

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	
	)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Objection Deadline: December 8, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: December 15, 2009 at 1:00 p.m. (ET)

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 AUTHORIZING AND
APPROVING THE SETTLEMENT WITH THE LIUNA PLAINTIFFS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), submit this Motion (the "*Motion*") for the entry of an order substantially in the form annexed hereto as *Exhibit A* authorizing and approving that certain Settlement Agreement (as defined herein), by and between the Debtors and the LIUNA Plaintiffs (as defined herein). In support thereof, the Debtors respectfully represent:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

RELIEF REQUESTED

2. By this Motion, the Debtors, pursuant to sections 105, 1107, and 1108 of title 11 of the United States Code (the "*Bankruptcy Code*") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), seek entry of an order authorizing and approving the Settlement Agreement (as defined herein).

BACKGROUND

3. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On June 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors' Committee*").

4. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

5. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building

materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- **SelectBuild.** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

6. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009. To implement this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

THE LIUNA ACTION

7. On November 21, 2008, February 25, 2009, and May 26, 2009, the Laborers' International Union of North America ("**LIUNA**") filed charges with the National Relations Labor Board (the "**NLRB**") on behalf of Manuel Silva, Alfredo Casillas, and Ismael Casillas-Plascencia (the "**Employees**", and together with LIUNA, the "**LIUNA Plaintiffs**") alleging that the Debtors engaged in various unfair labor practices in violation of the National Labor Relations Act (collectively, the "**LIUNA Action**"). Through the LIUNA Action, the Employees sought, *inter alia*, reinstatement and back pay.

8. The Debtors vigorously dispute the allegations raised in the LIUNA Action and do not believe that they would be found liable for any damages in the LIUNA Action if such Action were litigated to a final resolution by a trier of fact. Nonetheless, the Debtors would be forced to incur substantial expenses on legal and other fees in order to defend the LIUNA Action and there is a chance, as there is with any litigation, that the Debtors would be subjected to liability as a result of the LIUNA Action. In light of the costs attendant with continuing to litigate the LIUNA Action, the Debtors have determined, in the sound exercise of their business judgment, that it is in the best interests of the Debtors, their estates, and all interested parties to settle the LIUNA Action. Accordingly, the Debtors entered into that certain Settlement Agreement and General Release dated as of November 11, 2009 (the "***Settlement Agreement***"). Pursuant to the Settlement Agreement, the Debtors have agreed to pay the Employees a total of \$16,459.86 in back pay and in lieu of reinstatement and have agreed to place the Employees on a preferential rehire list.

BASIS FOR RELIEF REQUESTED

9. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored." *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *see also In re Penn Cent. Transp. Co.*, 596 F.2d 1102 (3d Cir. 1979) ("[I]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims") (quoting *Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

10. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the

bankruptcy court "apprise[] itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." *In re Penn Cent. Transp. Co.*, 596 F.2d 1127, 1146 (3d Cir. 1979); *see also In re Marvel Entm't Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (describing "the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate'" (quoting *In re Louise's Inc.*, 211 B.R. 798, 801 (D. Del. 1997))).

11. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a compromise should be approved. The four enumerated factors are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *accord Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006).

12. Furthermore, the decision to approve a compromise "is within the sound discretion of the bankruptcy court." *In re World Health Alternatives, Inc.*, 344 B.R. at 296; *see also In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in *In re Martin*, 91 F.3d at 393. In making its decisions, the bankruptcy court should not substitute its judgment for that of the debtor. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983) ("[T]he court does not have to be convinced that the settlement is the best possible compromise.

Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.") (internal citations and quotations omitted); *see also In re World Health Alternatives, Inc.*, 344 B.R. at 296.

13. Pursuant to the Settlement Agreement, and subject to this Court's approval, the Settlement Agreement will be in full and final satisfaction of any and all claims that the Employees have or may have against the Debtors and their estates with respect to the allegations raised in the LIUNA Action. The Debtors believe that entering into the Settlement Agreement will provide a material benefit to these estates for the benefit of all stakeholders by allowing the Debtors to avoid potentially time-consuming and costly litigation. Indeed, because the Debtors' expected cost of litigation alone exceeds the Debtors' payment of \$16,459.86 under the Settlement Agreement, the amount paid to settle the litigation is well "within the reasonable range of litigation possibilities," *In re World Health Alternatives, Inc.*, 344 B.R. at 296 (internal citations and quotations omitted), and certainly does not "fall[] below the lowest point in the range of reasonableness," *In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (internal citations and quotations omitted).

14. In light of the foregoing, the Debtors, in their business judgment, believe that the Settlement Agreement represents a compromise between the Debtors and the Employees which is fair and equitable and advances the paramount interests of the creditors of these estates. Accordingly, for the reasons set forth above, the Debtors submit that entering into the Settlement Agreement is an exercise of sound business judgment and that the Court should therefore approve the Settlement Agreement.

NOTICE

15. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the U.S. Trustee; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (c) counsel to the Creditors' Committee; (d) LIUNA; (e) the Employees; and (f) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

16. No prior request for the relief sought in this Motion has been made to this or any other court.

(Remainder of page intentionally left blank.)

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
November 25, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Objection Deadline: December 8, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: December 15, 2009 at 1:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) THE U.S. TRUSTEE; (B) COUNSEL TO WELLS FARGO BANK, AS AGENT UNDER THE DEBTORS' PREPETITION CREDIT AGREEMENT AND DIP FACILITY (AS DEFINED IN THE PLAN); (C) COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS; (D) LIUNA; (E) THE EMPLOYEES; AND (F) ANY PERSONS WHO HAVE FILED A REQUEST FOR NOTICE IN THE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the attached **Debtors' Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing and Approving the Settlement With the LIUNA Plaintiffs** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **December 8, 2009 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON DECEMBER 15, 2009 AT 1:00 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or a hearing.

Dated: Wilmington, Delaware
November 25, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	
	)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Ref. Docket No.

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 9019, AUTHORIZING AND APPROVING
THE SETTLEMENT WITH THE LIUNA PLAINTIFFS**

Upon consideration of the motion (the "**Motion**") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order authorizing and approving the Settlement Agreement² with the LIUNA Plaintiffs, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement Agreement is approved, and the terms, conditions, and provisions of the Settlement Agreement are incorporated in this Order by reference as if fully set forth herein.
3. The Debtors are authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate or otherwise enforce the terms, conditions and provisions of the Settlement Agreement.
4. The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
December _____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

AFFIDAVIT OF SERVICE

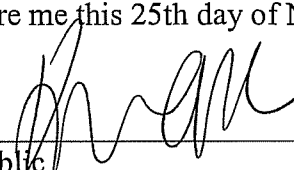
STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on November 25, 2009, she caused a copy of the **Debtors' Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing and Approving the Settlement With the LIUNA Plaintiffs** to be served as indicated upon the parties identified on the attached service lists.

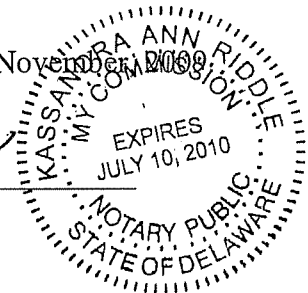


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 25th day of November, 2009.



Notary Public
My Commission Expires:



¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

**BUILDING MATERIALS HOLDING CORPORATION
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SETTLEMENT WITH LIUNA PLAINTIFFS
11/25/2009**

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