

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

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In re:	:	Chapter 11
	:	
BUILDING MATERIAL HOLDING CORPORATION, <u>et al.</u> ¹	:	Case No. 09-12074 (KJC)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Obj. Deadline: December 31, 2009 at 4:00 p.m. (ET)
	:	Hearing Date: January 5, 2010 at 11:00 a.m. (ET)
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**VERIFIED SECOND INTERIM FEE APPLICATION OF ARENT FOX LLP
AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, FOR COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES FOR
THE PERIOD OF SEPTEMBER 1, 2009 THROUGH NOVEMBER 30, 2009**

Pursuant to Sections 330 and 331 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court’s Professional Fee Order establishing procedures for interim compensation and reimbursement of expenses of professionals, dated July 16, 2009 (the “Professional Fee Order”), Arent Fox LLP (“Arent Fox”) hereby files this Verified Second Interim Fee Application of Arent Fox LLP, as Counsel to the Official Committee of Unsecured Creditors (“Committee”) for Services Rendered and Reimbursement of Expenses for the Period of September 1, 2009 through November 30, 2009 (the “Second Interim Application”). In support of this Interim Application, Arent Fox respectfully represent as follows:

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).

INTRODUCTION

1. By this Second Interim Application, Arent Fox seeks quarterly allowance and approval of \$595,777.58 (the “Interim Amount”) for fees and expenses for the period of September 1, 2009 through November 30, 2009 (the “Second Interim Period”). The Interim Amount consists of (i) 100% of the compensation that Arent Fox earned during the Second Interim Period in the amount of \$586,568.00, and (ii) 100% of the expenses that Arent Fox incurred in the course of its representation as counsel to the Committee during the Second Interim Period in the amount of \$9,209.58.

2. On October 30, 2009, Arent Fox filed its Fourth Monthly Application for the Period September 1, 2009 through September 30, 2009 (the “September Fee Application”) for approval of compensation in the amount of \$215,045.00 for fees and reimbursement in the amount of \$650.67 for expenses incurred in the fourth monthly period. No objections to the September Fee Application were received.

3. On November 13, 2009, Arent Fox filed its Fifth Monthly Application for the Period October 1, 2009 through October 31, 2009 (“October Fee Application”, together with the September Fee Application and any subsequent monthly applications, the “Monthly Applications”) for approval of compensation in the amount of \$309,355.50 for fees and reimbursement in the amount of \$8,032.19 for expenses incurred in the fifth monthly period. No objections to the October Fee Application were received.

4. On December 16, 2009, Arent Fox filed its Sixth Monthly application for the Period November 1, 2009 through November 30, 2009 (the “November Fee Application”) for approval of compensation in the amount of \$62,167.50 for fees and reimbursement in the amount

of \$526.71 for expenses incurred in the sixth monthly period. The deadline to object to the November Fee Application is December 31, 2009.

FACTUAL BACKGROUND

1. On June 16, 2009, each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors remain in possession of their assets as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. On June 26, 2009, the Office of the United States Trustee appointed the Committee. *See* Docket No. 108. On that same day, the Committee elected to retain Arent Fox as counsel, subject to approval by this Court. On July 10, 2009, the Court approved the retention of Arent Fox as counsel to the Committee *nunc pro tunc* to June 26, 2009 [Docket No. 414].

3. On September 21, 2009, Arent Fox filed and served its First Interim Fee Application for Services Rendered and Reimbursement of Expenses for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of June 26, 2009 through August 31, 2009 (the “First Interim Application”) [Docket No. 653] requesting, *inter alia*, allowance of \$457,213.00 in fees and reimbursement of \$7,188.28 in expenses. No objections to the First Interim Fee Application were received. A hearing on the First Interim Fee Application is scheduled for January 5, 2010.

MONTHLY APPLICATIONS COVERED HEREIN

5. Arent Fox has filed and served monthly fee applications for the periods of (i) September 2009, (ii) October 2009, and (iii) November 2009. The following table summarizes the monthly fee applications that Arent Fox filed with respect to the Second Interim Period.

Fee Application Covered Dates, Date Filed, Doc No.	Total Fee Request	Total Expense Request	Certificate of No Objection/ Certification of Counsel Filing Date, Doc. No.	Total Amount of Fees Approved to Date via Certificate of No Objection (80%)	Total Amount of Expenses Approved to Date via Certificate of No Objection (100%)	Amount of Holdback Fees
Fourth Monthly Fee Application of Arent Fox LLP for September 1, 2009 – September 30, 2009 Filed on October 30, 2009 [Docket No. 804]	\$215,045.00	\$650.67	November 18, 2009 Docket No. 955	\$172,036.00	\$650.67	\$43,009.00
Fifth Monthly Fee Application of Arent Fox LLP for October 1, 2009 – October 31, 2009 Filed on November 13, 2009 [Docket No. 920]	\$309,355.50	\$8,032.19	December 7, 2009 Docket No. 1070	\$247,484.40	\$8,032.19	\$61,871.10
Sixth Monthly Fee Application of Arent Fox LLP for November 1, 2009 – November 30, 2009 Filed December 16, 2009 [Docket No.1159]	\$62,167.50	\$526.72	Pending	Pending	Pending	Pending
Total:	\$586,568.00	\$9,209.58²		\$419,520.40	\$8,682.86	\$104,880.10

6. Twenty percent (20%) of such fees are to be withheld on a quarterly basis (the “Holdback Fees”). Beginning with the period ending August 31, 2009, and at three month intervals, each professional must file and serve a quarterly application for such period. *See* Fee Procedures Order at p.2, sub-paragraph d. All fees and costs paid to a professional pursuant to

² Certain expenses may be adjusted per the Fee Examiner’s request, and deducted from the Holdback Fees.

monthly and quarterly fee applications are subject to this Court's approval of the final fee application of such professional.

7. The September Fee Application. On October 30, 2009, Arent Fox filed and served its Verified Fourth Monthly Fee Application for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of September 1, 2009 through September 30, 2009 [Docket No. 804] requesting, *inter alia*, allowance of \$215,045.00 in fees and reimbursement of \$650.67 in expenses. No objections to the September Fee Application were received.

8. The October Fee Application. On November 13, 2009, Arent Fox filed and served its Verified Fifth Monthly Fee Application for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of October 1, 2009 through October 31, 2009 [Docket No. 920] requesting, *inter alia*, allowance of \$309,355.50 in fees and reimbursement of \$8,032.19 in expenses. No objections to the October Fee Application were received.

9. The November Fee Application. On December 16, 2009, Arent Fox filed and served its Verified Sixth Monthly Fee Application for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors for the Period of November 1, 2009 through November 30, 2009 [Docket No. 1159] requesting, *inter alia*, allowance of \$62,167.50 in fees and reimbursement of \$526.72 in expenses. The deadline to object to the November Fee Application is December 31, 2009.

10. The Monthly Fee Applications covered by this Second Interim Application contain detailed daily time logs describing the actual and necessary services provided by Arent

Fox during the Second Interim Period as well as other detailed information required to be included in its fee applications.

11. By this Second Interim Application, Arent Fox requests that the Court (i) approve the Second Interim Amount of one-hundred percent (100%) of the fees earned and expenses incurred by Arent Fox during the Second Interim Period and evidenced in the Monthly Fee Applications and (ii) payment of the outstanding fees and expenses for the quarterly period.

12. At all relevant times, Arent Fox has been a disinterested person, as that term is defined at § 101(14) of the Bankruptcy Code, as modified by § 1103(b) of the Bankruptcy Code, and has not represented or held any interest adverse to any interest of the Committee.

13. Arent Fox has no promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with the Debtors' cases, except as disclosed herein and in the attached monthly fee applications. There is no agreement or understanding between Arent Fox and any other person, other than members of the Firm, for the sharing of compensation to be received for services rendered in these cases.

14. All services for which Arent Fox requests compensation were performed at the direction or instruction of the Committee and for or on behalf of the Committee. The professional services and related expenses for which Arent Fox requests quarterly allowance of compensation and reimbursement of expenses were rendered and incurred in connection with this case in the discharge of Arent Fox's professional responsibilities as Counsel to the Committee in the Debtors' Chapter 11 cases. Arent Fox's services have been reasonable, necessary and beneficial to the Committee, the Debtors' estates, creditors and other parties in interest, and in furtherance of the administration of these proceedings.

15. In accordance with the factors enumerated at § 330 of the Bankruptcy Code, Arent Fox respectfully submits that the amount requested by Arent Fox as compensation for its services is fair and reasonable.

WHEREFORE, Arent Fox respectfully requests that the Court (i) approve and allow the Interim Amount of **\$595,777.00**³ for the Second Interim Period, consisting of fees in the sum of **\$586,568.00**, as compensation for necessary professional services rendered and for reimbursement of actual and necessary costs and expenses in the amount of **\$9,209.58** for the Second Interim Period; (ii) that the Court approve the payment of the Holdback Fees for the period of September 1, 2009 to November 30, 2009; and (iv) for such other and further relief as may be just and proper.

³ This amount represents the anticipated total amount of expenses approved barring objections to the November Fee Application.

Dated: Washington, DC
December 16, 2009

Benesch Friedlander Coplan & Aronoff, LLP

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*Counsel for the Official Committee of
Unsecured Creditors*

CERTIFICATION

I, Christopher J. Giaimo, hereby certify under the penalty of perjury under the laws of the State of Delaware that the following is true to the best of my knowledge, information and belief:

1. I am a member of the firm of Arent Fox LLP (“Arent Fox”), with offices located at 1050 Connecticut Avenue, NW, Washington DC 20036, as well as in New York, NY and Los Angeles, CA, and have been duly admitted to practice before, among others, the Southern District of New York, the District of Maryland, and have been admitted to the United States District Court for the District of Delaware *pro hac vice*.

2. This certification is submitted in support of the attached application (the “Application”) and all capitalized terms not otherwise defined herein are defined in accordance with their usage in the Application.

3. I am familiar with the legal services rendered by Arent Fox as counsel to the Committee during the Compensation Period and I am familiar with the compensation and reimbursement sought by the Application.

4. I have reviewed the Application and the facts set forth therein are true and correct to the best of my knowledge, information and belief. I have also reviewed Del. Bankr. LR 2016-2 and the Professional Fee Order and submit that the Application substantially complies with such Rule and Order.

Dated: December 16, 2009
Washington, DC

/s/ Christopher J. Giaimo
Christopher J. Giaimo

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
BUILDING MATERIAL HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> ,)	
)	
Debtors)	Obj. Deadline: December 31, 2009 at 4:00 p.m. (ET)
)	Hearing Date: January 5, 2010 at 11:00 a.m. (ET)
)	

NOTICE OF APPLICATION

TO: The Debtor, Office of the United States Trustee and all parties requesting Notice pursuant to Bankr. R. 2002

PLEASE TAKE NOTICE that Arent Fox LLP has filed its Second Interim Fee Application as Counsel to the Official Committee of Unsecured Creditors for Compensation for Services Rendered and Reimbursement of Expenses for the Period September 1, 2009 through November 30, 2009 (the "Interim Application").

PLEASE TAKE NOTICE that pursuant to the Interim Compensation Order, the Debtors were authorized to pay on an interim basis 80% of the amount of compensation requested and 100% of the amount requested for reimbursement of expenses without further order from the Court upon the expiration of a 15 day objection period.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Interim Application are to be filed and served on the parties set forth in the Interim Compensation Order on or before **December 31, 2009 at 4:00 p.m. (ET)**.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THIS MATTER WILL BE HELD ON **JANUARY 5, 2009 AT 11:00 A.M.** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, COURT ROOM 5, WILMINGTON, DELAWARE 19801.

Dated: December 16, 2009

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Counsel to the Official Committee of Unsecured
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
BUILDING MATERIAL HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	
)	
Debtors)	
)	

CERTIFICATE OF SERVICE

I, Bradford J. Sandler, Esquire, hereby certify that on December 16, 2009, a true and correct copy of the foregoing document was served via United States mail upon all parties on the attached list.

Dated: December 16, 2009

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