purchase agreement, the Debtor is responsible for payment of all taxes prior to the sale closing date and the purchaser is responsible for all taxes from the closing date.³ If their collateral is purchased, this requires the Tax Authorities to look to two entities for payment of their claims and, possibly, enforcement action against two entities as well. This may also lead to a dispute concerning the amount each party must pay the Tax Authorities. Furthermore, while section 2.1 of the asset purchase agreement and its definition of “Permitted Liens” provide for the purchaser to acquire the assets subject to the liens securing year 2010 ad valorem property tax liens, nothing in the Plan or the asset purchase agreement requires the Debtor to segregate sufficient funds to cover its portion of the ad valorem property tax debt. This leaves the Tax Authorities without adequate protection of their cash collateral or the Debtor’s portion of the tax liability. Therefore, the Tax Authorities object to confirmation of a Plan that does not: (i) provide that the Tax Authorities’

³ This outcome is completely contrary to how such a transaction would take place if there were no Bankruptcy filing. Outside a Bankruptcy case, if the sale were to close before October, the liens securing ad valorem property taxes would pass through the sale unaffected and, although the seller’s personal liability for the taxes would remain, if the taxes were not paid prior to the state law delinquency date, the Tax Authorities would be entitled to seize a sufficient amount of the assets from the purchaser to satisfy all base tax, interest and penalties that accrued from the date of delinquency. Additionally, Texas Property Tax Code Section 38.081 requires a purchaser to withhold sufficient funds from the sale proceeds to pay ad valorem property taxes.

liens attach to the gross sale proceeds with the same validity, priority and extent that they attached to the assets sold; and (ii) require the segregation of sale proceeds in a sufficient amount to pay all amounts owed for year 2010 plus any interest that accrues prior to distribution of the sale proceeds to any other creditor (all of whom are junior to the Tax Authorities) against which the Tax Authorities shall hold a senior lien as adequate protection of their cash collateral and their right to payment of their claims.

5. The Tax Authorities object to section 6.2(d) of the Plan which authorizes TRBP⁴ to distribute sale proceeds to the holders of Equity Interests after making appropriate reserves for claims that are not already paid. The Tax Authorities object to payment of Equity Interests prior to payment of their claims which are secured by senior liens.

6. The Tax Authorities object to section 8.3 of the Plan which provides for no distributions on disputed claims until they become allowed claims. This provision could extend beyond the payment date in section 4.5 of the Plan which provides for the payment of the Tax Authorities' claims when they become due and owing in the ordinary course of business. Ad valorem property taxes are due and owing when the tax statements are mailed to the taxpayers. The taxpayer has a payment grace period that expires on January 31 of the subsequent year. Dallas County and Tarrant County mail tax statements during the month of October. Here, the ad valorem business personal property taxes will be delinquent under Texas law on February 1, 2011. If there is a dispute concerning their claims it could extend beyond October and perhaps beyond January 31, 2011. Regardless of when the taxes are paid, pursuant to 11 U.S.C. Sections 506(b) and 511, as oversecured creditors, the Tax Authorities are entitled to post petition interest

⁴ All capitalized terms that are not defined herein shall have the meaning as that ascribed to them in the Plan. If the term is not defined in the Plan it shall have the same meaning as that ascribed to it in the asset purchase agreement.

on their claims at the state statutory rate of 1% per month as well as post effective date interest at the state statutory rate of 12% per annum pursuant to 11 U.S.C. Sections 511 and 1129. The payment of the undisputed portion of the Tax Authorities' claims would minimize the accrual of interest on their claims pending resolution of any dispute.

7. The Tax Authorities object to confirmation of the Plan because it does not specifically provide for a disputed claims reserve. The Tax Authorities are entitled to adequate protection of their liens against the assets in the form of the segregation of funds.

8. The Tax Authorities object to the injunction in Section 11.6 and any modified injunction in any plan supplement, amended asset purchase agreement or order confirming the Plan to the extent that it prevents or may be construed to prevent the Tax Authorities from enforcing the Plan, their right to payment in full of their claims and/or liens. The Tax Authorities also object to this provision because it contradicts the proposed plan treatment of the Tax Authorities' claims as unimpaired.

WHEREFORE, PREMISES CONSIDERED, the Tax Authorities request that the Court enter an order denying confirmation of the Plan and granting them such other and further relief to which they may be justly entitled.

Dated: July 15, 2010.

Respectfully submitted,

Linebarger Goggan Blair & Sampson, LLP
2323 Bryan St., Suite 1600
Dallas, TX 75201
Ph. No. (214) 880-0089
Fax No. (469) 221-5002
laurie.huffman@publicans.com

By: /s/Laurie Spindler Huffman
Laurie Spindler Huffman (SBN 24028720)

ATTORNEYS FOR DALLAS COUNTY
AND TARRANT COUNTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically through the Court's electronic case filing system or via electronic mail upon those parties listed in paragraph 9 of the Order (I) Approving the Disclosure Statement, (II) Approving the Procedures to Solicit Acceptance of the Debtor's Prepackaged Plan (if needed), including Ballots and Notices Relating Thereto, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtor's Prepackaged Plan on this 15th day of July 2010.

/s/ Laurie Spindler Huffman
Laurie Spindler Huffman