

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

IN RE:)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
Debtors.)	Jointly Administered
)	Objection Deadline: July 9, 2009 at 4:00 p.m. (ET)
)	Hearing Date: July 16, 2009 at 4:30 p.m. (ET)

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING
AND APPROVING AN OMNIBUS PROCEDURE FOR SETTLING AND
ALLOWING CERTAIN CLAIMS AND CAUSES OF ACTION BROUGHT
OR THREATENED BY OR AGAINST THE DEBTORS IN JUDICIAL,
ADMINISTRATIVE, ARBITRAL OR OTHER ACTIONS OR PROCEEDINGS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), submit this motion (the "*Motion*") for entry of an order substantially in the form annexed hereto as *Exhibit A*, authorizing and approving an omnibus procedure for settling and allowing certain claims and causes of action threatened or brought by or against the Debtors in judicial, administrative, arbitral or other actions or proceedings (the "*De Minimis Claims*"). 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 section 363(b) 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 authority to resolve the De Minimis Claims by settlement pursuant to the omnibus procedures outlined below in order to minimize expenses and thus maximize value for the creditors of the Debtors' estates. The Debtors request the authority to settle De Minimis Claims up to a maximum value of \$1,000,000.²

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.

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.

² For the purposes of determining the applicable value of a De Minimis Claim (the "***Settled Value***"), the Debtors propose that the Settled Value equals the value of the performance agreed to by the Debtors and the Settling Party (as defined below) to resolve such De Minimis Claim.

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***"). As set forth in greater detail in the Plan and Disclosure Statement, the Plan contemplates a restructure of the Debtors' balance sheet and ownership structure, as well as an immediate cash distribution to unsecured creditors and an opportunity for such creditors to receive full payment from the Reorganized Debtors, depending on business performance. The Debtors believe that the restructuring proposal embodied in the Plan provides the Debtors' creditors with the best means of maximizing value of the Debtors and their businesses. To implement this restructuring, the Debtors have obtained a commitment to provide \$80 million in the form of debtor-in-possession financing, which the Court approved on an interim basis on June 17, 2009.

THE DE MINIMIS CLAIMS

7. As with any large company, the Debtors are, at any given time, party to numerous lawsuits, disputed accounts payable or accounts receivable claims, administrative procedures, arbitrations and other proceedings threatened or brought by or against various individuals and entities. Such individuals and entities include vendors, employees, agencies and departments of various levels of government, personal injury claimants and other parties. The amounts at issue in many such claims are minimal, given the size and complexity of the Debtors' businesses, and the Debtors routinely settle such minimal-value claims in the ordinary course of their businesses.

8. Currently, the Debtors have approximately 102 litigation claims pending. This number does not include administrative proceedings, arbitrations or other proceedings, nor does it include claims threatened but not yet brought and claims that may arise throughout the pendency of the Chapter 11 Cases. This number, while high, actually represents only a fraction of the claims that the Debtors will likely seek to resolve through settlement during the Chapter 11 Cases.

9. If the Debtors were required to obtain the Court's prior approval to settle each De Minimis Claim, and considering the ever-growing size of the list of parties requesting notice and service of papers in the Chapter 11 Cases, the Debtors would incur significant costs associated with preparing, filing, and serving separate motions for each proposed settlement. Further, the Debtors would likely suffer the delays normally incumbent with obtaining such Court approval while complying with the required notice periods and available hearing schedules and, in some cases, would lose significant negotiating leverage in resolving such claims. Therefore, the Debtors desire to establish an omnibus procedure in the Chapter 11 Cases that will

allow settlements to be concluded on a more cost-effective and expeditious basis, while at the same time preserving an oversight function for key parties-in-interest.

THE SETTLEMENT PROCEDURES

10. The Debtors propose that the following settlement procedures apply to claims and causes of action pending or threatened in judicial, administrative, arbitral or other actions or proceedings by (a) non-insider third parties (each a "***Settling Party***" and, collectively, the "***Settling Parties***")³ against any of the Debtors or (b) any of the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against any of the Debtors by the Settling Parties (or against the Settling Parties by any of the Debtors), in connection with such claims and causes of action, without obtaining a specific order from this Court authorizing the settlements (the "***Settlement Procedures***"):

- (a) no settlement of a De Minimis Claim will be agreed to unless it is reasonable in the sound business judgment of the affected Debtor upon consideration of (i) the probability of success if the claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claims, (iii) other factors relevant to assessing the prudence of the settlement, and (iv) the fairness of the settlement to such Debtor's estate, creditors, and shareholders;
- (b) no settlement will be effective unless it is executed by an authorized representative of both the Debtors and the Settling Party;
- (c) with respect to any Settled Value that is equal to or less than \$250,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action on any reasonable terms and may enter into, execute, and consummate a written agreement of settlement that will be binding on it and its estate without notice by such Debtor to any third party or further action by this Court;

³ For purposes hereof, a non-insider will mean any Settling Party that is not an "insider," as such term is defined in section 101(31) of the Bankruptcy Code.

- (d) with respect to any Settled Value that is greater than \$250,000 but does not exceed \$1,000,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action only if (i) it provides written notice (the "**Notice**") to the Office of the United States Trustee for the District of Delaware, counsel for the Creditors' Committee (as hereinafter defined) and counsel for the administrative agent for the Debtors' prepetition and postpetition secured lenders (the "**Negative Notice Parties**") of the terms of the settlement, and (ii) such terms are not objected to in writing by any of the Negative Notice Parties within ten days after the date of service of the Notice by filing such objection with this Court and serving such objection on Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Michael A. Rosenthal and Matthew K. Kelsey and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, Wilmington, Delaware 19801, Attn: Sean M. Beach and Robert F. Poppiti, Jr., so that it is actually received on or before the tenth day after the date of service of the Notice (the "**Objection Period**"). In the absence of any such objection, the Debtor may enter into, execute, and consummate a written agreement of settlement that will be binding on it and its estate without further order of this Court;
- (e) if any Negative Notice Party properly and timely objects to the terms of any settlement during the Objection Period, and the Debtor, in its sole discretion, still desires to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed, except upon (i) resolution of the objection by the Debtors and the objecting party or parties, or (ii) further order of the Court after a hearing; and
- (f) any settlement that is not authorized pursuant to the foregoing procedures, or pursuant to any other order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties in interest.⁴

11. If the settlement calls for payment by the Debtors, such payment shall be made by the Debtors' agreement to an allowed prepetition claim which shall be paid pursuant to the Plan, except with respect to claims deemed to be administrative expense claims in accordance with the terms of the settlement or under 11 U.S.C. §§ 503 and 507, and with respect to such claims only in the Debtors' sole discretion; *provided, however*, that a settlement may

⁴ Nothing in the Omnibus Procedures is intended or should be construed to alter any requirements under the Debtors' insurance policies.

provide for equitable relief with respect to any claim, subject to the limits on Settled Value contained in the Settlement Procedures; *provided, further*, that with respect to cross-claims and counter-claims, the settlement may provide for offsets in favor of the Settling Parties against, and up to but not exceeding, the amount of any monetary payments to be otherwise made by the Settling Parties to, or on behalf of, the Debtors.

12. To the extent that a Settling Party holds a valid reclamation claim on goods in the Debtors' possession pursuant to 11 U.S.C. § 546(c)(1) that is not subject to the prior rights of a holder of a security interest in such goods, the Debtors seek the authorization to enter into a settlement, subject to the Settlement Procedures, providing for the return of such goods to the Settling Party, the granting of an administrative expense claim to the Settling Party, or any other performance agreed to by the Debtors in their sole discretion.

BASIS FOR RELIEF REQUESTED

13. A settlement of claims and causes of action owned by a debtor constitutes a disposition of property of the estate. *See Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 350 (3d Cir. 1999). If a settlement falls outside the ordinary course of business of the debtor, it requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. *Id.* at 351. Typically, in addition to approval under section 363(b) of the Bankruptcy Code, Bankruptcy Rule 9019 requires a motion, notice and hearing as a prerequisite of approval.

14. In reviewing a motion for approval of a settlement, bankruptcy courts must assess and balance the value of the claim against the value to the estate of the proposed compromise. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996). This requires court consideration of the following criteria: "(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."

Id. Given that the Settlement Procedures require the Debtors to act reasonably pursuant to the above criteria, the time and expense of filing a motion for each settlement into which the Debtors seek to enter, the relatively small value at issue in the De Minimis Claims given the size of the estates and the fact that the Debtors have traditionally entered into such settlements in the ordinary course of their businesses, the Settlement Procedures proposed in this Motion fulfill the criteria of *In re Martin* and will streamline the settlement process and conserve the Debtors' and this Court's time and resources.

15. Pursuant to Bankruptcy Rule 9019(b), this Court may authorize the Debtors to settle certain classes of controversies without requiring a separate notice and hearing for each settlement. Consequently, this Court and other courts in large chapter 11 cases have approved settlement procedures, similar to those proposed above, designed to streamline the court approval process. *See In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Sept. 29, 2008) [Docket No. 1513] (establishing expedited procedures for the settlement of certain claims); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Dec. 1, 2006) [Docket No. 436]; *In re Garden Ridge Corp.*, Case No. 04-10324 (LHK) (Bankr. D. Del. Sept. 8, 2004) [Docket No. 928]; *In re USG Corp.*, Case No. 01-2094 (RJN) (Bankr. D. Del. Jan. 30, 2003) [Docket No. 3163] (same); *In re Exide Technologies, Inc.*, Case No. 02-11125 (JCA) (Bankr. D. Del. May 10, 2002) [Docket No. 213] (same). *See also In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) [Docket No. 230] (same); *In re Tower Auto., Inc.*, Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Mar. 14, 2005) [Docket No. 240] (same); *In re UAL Corp.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002) [Docket No. 990] (same).

16. The Debtors believe that the relief requested herein will aid in their efforts to reduce expenses and maximize value for the benefit of their estates, creditors, and other parties in interest. By granting the relief requested herein, the Debtors will be able to avoid the cost of counsel drafting and filing numerous motions and sending out numerous hearing notices. The Settlement Procedures also will reduce the burden on the Court's docket while protecting the interests of all creditors through the notice and objection procedures described herein. Therefore, approval of the Settlement Procedures is in the best interest of the Debtors and their estates, and will not prejudice the rights of any party in interest in the Chapter 11 Cases.

DEBTORS' RESERVATION OF RIGHTS

17. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to amend their bankruptcy schedules after they are filed, or to seek allowance or disallowance of claims, in whole or in part, in accordance with the Bankruptcy Code and applicable federal and local rules or in accordance with subsequent orders of the Court.

NOTICE

18. No trustee or examiner has been appointed in these Chapter 11 Cases. The United States Trustee formed the official committee of unsecured creditors ("the ***Creditors' Committee***") on June 26, 2009. The Debtors have provided notice of filing of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); and (d) 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.

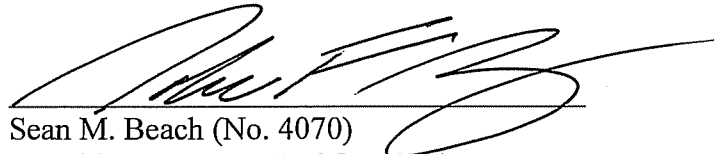
NO PRIOR REQUEST

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

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
June 29, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
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PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

**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**
)

) **Objection Deadline: July 9, 2009 at 4:00 p.m. (ET)**
)

) **Hearing Date: July 16, 2009 at 4:30 p.m. (ET)**

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE; (II) COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS; (III) COUNSEL TO WELLS FARGO BANK, AS AGENT UNDER THE PREPETITION CREDIT FACILITY AND THE DIP FACILITY (AS DEFINED IN THE PLAN); AND (IV) ALL PARTIES ENTITLED TO NOTICE UNDER RULE 2002-1(b) OF THE LOCAL RULES OF BANKRUPTCY PRACTICE AND PROCEDURE FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for an Order Authorizing and Approving an Omnibus Procedure for Settling and Allowing Certain Claims and Causes of Action Brought or Threatened By or Against the Debtors in Judicial, Administrative, Arbitral or Other Actions or Proceedings** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **July 9, 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.

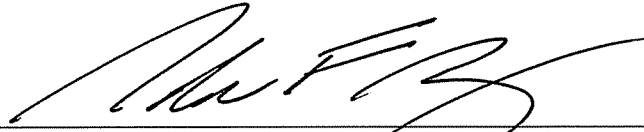
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON JULY 16, 2009 AT 4:30 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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 hearing.

Dated: Wilmington, Delaware
June 29, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

**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**
)
) **Ref. Docket No. _____**
)

**ORDER AUTHORIZING AND APPROVING OMNIBUS PROCEDURES
FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION BROUGHT
OR THREATENED BY OR AGAINST THE DEBTORS IN JUDICIAL,
ADMINISTRATIVE, ARBITRAL, OR OTHER ACTIONS OR PROCEEDINGS**

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 an omnibus procedure for settling and allowing certain claims and causes of action threatened or brought by or against the Debtors in judicial, administrative, arbitral or other actions or proceedings (the "***De Minimis Claims***"), 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

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.

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 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. The Debtors are authorized to settle De Minimis Claims involving (a) Settling Parties² against the Debtors, or (b) the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against the Debtors by the Settling Parties (or against the Settling Parties by the Debtors), where such claims are filed, or threatened to be filed, in a judicial, administrative, arbitral or other action or proceeding brought by or against the Debtors, in accordance with the following Settlement Procedures:

- (a) no settlement of a De Minimis Claim will be agreed to unless it is reasonable in the sound business judgment of the affected Debtor upon consideration of (i) the probability of success if the claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claims, (iii) other factors relevant to assessing the prudence of the settlement, and (iv) the fairness of the settlement to such Debtor's estate, creditors and shareholders;
- (b) no settlement will be effective unless it is executed by an authorized representative of both the Debtors and the Settling Party;
- (c) with respect to any Settled Value that is equal to or less than \$250,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action on any reasonable terms and may enter into, execute and consummate a written agreement of settlement that will be binding on it

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

and its estate without notice by such Debtor to any third party or further action by this Court;

- (d) with respect to any Settled Value that is greater than \$250,000 but does not exceed \$1,000,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action only if (i) it provides written notice (the "**Notice**") to the Office of the United States Trustee for the District of Delaware, counsel for the Creditors' Committee and counsel for the administrative agent for the Debtors' prepetition and postpetition secured lenders (the "**Negative Notice Parties**") of the terms of the settlement, and (ii) such terms are not objected to in writing by any of the Negative Notice Parties within ten days after the date of service of the Notice by filing such objection with this Court and serving such objection on Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Michael A. Rosenthal and Matthew K. Kelsey and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, Wilmington, Delaware 19801, Attn: Sean M. Beach and Robert F. Poppiti, Jr., so that it is actually received on or before the tenth day after the date of service of the Notice (the "**Objection Period**"). In the absence of any such objection, the Debtor may enter into, execute, and consummate a written agreement of settlement that will be binding on it and its estate without further order of this Court;
- (e) if any Negative Notice Party properly and timely objects to the terms of any settlement during the Objection Period, and the Debtor, in its sole discretion, still desires to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed except upon (i) resolution of the objection by the Debtors and the objecting party or parties, or (ii) further order of the Court after a hearing; and
- (f) any settlement that is not authorized pursuant to the foregoing procedure, or pursuant to any other order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties in interest.

3. All time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. To the extent that the Debtors are authorized by this Order to fix the allowed amount and priority of a filed claim without further order of this Court, then the allowed

amount and priority of such filed claim, and the Debtor against which such filed claim is allowed, shall be as set forth in the applicable agreement between the Debtor and the Settling Party, and such agreement shall be fully binding upon the applicable Debtor's estate.

6. If the settlement calls for payment by the Debtors, such payment shall be made by the Debtors' agreement to an allowed prepetition claim which shall be paid pursuant to the Plan, except with respect to claims deemed to be administrative expense claims in accordance with the terms of the settlement or under 11 U.S.C. §§ 503 and 507, and with respect to such claims only in the Debtors' sole discretion; *provided, however*, that a settlement may provide for equitable relief with respect to any claim, subject to the limits on Settled Value contained in the Settlement Procedures; *provided, further*, that with respect to cross-claims and counter-claims, the settlement may provide for offsets in favor of the Settling Parties against, and up to but not exceeding, the amount of any monetary payments to be otherwise made by the Settling Parties to, or on behalf of, the Debtors.

7. To the extent that a Settling Party holds a valid reclamation claim on goods in the Debtors' possession pursuant to 11 U.S.C. § 546(c)(1) that is not subject to the prior rights of a holder of a security interest in such goods, the Debtors are authorized to enter into a settlement, subject to the Settlement Procedures, providing for the return of such goods to the Settling Party, the granting of an administrative expense claim to the Settling Party, or any other performance agreed to by the Debtors in their sole discretion.

8. Nothing in the Motion or this Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

9. Notwithstanding the possible applicability of Rules 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and satisfies the requirements of applicable rules.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: July ____, 2009
Wilmington, Delaware

Kevin J. Carey
Chief United States Bankruptcy Judge