

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

**IN RE:** ) Case No. 09-12074(KJC)  
) (JOINTLY ADMINISTERED)  
**BUILDING MATERIAL HOLDING** ) Chapter 11  
**CORPORATION, *et al.*,** )  
) Courtroom 5  
) 824 Market Street  
**Debtors.** ) Wilmington, Delaware 19801  
)  
) November 19, 2009  
) 11:04 A.M.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE HONORABLE KEVIN J. CAREY  
UNITED STATES CHIEF BANKRUPTCY JUDGE

**APPEARANCES:**

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1 THE COURT: Good morning.

2 MR. POPPITI: Good morning, Your Honor. May it  
3 please the Court, for the record, Robert Poppiti from Young  
4 Conaway, Stargatt and Taylor on behalf of the debtors.

5 Your Honor, I'll be working off the agenda we filed  
6 on November 17th for today's hearing.

7 THE COURT: All right.

8 MR. POPPITI: Your Honor, Matters 1 through --  
9 Matters 1 through 8, Your Honor, have been adjourned. So, if  
10 it's all right, Your Honor, I will not walk through those, and  
11 I'll go ahead to Matter Number 9.

12 THE COURT: That's fine.

13 MR. POPPITI: Matters Number 9 and 10, Your Honor, we  
14 filed certificates of no objection. My understanding is that  
15 Your Honor signed the orders on those.

16 THE COURT: 9 through 17, orders have been signed.

17 MR. POPPITI: Okay.

18 THE COURT: I did that this morning.

19 MR. POPPITI: Great, Your Honor. Then how about we  
20 just pick up on Agenda Item 18? Agenda Item 18, Your Honor, is  
21 the Harris stay relief motion. We've been working with the  
22 movant to try to resolve this motion, Your Honor. My  
23 understanding at this point in time is that that motion will be  
24 adjourned through the December 15th hearing so that the parties  
25 can continue to work together to reach a consensual resolution.

1           However, if the parties aren't able to come to a  
2 resolution by November 25th, the debtors have represented to  
3 the movants that the movant is free to file -- or the movant is  
4 free to request that the Court enter the proposed form of order  
5 that was filed to the motion, and the debtors would not oppose  
6 that.

7           However, the intention is for the parties to continue  
8 to try to work together to try to reach a consensual resolution  
9 until that time.

10           THE COURT: All right.

11           MR. POPPITI: Your Honor, perhaps it makes some sense  
12 to skip over Agenda Items 19 and 20. They're the claims  
13 objections.

14           THE COURT: Okay.

15           MR. POPPITI: Your Honor, actually my understanding  
16 is that counsel on -- for Harris has a few items for Your  
17 Honor.

18           THE COURT: Very well.

19           MR. ALLINSON: Good morning, Chief Judge Carey. I  
20 have a motion to shorten notice that was filed with the motion  
21 for relief from stay. And it had to be determined deadlines on  
22 which it would be considered. The requested deadline and  
23 hearing date were noticed on the original notice of motion.  
24 But the motion to shorten remains unsigned. And if I may, I'd  
25 like to tender that to the Court.

1 THE COURT: All right. Was the chambers copy of that  
2 motion delivered at the time of the filing?

3 MR. ALLINSON: Your Honor, I don't know. And I can  
4 go back and check with my office --

5 THE COURT: Well, it's not necessary. Ordinarily,  
6 given the date of the filing, had a chambers copy been  
7 delivered, I would like have acted on it at that time.

8 MR. ALLINSON: Okay. I'll make sure that my office  
9 is aware of that procedure and that hopefully we can avoid this  
10 kind of procedural snafu in the future.

11 May I approach?

12 THE COURT: You may.

13 MR. ALLINSON: I've interlineated one misspelled  
14 word.

15 THE COURT: We support literacy in this court. Thank  
16 you.

17 (Laughter)

18 MR. ALLINSON: Thank you very much.

19 THE COURT: You're welcome.

20 MR. ALLINSON: May I be excused?

21 THE COURT: You may.

22 MR. ALLINSON: Thank you.

23 MR. POPPITI: Robert Poppiti again, Your Honor, for  
24 the record.

25 As I was saying earlier, it may make some sense to

1 skip over Agenda Items 19 and 20 for the moment, to Agenda Item  
2 21. And that's the seal motion that was related to a motion  
3 Your Honor previously approved. That was the motion to enter  
4 into certain insurance agreements with Ace.

5           The debtors, Your Honor, were able to work with the  
6 Office of the United States Trustee and get this matter worked  
7 out. The resolution is basically that we're going to file a  
8 redacted form of the insurance agreements, Your Honor, and  
9 nonredacted would be filed under seal.

10           If Your Honor has no questions, may I approach with a  
11 form of order?

12           THE COURT: You may.

13           MR. POPPITI And I have a blackline, as well.

14           THE COURT: All right. Thank you. Does anyone else  
15 wish to be heard in connection with this matter?

16                           (No audible response heard)

17           THE COURT: I hear no response.

18                           (Pause)

19           THE COURT: That order has been signed.

20           MR. POPPITI: Your Honor, moving back to Agenda Item  
21 19, this was the debtor's first omnibus claims objection. Your  
22 Honor, we had several responses to the claims objection and we  
23 did our best attempt to lay out what those responses were and  
24 the resolution of those responses, if we were able to resolve  
25 them. And if not, whether they were going forward.

1           So, at this point, if it's all right, Your Honor,  
2 I'll be working off Exhibit A to the agenda.

3           THE COURT: All right.

4           MR. POPPITI: Your Honor, the first three matters  
5 were either resolved or adjourned. They were the response of  
6 Joy Debus, which has been resolved. The movant -- or the  
7 respondent has confirmed that the debtors can go ahead and  
8 request the entry of the proposed form of order.

9           Matters B and C, Your Honor, the Brazos and W&F  
10 Manufacturing, they were objections by the debtors on the basis  
11 of a late filed claim. We've adjourned those to December 15th.

12           So, the first matter that would be going forward,  
13 Your Honor, is the debtors' objection to the equity claim of  
14 William T. Robertson. If I may approach, Your Honor, perhaps  
15 it would be easiest for me to hand up a copy of the proof of  
16 claim, rather than have you sift through the agenda binder.

17           THE COURT: Very well. Now, let me ask, for the  
18 record, whether Mr. Robertson or anyone on his behalf is  
19 present in the courtroom or on the telephone? I do have a note  
20 from our ECRO that none of the telephone parties who had  
21 previously signed up called in prior to the hearing. So, it's  
22 my understanding there is no telephone connection at this time.  
23 There is? We have a connection. Is anyone on the telephone?

24           OPERATOR: I am here, Your Honor. This is the  
25 operator. And Mr. Robertson has not dialed in yet.

1 THE COURT: Okay. You may proceed.

2 MR. POPPITI: Great, Your Honor.

3 Your Honor, as Your Honor can see from the proof of  
4 claim I just handed up, what Mr. Robertson or Mr. Robertson has  
5 essentially asserted here is what the debtors like to refer to  
6 as an equity claim. All he's asserted is he owns stock, common  
7 stock, as he's called it, and he's, you know, set forth a  
8 dollar amount on that stock.

9 Other than that, Your Honor, the proof of claim  
10 asserts nothing more than equity ownership. The two pages of  
11 attachments to the proof of claim are nothing more than a copy  
12 of Mr. Robertson's, you know, bank statement or trading  
13 statement, if you would, from TD Bank.

14 So, the debtors' understanding, Your Honor, is that  
15 the bar date order provides that claimants were not required to  
16 submit equity claims, in other words, proof of claims just  
17 setting forth equity ownership.

18 At that point, the debtors moved to go ahead and  
19 object to this claim and have it expunged. Mr. Robertson has  
20 obviously responded. But the debtors are where they were  
21 before, Your Honor, that the proof of claim simply sets forth  
22 ownership of stock, and that we're not required to file that in  
23 this case.

24 So, unless Your Honor has any questions, I would move  
25 that the claim be expunged.



1 THE COURT: I've reviewed the proof of claim, along  
2 with the narrative that was submitted by the claimant here.  
3 I'll note it's rather colorful.

4 MR. POPPITI: It is.

5 THE COURT: But it doesn't change the fact it's an  
6 equity claim. So, I will sustain the objection.

7 MR. POPPITI: Great. Thank you, Your Honor. And  
8 we'll hold off until we walk through the rest of the matters on  
9 the first omnibus before I hand up an order.

10 THE COURT: All right.

11 MR. POPPITI: Your Honor, skipping through Exhibit A  
12 again, the next -- the easiest way to probably deal with this  
13 is there's a bucket of 53 or so claims that have responded to  
14 the debtors' no document objection. If I may, Your Honor, I'd  
15 like to approach with what are not all of the proofs of claim,  
16 but two that I think illustrative of that 53.

17 THE COURT: Okay.

18 MR. POPPITI: May I approach?

19 THE COURT: Yes. Thank you.

20 MR. POPPITI: Your Honor, it might be helpful for me  
21 to walk through where the -- how the debtors got and where they  
22 are on these objections right now.

23 THE COURT: Okay.

24 MR. POPPITI: Your Honor, as you can see from the  
25 proof of claim, the claimants filed proof of claims that

1 basically set forth a dollar amount, and they say they're for  
2 unpaid wages and overtime. Nothing in support of them. No  
3 attachments. Just a simple one-page proof of claim, a  
4 signature, a two-word description, and a dollar amount.

5           At that point in time, Your Honor, the debtors went  
6 back to their books and records, they reviewed those records,  
7 and they found nothing in the books and records to support  
8 those amounts.

9           In light of this, the debtors were trying to figure  
10 out a way to handle these most prudently because there was a  
11 significant amount of them, Your Honor. So, what we did, Your  
12 Honor, is we looked to Local Rule 3007(1)(d) at Romanette vi.  
13 And what that says, Your Honor, is that there's no basis in the  
14 debtors' books and records, and there's insufficient  
15 documentation attached to the proof of claim. The debtors are  
16 free to object to the proof of claim nonsubstantively.

17           Your Honor, that's what we did because we believe  
18 that was the most prudent way to handle these proofs of claim.

19           Your Honor, upon filing that objection, we did  
20 receive responses from the claimants. There was 53 responses,  
21 as I said earlier. And I think it may be helpful, Your Honor,  
22 much like with the proofs of claim, to walk through perhaps one  
23 or two responses. Because, again, they're illustrative of the  
24 bucket of 53, if you would.

25           THE COURT: Go ahead.

1 MR. POPPITI: Your Honor, I'll be at Agenda Item 19,  
2 it would be behind Exhibit Tab G.

3 THE COURT: I have it.

4 MR. POPPITI: Okay. Your Honor, what the claimants  
5 did is they came back and they filed form declaration. All 53  
6 declarations were basically the same, no real changes, fill in  
7 the blanks type declarations.

8 But if you walk through it, Your Honor, I think it's  
9 relatively clear that they've added nothing more in support of  
10 this proof of claim. The first paragraph simply says that  
11 they're an adult resident.

12 The second one -- second paragraph, Your Honor, does  
13 nothing more than assert the same amount they did in their  
14 proof of claim and say it's for unpaid wages.

15 Paragraph 3 says they understand that we've objected  
16 to their claim.

17 Paragraph 4 says I worked with the company from X  
18 years to Y years, and they attach a pay stub or a W-2, not to  
19 prove their claim, but to prove that they actually worked with  
20 the debtors.

21 You skip down to Paragraph 5 and 6 and, Your Honor,  
22 all they really say is what they've said in their proof of  
23 claim, which the debtors believe is insufficient. They say  
24 here's my role at the company, I guess that I worked the number  
25 of hours a week of overtime, and here's how I got to the dollar

1 amount I set forth in my proof of claim.

2           And then you jump down to Paragraph 7 and 8, Your  
3 Honor, and it says nothing more than other people have  
4 responded in a similar manner, and I'm unable to attend the  
5 hearing.

6           So, I think, Your Honor, the debtors are where we  
7 were before, which is we don't think there's sufficient  
8 documentation in this proof of claim to support a valid claim  
9 against the debtors' estate.

10           THE COURT: I ask if anyone else wishes to be heard  
11 in connection with these responses?

12                           (No audible response heard)

13           THE COURT: I hear no response to that. The claims  
14 are similar. They claim they were paid for piecework, had  
15 worked overtime, but were never paid for that time.

16           MR. POPPITI: Correct, Your Honor.

17           THE COURT: And while there were copies of pay  
18 stubs/earning statements to prove that they had worked, and  
19 they contain estimates, but they don't often specify how much  
20 overtime was due.

21           They also assert that it's the debtor that has the  
22 time records to support the claim. But I'm assuming that no  
23 discovery requests have been made of the debtor.

24           MR. POPPITI: They have not, Your Honor.

25           THE COURT: Okay. So, really in a reversal of what



1 claim. Not that it wasn't valid, but we objected on the basis  
2 that it's not a 503(b)(9) claim because it was seeking freight  
3 charges.

4 Obviously the claimant has responded, Your Honor, and  
5 said that notwithstanding the fact that the invoices say  
6 freight charges, that freight charges doesn't mean freight  
7 charges.

8 But, Your Honor, it's still the debtors' belief that  
9 the invoices are relatively clear. The amounts for freight  
10 charges under Section 503(b)(9) of the Bankruptcy Code, freight  
11 charges are not properly entitled to priority as goods are  
12 entitled to.

13 THE COURT: Let me ask if anyone wishes to be heard  
14 in connection with this matter?

15 (No audible response heard)

16 THE COURT: The claimant is neither present nor on  
17 the telephone. But I suppose were the claimant to submit  
18 evidence that, in fact, what is labeled as freight charges were  
19 actually the provision of goods, I might be inclined to  
20 consider that. But absent such evidence, I don't think I have  
21 any choice but to sustain the objection.

22 MR. POPPITI: Thank you, Your Honor. May I approach  
23 with a form of order?

24 THE COURT: You may.

25 (Pause)

1 THE COURT: That order has been signed.

2 MR. POPPITI: Thank you, Your Honor. If Your Honor  
3 will bear with me for one moment, I would like to just take one  
4 quick look at the charge of the responses just to make sure we  
5 didn't miss anything, Your Honor.

6 THE COURT: Very well.

7 MR. POPPITI: Given the volume of responses here.

8 THE COURT: Understood.

9 (Pause)

10 MR. POPPITI: Bear with us for one moment, Your  
11 Honor.

12 THE COURT: All right.

13 MR. POPPITI: Your Honor, I think that's all we have  
14 for the Court today. And we certainly appreciate Your Honor's  
15 time.

16 THE COURT: All right. Thank you, all, very much.  
17 That concludes this hearing. Court will stand in recess.

18 MR. POPPITI: Thank you.

19 (Whereupon, at 11:20 A.M., the hearing was adjourned.)

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
23 above-entitled matter.

24 /s/ Karen Hartmann AAERT CET\*\*D0475 Date: November 28, 2009

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**UNITED STATES BANKRUPTCY COURT**  
**District of Delaware**

**In Re:**

Building Materials Holding Corporation  
720 Park Boulevard, Suite 200  
Boise, ID 83712  
EIN: 91-1834269

**Chapter:** 11

*Case No.:* 09-12074-KJC

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION***

A transcript of the proceeding held on 11/19/2009 was filed on 12/3/2009 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 12/24/2009 .

If a request for redaction is filed, the redacted transcript is due 1/4/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 3/3/2010 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 12/3/09

(ntc)

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