

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

In re: BUILDING MATERIALS HOLDING CORPORATION, et al., Debtors.	Chapter 11 Case No. 09-12074 (KJC) Jointly Administered Cure Objection Deadline: December 3, 2009 at 4:00 p.m. (ET)
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**CONTINENTAL TRADING, INC.'S OBJECTION TO NOTICE OF (I) POSSIBLE
ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
(II) FIXING OF CURE AMOUNTS IN CONNECTION THEREWITH, AND (III)
DEADLINE TO OBJECT THERETO**

Continental Trading, Inc. ("Continental") hereby objects to Debtors' classification of the parties contract as an executory contract and to the cure amount stated in the NOTICE OF (I) POSSIBLE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) FIXING OF CURE AMOUNTS IN CONNECTION THEREWITH, AND (III) DEADLINE TO OBJECT THERETO, dated October 22, 2009. Continental respectfully represents as follows:

II. OBJECTION

1. Continental objects to Debtors' classification of the parties contract as an "executory contract" and any cure amount or assumption of such contract is improper and not applicable to the parties' agreement.

2. Continental's contract with Debtors' is improperly listed as an "executory contract" on Debtors' Bankruptcy Schedule G. As a result, Continental received the above notice pertaining to the fixing of cure amounts and possible assumption of certain executory contracts. The contract between Continental and Debtors' is not an "executory contract" under applicable



Bankruptcy law, and thus, any cure amount or assumption of such contract is improper and not applicable to the parties' agreement.

3. In *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989), the court stated:

Although the Bankruptcy Code contains no definition of an executory contract, courts have generally relied on the following definition: "[An executory contract is] a contract under which the obligation of *both* the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other. *Countryman, Executory Contracts in Bankruptcy*, Part 1, 57 Minn.L.Rev. 439, 460 (1973); *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1045 (4th Cir.1985); *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 522 n. 6, 104 S.Ct. 1188, 1194 n. 6, 79 L.Ed.2d 482 (1984); *In re KMMCO, Inc.*, 40 B.R. 976, 978 (E.D.Mich.1984).

4. Under the definition stated in *Sharon Steel Corp.*, Continental's contract with Debtors is not an "executory contract". The parties' agreement arises from the purchase and delivery of certain building materials by and to Debtors. Continental has fully performed its obligations under the agreement by delivering the purchased materials to Debtors. Under the definition of "executory contract" in *Sharon Steel Corp.*, the obligations of *both* the bankrupt (Debtors) and the other party (Continental) to the contract are not so far unperformed that failure of either to complete performance would constitute a material breach. Here, Continental has already performed its obligations under the agreement; the only obligation not performed under the agreement is the Debtors' payment obligation.

5. Accordingly, Continental's contract with Debtor's is not an "executory contract" and any cure amount and/or assumption of such contract referenced in Debtors' notice is improper and not applicable to Continental's claim.

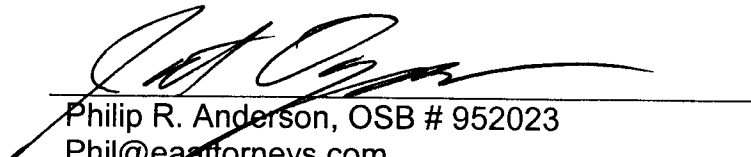


6. In the alternative, if it is determined that Continental's contract with Debtors is an executory contract under applicable Bankruptcy law, Continental asserts that the appropriate cure amount in connection with Debtors' potential assumption of said contract is the sum of \$10,358.99.

III. CONCLUSION

7. WHEREFORE, Continental respectfully requests that Debtors' Schedule G be amended to reflect that Continental's contract with Debtors is *not* an executory contract or unexpired lease under section 365 of the Bankruptcy Code; or, in the alternative, fixing the cure amount in connection the Debtors' potential assumption of said contract in the sum of \$10,358.99.

ELLIOTT, ANDERSON, RIQUELME &
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Of Attorneys for Creditor Continental Trading,
Inc.



CERTIFICATE OF SERVICE

I, JARET Y. OGASAWARA, am an attorney licensed to practice law in the State of Oregon. I am an active member in good standing of the Oregon State Bar. I hereby certify that a true and correct copy of CONTINENTAL TRADING, INC.'S OBJECTION TO NOTICE OF (I) POSSIBLE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) FIXING OF CURE AMOUNTS IN CONNECTION THEREWITH, AND (III) DEADLINE TO OBJECT THERETO, was served on this 2nd day of December 2009, via Overnight Mail to the following:

2009 DEC -3 11:10:15
CLERK OF DISTRICT COURT
WILMINGTON, DE

United States Bankruptcy Court for the District of Delaware
Clerk of Bankruptcy Court
824 N. Market Street, 3rd Floor
Wilmington, Delaware 19801

Benesch, Friedlander, Coplan & Aronoff LLP
Attn: Bradford J. Sandler, Esq.
222 Delaware Ave., Suite 801
Wilmington, DE 19801

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

Paul, Hastings, Janofsky & Walker, LLP
Attn: Kevin B. Fisher, Esq. and
Seth Mennillo, Esq.
55 Second Street, 24th Floor
San Francisco, CA 94105

Gibson, Dunn & Crutcher LLP
Attn: Michael A. Rosenthal, Esq. and
Matthew K. Kelsey, Esq.
200 Park Avenue, 47th Floor
New York, NY 10166

Richards, Layton & Finger, P.A.
Attn: Paul N. Heath, Esq.
One Rodney Square
920 N. King Street
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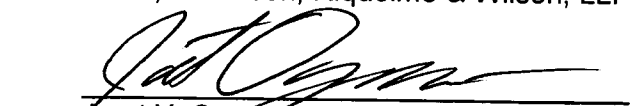
Young Conaway Stargatt & Taylor, LLP
Attn: Sean M. Beach, Esq. and
Robert F. Poppiti, Jr., Esq.
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801

United States Trustee for the District of Delaware
Attn: Joseph McMahon, Esq.
844 King Street, Suite 2313
Lockbox # 35
Wilmington, DE 19801

Arent Fox, LLP
Attn: Christopher J. Giaimo Esq. and
Katie A. Lane, Esq.
1050 Connecticut Avenue, NW
Washington, DC 20036

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 2, 2009, at Bend, Oregon.

Elliott, Anderson, Riquelme & Wilson, LLP



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Fax: 541-330-1480



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CERTIFICATION OF OVER THE COUNTER FILING

Elliott, Anderson, Riquelme & Wilson, LLP
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Bend, OR 97701
Telephone: (541) 383-3755
Facsimile: (541) 330-1480



CERTIFICATE OF SERVICE

I, JARET Y. OGASAWARA, am an attorney licensed to practice law in the State of Oregon. I am an active member in good standing of the Oregon State Bar. I hereby certify that a true and correct copy of CERTIFICATION OF OVER THE COUNTER FILING, was served on this 2nd day of December 2009, via Overnight Mail to the following:

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of Delaware
Clerk of Bankruptcy Court
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Dallas, Texas 75201

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