

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 Objection Deadline: December 8, 2009 at 4:00 p.m. ET) Hearing Date: December 15, 2009 at 1:00 p.m. (ET)
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**CONTINENTAL TRADING, INC.'S RESPONSE TO DEBTORS' FIFTH
OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO
SECTION 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY
RULES 3003 AND 3007 AND LOCAL RULE 3007-1**

Continental Trading, Inc. ("Continental") hereby submits its objection to Debtors' Fifth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code seeking to improperly reclassify a portion of Continental's claim No. 2593 from priority status to general unsecured status. Continental requests that the entire amount under claim No. 2593 maintain its current status as a priority claim and in support thereof, Continental respectfully represents as follows:

I. BACKGROUND

1) On or about July 20, 2009, Continental filed a proof of claim in this matter in the amount of \$10,358.99 ("claim No. 68"). Due to a scrivener's error, claim No. 68 was classified as a general unsecured claim.

2) On or about September 10, 2009, Continental filed an amended proof of claim ("claim No. 2593"), amending and superseding claim No. 68, to



properly reflect that Continental's claim of \$10,358.99 is a priority claim under Bankruptcy Code Section 503(b)(9).¹

3) Debtors' Fifth Omnibus (Substantive) Objection seeks to improperly reclassify a portion of Continental's claim No. 2593, specifically \$5,108.54, from its current priority status to general unsecured status. Debtors' do not object to the other portion of Continental's claim No. 2593, specifically \$5,250.45, remaining a priority claim. Continental's response is limited to that portion of claim No. 2593 which Debtors' seek to improperly reclassify.

4) The disputed portion of Continental's claim No. 2593 arises from the purchase and sale of certain building materials ordered by and delivered to BMC West. BMC West received these materials within the twenty days prior to the filing of bankruptcy, and Continental's claim for their value should be classified as a priority claim under Bankruptcy Code section 503(b). Accordingly, the entire amount of Continental's claim No. 2593 is properly classified as a priority claim.

5) Documents establishing the full amount of Continental's claim No. 2593 is properly classified as a priority claim, including invoices, bill of lading and dispatch record, are attached hereto and incorporated herein.

II. RESPONSE TO OBJECTION

6) Under Bankruptcy Code section 503(b)(9), Continental is entitled to a priority claim for the value of any goods received by the Debtors within the 20 days before the date the bankruptcy petition was filed. The attached invoices, bill of lading and dispatch record clearly establish Debtors' receipt of goods on June 15, 2009, which date is within the 20 days prior to the filing of bankruptcy in this matter.

¹ Debtors' Fourth Omnibus (Non-Substantive) Objection properly identifies Continental's claim No. 2593, in the full amount of \$10,358.99, as a priority claim.



7) Continental's Invoice No. 8125 shows the purchase of certain building materials in the amount of \$5,108.54 billed to BMHC Accounts Payable Department, Boise, ID and shipped to Debtors at 45-491 Golf Center Way, Indio, CA. Invoice No. 2086 from Francisco's Trucking, Inc., shows that P.O. No. 8125 was "Delivered To: Boulder West, Indio CA, 06/15/09". Continental's dispatch record demonstrates the materials were delivered to Debtors on June 15, 2009 at 45-491 Golf Center Way, Indio, CA. The bill of lading is signed and dated by an employee of Debtors and acknowledges receipt of materials by Debtors on June 15, 2009.

8) The attached documents clearly establish the Debtors' receipt of building materials in the amount of \$5,108.54 within the twenty days prior to the filing of bankruptcy. Debtors' request for reclassification this amount as "unsecured" is improper under section 503(b)(9). The entire amount of Continental's claim No. 2593, including the \$5,108.54 that is the subject of this response, should remain classified as priority under 503(b)(9) of the Bankruptcy Code.



III. CONCLUSION

9) WHEREFORE, Continental respectfully requests the Court to overrule Debtors' Fifth Omnibus Objection to Claims pertaining to Continental's claim No. 2593, and that Continental's entire claim in the sum of \$10,358.99 maintain its priority status.

ELLIOTT, ANDERSON, RIQUELME & WILSON,
LLP



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250 NW Franklin Ave., Ste 201

Bend, OR 97701

Phone No.: 541-383-3755

Fax: 541-330-1480

Of Attorneys for Creditor Continental Trading, Inc.





Invoice

CONTINENTAL TRADING, INC.

P.O. BOX 8516
BEND, OR 97708

Date	Invoice #
6/16/2009	8125

Bill To
BMHC AP DEPARTMENT PO BOX 70006 BOISE, ID 83707

Ship To
BOULDERS SELECT COMPONENTS TRUSS 45-491 GOLF CENTER WAY INDIO, CA 92203

P.O. No.	Terms	Ship Date	Ship Via	FOB
8791-1044798	1%10 NET 11	6/11/2009	TRUCK	INDIO

Description	Qty	Rate	Amount
2X4 STUD KDHF 2352/5 2352/6 2352/7	28.224	181.00	5,108.54
DISCOUNT \$36.08 (IF PAID IN 10 DAYS)			Total \$5,108.54





FRANCISCO'S TRUCKING, INC

16415 IRIS DR.
FONTANA, CA 92335

Invoice

Date	Invoice #
6/14/2009	2086

Bill To
CONTINENTAL TRADING, INC. P.O. BOX 8516 BEND OR, 97708-8516 541-317-3976

TRUCK No.	S.O. No.	Terms	P.O. No.
2666	2086	QUICK PAY	8125

Quantity	Description	RATE	Amount
1	MISCELANEOUS, WOOD OR LUMBER, 24 UNITS, 28,224 FBM. PICK UP FROM: DOUGLAS COUNTRY, WINCHESTER OR, 06/12/09. DELIVER TO: BOULDER WEST, INDIO CA, 06/15/09.	1,500.00	1,500.00
Phone #	Fax #	E-mail	Total \$1,500.00
909-823-3859	909-823-3859		Balance Due \$1,500.00

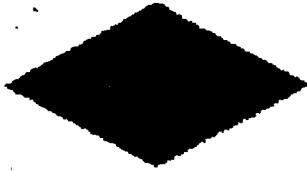
THIS INVOICE HAS BEEN ASSIGNED AND
MUST BE PAID DIRECTLY TO
ORANGE COMMERCIAL CREDIT
P.O. BOX 25229
ANAHEIM, CA 92825-5229
REPORT CLAIMS TO (800) 360-4446



FROM : CONTINENTAL

FAX NO. : 5413170807

Jun. 11 2009 09:56AM P1



CONTINENTAL TRADING, INC.

P.O. Box 8516 • Bend, OR 97708-8516
541.317.3976 Fax: 541.317.0807

DISPATCH RECORD

Hopefully this
Thurs or Friday
I will call you.

DATE: TSA (ready)

CONTINENTAL P.O. # 0125 FLAT BED DF 28,000 WT 48-50000
EST. FRT. \$ 1500 TARPS: YES NO CLEAN & DRY

MAXI REG VAN

PICK Douglas County DROP Boalders west
Winchester, OR 49491 Golt Center Ave
David, CA

MILL# 3760 CUST# 8791-1044798
PHONE 541-957-0235 PHONE 760-347-2322

DESCRIPTION: 24 stud kottmar 5-6-7

need to
make
loading
app
with w/cta

PICK _____ DROP _____

MILL# _____ CUST# _____
PHONE _____ PHONE _____

DESCRIPTION: _____

TRUCKING COMPANY: Francisco Trucking
CONTACT: Francisco
PICK UP DATE: 6/11-6/12 DEL DATE: 6/15
SPECIAL INSTRUCTION: _____

IF YOU ARE NOT ABLE TO PICK UP ON TIME, PLEASE BE SURE TO CALL
DISPATCH AT 541-317-3976. WE NEED TO INFORM OUR CUSTOMER.
* PLEASE MAKE SURE YOUR TRUCK CAN HAUL THE WEIGHT.
* PLEASE CALL IF TRUCK CANNOT GET FULL LOAD ON. IF WE CAN'T BE
REACHED, PLEASE GET WEIGHT TICKET.
* NO CONTINENTAL TRADING LOAD WILL BE DOUBLE BROKERED.
* IF TARPS ARE REQUESTED, BUT TRUCKER DOES NOT TARP AND LOAD IS
DAMAGED, TRUCKING COMPANY WILL BE LIABLE FOR DAMAGES.
* THERE WILL BE A CHARGE FOR DROPPED LOADS.
* THE FOREGOING LIST IS NOT AN OFFER TO CONTRACT, BUT RATHER AN
INVITATION SEEKING AN OFFER. ANY TRANSPORTATION BROKER
SUBMITTING AN OFFER DOES SO AS THE AGENT OF THE TRUCKER.

IN ORDER FOR PAYMENT, CONTINENTAL TRADING'S P.O. # MUST BE ON
THE INVOICE. IF YOU NEED MORE INFORMATION, CONTACT 541-317-3976.

Douglas County Forest Products

398 Del Rio Road, PO Box 848, Winchester, OR 97495
(541) 672-5711, (541) 957-0246

Page 1
Date 6/12/2009

to: 32550

Bill of Lading

Ship Date 6/12/2009
Order No. 37160

FRANCISCO

Shipper No. 8125
Carrier No. 8125

Customer: CONTINENTAL TRADING, INC.
PO BOX 8516
3798 NORTH WEST SUMMERFIELD
BEND, OR 97708

Ship To: CONTINENTAL TRADING

FBM	DESCRIPTION	UNITS
10,976	2 x 4 HEM-FIR STUD GRADE S4S KD 7	8
9,408	2 x 4 HEM-FIR STUD GRADE S4S KD 6	8
7,840	2 x 4 HEM-FIR STUD GRADE S4S KD 5	8

See Invoice
6/15/09

(Received By)	(Date)
Subject to Section 7 of the conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.	
<i>Eric Rappe</i> (Signature of Consignor)	Total Charges: \$ _____ Freight charges are prepaid except when box is checked Check box if charges are to be collect <input type="checkbox"/>

RECEIVED, subject to the classifications and lawfully filed tariffs in effect on the date of the issue of this Bill of Lading, the property described above in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all of any of, said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

SHIPPER DOUGLAS COUNTY FOREST PRODUCTS	CARRIER <i>[Signature]</i>
PER <i>Eric Rappe</i>	PER
TELEPHONE NUMBER	DATE

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 RESPONSE TO DEBTORS' FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1 was served on this 2nd day of December 2009, via Overnight Mail to the following:

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

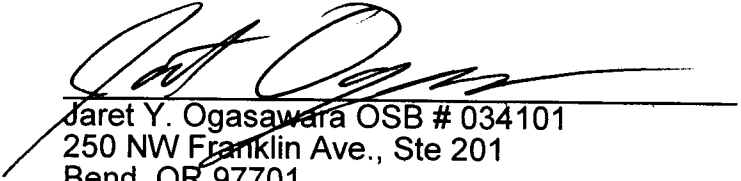
Gibson, Dunn & Crutcher LLP
Attn: Michael A. Rosenthal, Esq. and
Matthew K. Kelsey, Esq.
200 Park Avenue, 47th Floor
New York, NY 10166

Young Conaway Stargatt & Taylor, LLP
Attn: Sean M. Beach, Esq. and
Robert F. Poppiti, Jr., Esq.
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899

Aaron G. York
Jeremy L. Graves
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201

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


Jaret Y. Ogasawara OSB # 034101
250 NW Franklin Ave., Ste 201
Bend, OR 97701
Jaret@eaattorneys.com
Ph. No.: 541-383-3755
Fax: 541-330-1480

CERTIFICATE OF SERVICE

Elliott, Anderson, Riquelme & Wilson, LLP
250 NW Franklin Ave., Ste. 201
Bend, OR 97701
Telephone: (541) 383-3755
Facsimile: (541) 330-1480

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

2010-03-10 10:10 AM
 101011

In re: BUILDING MATERIALS HOLDING CORPORATION, et al., <p style="text-align: center;">Debtors.</p>)))))	Chapter 11 Case No. 09-12074 (KJC) Jointly Administered
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CERTIFICATION OF OVER THE COUNTER FILING

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. Creditor, 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 and RESPONSE TO DEBTORS' FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1 are being filed over the counter by counsel instead of electronically because: (1) neither myself nor any attorneys in my firm are admitted to practice law in the State of Delaware; (2) neither myself nor any attorneys in my firm are registered or have an ECF password to permit participation in electronic filing in the US Bankruptcy Court for the District of Delaware; (3) counsel for creditor anticipates that these two documents will be the only documents creditor will file in this matter, and pursuant to discussions with the clerk of the court, ECF registration is not required under such circumstances.

CERTIFICATION OF OVER THE COUNTER FILING

Elliott, Anderson, Riquelme & Wilson, LLP
 250 NW Franklin Ave., Ste. 201
 Bend, OR 97701
 Telephone: (541) 383-3755
 Facsimile: (541) 330-1480



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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
Wilmington, DE 19801

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

Aaron G. York
Jeremy L. Graves
2100 Mckinney Avenue, Suite 1100
Dallas, Texas 75201

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