

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re: :
 : Case No. 09-07047
 Taylor, Bean & Whitaker Mortgage Corp. : Judge Jerry A. Funk
 : Chapter 11
 Debtor. :
 :

**RESPONSE TO OBJECTION TO CLAIM OF OHIO BUREAU OF WORKERS
COMPENSATION**

The Ohio Bureau of Workers Compensation (“OBWC”) hereby responds to the Official Committee of Unsecured Creditors (the “Committee”) and Taylor, Bean & Whitaker Mortgage Corp.’s (the “Debtor”) *Objection to Claim of Ohio Bureau of Workers Compensation* (Doc 3357) (the “Objection”) by stating that the Objection is without merit and should be denied for the following reasons:

The Objection is Unsupported

1. Neither the Committee nor the Debtor (jointly, the “Movants”) have provided any evidence to support their objection. To wit:

Claimant	Proof of Claim #	Amount	Basis for Disposition	Recommended Disposition
Ohio Bureau of Workers’ Compensation, Legal Division Bankruptcy Unit, PO Box 15567, Columbus, OH, 43215	818	\$2,830.99	Upon a further reconciliation of TBW’s books and records, including payroll files between 7/1/09 and 8/5/09, the estimated workers compensation owing Ohio Bureau is only \$1,892.15.	Claim should be stricken and disallowed to the extent it exceeds \$1,892.15

2. OBWC as of this date has not received any payrolls from Debtor and/or from the Committee to establish an assessment as outlined in the “Recommended Disposition” above.

Claim 818 was Properly Estimated.

3. Because Debtor did not provide payrolls as required by Ohio Revised Code (“ORC”) § 4123.35 and because 11 USC § 502(c) requires estimation of claims so as not to *unduly delay of the administration of the case* and, to help preserve the Ohio Workers Compensation Fund, OBWC estimated and filed Claim 818.

4. Claim 818, as filed, represents OBWC premiums due pursuant to ORC §4123.35. As stated, the premiums are based on “*payroll reports*” submitted by the employer and billed semi-annually; the *First Half* payroll report and premium payment for a particular year (01/01/xx -- 06/30/xx) is due on or before August 31, 20XX and *Second Half* (07-01/xx --12/31/xx) is due on or before February 28, 20xy (the following year). In the instant case, the premiums involved are assessed against the Debtors for the *Second Half of 2009* (but only from July 1, 2009 through the petition date of August 24, 2009).¹

Claim 818 is Prime Facie Evidence of Debtor’s Liability

5. Claim 818 was timely filed² on January 18, 2010. Generally, in reference to a filed claim, the presumptive validity of such a claim is not altered, unless, an

¹ The Objection references “payroll files between 07/01/09 and 08/05/09”, but offers no explanation of the abbreviated time frame nor does it provide copies of the disputed payroll reports.

² In reviewing any governmental bar dates, the petition in this case was filed August 24, 2009. Therefore, pursuant to 11 USC §502(b)(9), the “earliest” governmental claims bar date would have expired on

objection is filed and supported by substantial evidence.³ An objecting party must raise a substantive objection, one that is contained within 11 USC § 502(b) 1-9.⁴

6. Framed differently, “prepetition claims are presumed to be *prima facie* valid and the presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal.”⁵

Claim 818 is a Tax Claim

7. Next, pursuant to 11 U.S.C. §§ 502 and 503 and, well settled case law: “in Bankruptcy, state law governs the substance of claims”.⁶ In the instant case, the substance of these claims is governed by ORC § 4123.35, this statute, the Ohio Constitution and common law, require all Ohio employers, including Debtor, to obtain compensation coverage and the statute only offers two (2) options: “state fund” employer or “self insured” employer. State fund employers pay premiums to OBWC, and OBWC administers the claims similar to any “insurance company”. Self insured, on the other hand, must qualify to administer their own claims under the supervision of OBWC. However, even if an employer operates as a self-insured, it is mandated to pay assessments (at a lower rate than the state fund employers); the State of Ohio offers no “private” option

February 20, 2010, and the claims bar date was set for June 15, 2010. Therefore, the claim as filed is timely.

³ *Brown v. IRS (In re Brown)*, 82 F.3d 801 (8th Cir. 1996); *In re Hemingway Transp.*, 993 F.2d 915, 28 C.B.C.2d 1545 (1st Cir. 1993).

⁴ *In re Guidry*, 321 B.R. 712 (Bankr. D. Ill. 2005).

⁵ *In re Fullmer*, 962 F.2d 1463, 27 C.B.C.2d 92 (10th Cir. 1992)

⁶ *Butner v. United States*, 440 U.S. 48, 57, 59 L.Ed 136, 99S Ct. 914. (See also, *Raleigh v. Ill. Dep’t of Revenue*, 530 U.S. 15 (U.S. 2000.))

.8. Finally, Claim 818 is priority tax claim. The purpose of assigning priority status to certain tax claims is to enhance the government's ability to collect them.⁷ The United States Supreme Court defines a tax as a "pecuniary burden" laid upon individuals or their property, regardless of their consent, for the purpose of defraying the expenses of government or of undertakings authorized by it."⁸ OBWC premiums are ". . . a financial obligation to a government entity. . ." that "qualifies as a 'tax'".⁹

WHEREFORE, OBWC respectfully requests that this Court enter an order which denies and overrules the above referenced Objection until such time as Debtor provides evidence of its actual payroll reports for the period of July 1, 2009 through August 24, 2009, OBWC has an opportunity to review the payroll reports and to amend Claim 818.

Respectfully submitted pursuant to
LR 2090-1(C) (2),

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

⁷ *In re Miller*, 199 Bankr. 631 (Bankr. S.D. Tex. 1996); *Ramos v. IRS (In re Ramos)*, 208 B.R. 655, 658 (D. Tex. 1996)

⁸ *New York v. Feiring*, 313 U.S. 283, 285, 85 L. Ed. 1333, 61 S. Ct. 1028 (1941); see also *New Jersey v. Anderson*, 203 U.S. 483, 492, 51 L. Ed. 284, 27 S. Ct. 137 (1906). *In re Lorber Indus. of Cal.*, 675 F.2d 1062, 1066 (9th Cir. 1982); *In re Adams*, 40 B.R. 545, 547 (E.D. Pa. 1984). See also: *In re Jenny Lynn Mining Co.*, 780 F.2d 585, 588 (6th Cir. 1986) quoting *United States v. River Coal Co.*, 748 F.2d 1103, 1106 (6th Cir. 1984). *Accord Williams v. Motley*, 925 F.2d 741, 743 (4th Cir. 1991); *In re Metro Transp. Co.*, 117 Bankr. 143, 153 (Bankr. E.D.Pa. 1990); *In re Downs*, 99 Bankr. 51, 52 (Bankr. W.D.Wash. 1987).

⁹ *Yoder v. Ohio Bureau of Workers' Compensation (In re Suburban Motor Freight, Inc.)*, 998 F.2d 338 (6th Cir. 1993) ("*Suburban I*"); *Ohio Bureau of Workers' Compensation v. Yoder (In re Suburban Motor Freight)*, 36 F.3d 484 (6th Cir. 1994) ("*Suburban II*"); *In re Belden Locker Co.*, 2008 Bankr. LEXIS 849, 7-8 (Bankr. D. Ohio 2008).

Certificate of Service

I hereby certify that on August 8, 2011, Copies of the foregoing *Response to Objection* was served via Court's electronic filing system Parties may access copies of the Motion electronically through the Court's electronic filing system and via E-Mail and/or ordinary US Mail as follows:

Ordinary Mail

Debi Evans Galler
Berger Singerman PA
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131
Email: dgaller@bergersingerman.com

ECF/ Email

Amy Denton Harris
Email: aharris.ecf@srbp.com

Russell M Blain
Email: rblain.ecf@srbp.com

Edward J. Peterson, III
Email: epeterson.ecf@srbp.com

Elena L Escamilla
Email: elena.l.escamilla@usdoj.gov
Email: ustp.region21.or.ecf@usdoj.gov

Jeffrey W Kelley
Email:
jeffrey.kelley@troutmansanders.com

Arthur J Spector
Email: aspector@bergersingerman.com

Richard C. Prosser
Email: rprosser.ecf@srbp.com

Paul S Singerman
Email: singerman@bergersingerman.com

/s/Robert L. Doty
Robert L. Doty (0047216)
Assistant Attorney General