

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 09-12074(KJC)
) (JOINTLY ADMINISTERED)
BUILDING MATERIALS HOLDING) Chapter 11
CORPORATION, *et al.*,)
) Courtroom 5
) 824 Market Street
Debtors.) Wilmington, Delaware 19801
)
) January 5, 2010
) 11:04 A.M.

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

APPEARANCES:

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(Continued)

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For Alvarez & Marsal:

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By: RICHARD PARK

For Steven Varner:

STEVEN VARNER, Pro Se

1 THE COURT: Good morning, everyone.

2 MR. BEACH: Good morning, Your Honor. May it please
3 the Court, Sean Beach from Young Conaway Stargatt & Taylor on
4 behalf of the debtors.

5 Your Honor, also with me today is Mr. Michael
6 Rosenthal from Gibson Dunn and Crutcher on behalf of the
7 debtors. And I believe there are a number of professionals
8 that have appeared by phone today, as well.

9 Your Honor, the first four items on the agenda have
10 been adjourned, or the portions that are remaining have been
11 adjourned. I appreciate Your Honor has signed Items Number 5,
12 6, and 7, which leaves us only with the fee applications
13 remaining for the hearing.

14 Your Honor, we had some conversations with chambers,
15 and do apologize for getting the fee auditors' reports for the
16 second quarterlies over later than the one-week deadline, and
17 certainly appreciate chambers taking the time to review them on
18 an expedited time frame so that we can go forward with the
19 hearing today.

20 THE COURT: Yeah, what happened with that?

21 MR. BEACH: It was -- well, this was a bit of a
22 unique case overall because we thought we would be in and out
23 in three months, and there wasn't a fee auditor appointed early
24 on in the case because we were going to do a quick time frame.
25 We also didn't schedule a first quarterly fee hearing early on

1 in the case, as a result of that. The fee auditor was
2 ultimately appointed when the cases got extended. And since we
3 were six months down the road and hadn't had any fee hearings,
4 we tried to do a bit of a catch up. So, we were trying to
5 scramble to get in the November fee applications for -- to
6 include in the second quarterlies, which allowed the fee
7 auditor much less time than they would normally have to review
8 those fees. But they had agreed to, you know, work on an
9 expedited basis to do that. They got the reports to us as
10 quickly as they could.

11 My office waited until we got the last fee auditor
12 report in before submitting them to chambers, which was in
13 retrospect a mistake. We should have sent them over as we got
14 them. But that's the basic gist of what happened.

15 THE COURT: Okay. And the reason that I decided to
16 go forward with all of the applications today was there are --
17 as I look at it, all the issues with the fee examiners seem to
18 have been resolved.

19 MR. BEACH: They have been.

20 THE COURT: I do have a couple questions, but because
21 there was relatively little to be followed up after our review,
22 I decided it was just better for everybody to go ahead,
23 including the Court, to go ahead with today's hearing.

24 MR. BEACH: We appreciate that, Your Honor. And just
25 so Your Honor understands, the only period that's going to be

1 left after this fee period is a subperiod between December 1st
2 and December 17th confirmation. And if I might, Your Honor,
3 I'd just like to ask Mr. Rosenthal to make a brief update to
4 Your Honor in terms of where we stand on plan confirmation. I
5 think that might be useful, and then we can get into the fee
6 application.

7 THE COURT: Very well.

8 MR. ROSENTHAL: Thank you, Your Honor. Michael
9 Rosenthal on behalf of the debtors. Happy New Year.

10 THE COURT: Same to you.

11 MR. ROSENTHAL: Your Honor, I'm happy to report that
12 we did, in fact, go effective on the plan yesterday after --
13 maybe 1 o'clock eastern time. And as the Court might expect,
14 there were the usual small little glitches in the week before
15 the closing, but ultimately everything was resolved over the
16 New Year's weekend, and we were able to close.

17 And, Your Honor, we want to thank you for the time
18 you spent on the case. It was a relatively quick case, we know
19 you spent a lot of time, we know you gave us the hearing right
20 before the end of the year, and we certainly appreciate that.

21 THE COURT: Very well.

22 MR. BEACH: Your Honor, for the record again, Sean
23 Beach.

24 That brings us to the first quarterly fee
25 applications. As Your Honor might recall, on the December 17th

1 hearing, Gibson Dunn's first quarterly fee application was
2 approved. So, it leaves the remainder of the debtor and
3 Committee professionals, as well as the fee auditor's fees.
4 So, is there -- would Your Honor prefer just to ask questions
5 in connection with the applications that --

6 THE COURT: Yes. Let's start it off by just letting
7 me confirm, or not, for the record that all of the
8 professionals whose applications are up for hearing today have
9 acceded to any adjustments recommended by the fee auditor. If
10 anyone has not, now is the time to speak up.

11 (No audible response heard)

12 THE COURT: Okay. I'm greeted with silence. Let me
13 first turn to Benesch. Now, the question actually was raised
14 in connection with the fee examiner's review of the second
15 interim request, but relates back to the first request. And
16 that is at some point, the submissions were reflecting that the
17 firm was charging more than 10 cents a copy for photocopying.
18 The examiner notes that this was discussed in the second
19 interim submission. But I couldn't find anything that
20 specifically said an adjustment had been made to reduce that
21 which had been previously indicated as being in excess of what
22 the local rule permits.

23 MS. SMITH: Yes, Your Honor. Jennifer Smith from
24 Benesch Friedlander on behalf of the Committee.

25 It was my understanding that that adjustment had been

1 made. However, I would be happy to submit an explanation under
2 certification of counsel just to confirm that.

3 THE COURT: Well, let me ask you this. Is it your
4 intention to submit an application in connection with the stub
5 period that's just been described?

6 MS. SMITH: I imagine we will.

7 THE COURT: Then I would say address it in that
8 submission.

9 MS. SMITH: Certainly.

10 THE COURT: Okay. Bear with me for a moment.

11 (Pause)

12 THE COURT: I'd like to turn to the direct fee
13 review. Fee request, if I may. Is the fee auditor present or
14 on the phone?

15 MR. DRYER: Yes, Your Honor.

16 THE COURT: Step forward, if you would. And identify
17 yourself for the record.

18 MR. DRYER: W. Joseph Dryer, Direct Fee Review.

19 THE COURT: Good morning.

20 MR. DRYER: Good morning.

21 THE COURT: Do you have a copy of your application
22 with you?

23 MR. DRYER: No, I don't, Your Honor.

24 THE COURT: Okay. Maybe counsel can offer you one of
25 their copies, a binder, if they have it.

1 MR. BEACH: I apologize, Your Honor. I didn't bring
2 copies of all --

3 THE COURT: Okay. Well, then do this. Come forward,
4 if you would.

5 (Pause)

6 THE COURT: I'm showing you a time detail for an
7 October 30 entry that precedes a bunch of November 3 entries.
8 And all of the subsequent entries show write and sent e-mail,
9 point one. But the September 30 e-mail shows one point one.
10 And I was just wondering whether that was an error or whether
11 it really was an hour and ten? Just the juxtaposition of the
12 entries caused me to ask that question.

13 MR. DRYER: Yes, Your Honor. I'm not aware of that
14 specific entry. I can only say that I will go back and review
15 that entry, and if there's an error, I'll adjust the subsequent
16 detail for that specific entry.

17 THE COURT: Okay. Just have -- just submit something
18 under a certification. And unless I have a question, I'll act
19 without further hearing.

20 MR. DRYER: Thank you.

21 THE COURT: And I'll act promptly.

22 MR. DRYER: Thank you.

23 THE COURT: All right. It was the only question I
24 had with respect to direct fee.

25 Let me turn also to the second interim quarterly fee

1 request of Peter J. Solomon. Bear with me while I get to my
2 notes.

3 (Pause)

4 THE COURT: And I see that there are representatives
5 on the telephone.

6 MR. BEACH: They are, Your Honor.

7 THE COURT: Okay. I'm looking at the fee auditor's
8 report with respect to the second interim quarterly fee
9 request. And in Paragraph 5 on Page 2 at the bottom, the fee
10 auditor notes that -- well, had requested an explanation of the
11 charges with respect to meal expenses, which I think are -- I
12 would generally categorize as overtime meals as a result of
13 overtime work. And the explanation given was that they're
14 charged roughly in proportion to the percentage of total time
15 that we each spend on the debtor's matters relative to other
16 projects, that's a paraphrase but I think it captures the
17 essence of the explanation.

18 The fee auditor did not request an adjustment as a
19 result of that. But I'd like a further explanation by a
20 Solomon rep about exactly how those charges are allocated.

21 MR. DIETZ: Your Honor, it's Brad Dietz. And I
22 believe what we would do on a given evening would be if an
23 analyst associate, or even myself were working on multiple
24 matters, that we would allocate the meal expense that evening
25 proportionally to the time that we spent, if it's one project

1 or two projects. That's my understanding of our accounting
2 methodology.

3 THE COURT: Well, let me state a general principle,
4 and then you'll tell me how your allocation process fits into
5 this. Typically in overtime meal charges, which I generally
6 approve, and I know are standard in the industry, I would allow
7 them in situations in which work on that particular debtor's
8 matter occasioned the professional to incur the overtime work.
9 And, for example, it's not that the professional involved would
10 have to have spent 14 hours that day to be entitled to an
11 overtime meal charge. But that there be some significant
12 portion of the day which would have been spent on that debtor's
13 work in order to justify the overtime meal charge being
14 ascribed to that particular debtor.

15 How does that fit within the process that you've just
16 described to me?

17 MR. DIETZ: I think it generally does. And the -- I
18 guess the way I would try and maybe just do it from a simple
19 arithmetic standpoint would be if the analyst or the associate
20 was working on two projects during the day and carried over to
21 the evening, not trying to bifurcate the day by hours, but, you
22 know, in the evening time. If the meal was -- if they had
23 spent their time on two matters during the day, the overtime
24 and there was a meal, and the meal was -- and it was 50 percent
25 between the two matters, the meal was \$20, we'd allocate 10 to

1 project one and 10 to project two.

2 THE COURT: Well, what if -- what if on a given day,
3 let's say there were 10 hours expended between two matters, an
4 hour for one, and nine for the other, you would still allocate
5 10 percent of the meal charge to that matter in which you had
6 spent one hour?

7 MR. DIETZ: My colleague, Paul Croci, may be able to
8 help me with that allocation more specifically.

9 MR. CROCI: Your Honor, this is Paul Croci, also from
10 Peter Solomon. I'm here with Brad Dietz.

11 Essentially each evening when we, you know, come to
12 meal time, we order a meal, and specifically designate which
13 client to charge the meal to. And then specifically, as Paul
14 Garino and myself would order a meal, we would be working on
15 the given matter that we would charge it to. So, if at the
16 time that we were staying there, which I think is keeping with
17 your thought process, that you order a meal such that it is
18 what is responsible for causing you to incur the overtime work.
19 So, in general, whatever we're working on at that given time is
20 what we charge the meal to.

21 THE COURT: All right. The reason I'm inquiring here
22 is that, although, as I said, the policy among really all types
23 of professionals is to charge for overtime meals. The process,
24 as it was described in the submissions, was sufficiently fuzzy
25 that I wanted to delve a little further into it.

1 But I am satisfied with the response that's been
2 given, and the fact that the fee auditor did not request an
3 adjustment.

4 That exhausts my questions with respect to the
5 applications before me today. Does anyone else wish to be
6 heard in connection with any of the matters?

7 (No audible response heard)

8 THE COURT: All right. I hear no further response.

9 (Pause)

10 MR. BEACH: Your Honor, for the record, Sean Beach.
11 May I approach with forms of order for the debtor
12 professionals? And I can also take up the Committee
13 professional orders, as well.

14 THE COURT: And what have you done with the, if
15 anything, with the fee auditor's request?

16 MR. BEACH: Your Honor, I didn't make an adjustment.
17 If I may make a suggestion similar to the one that you made
18 with respect to Benesch. Instead of making an adjustment on
19 this application, can we make an adjustment on the next
20 application, to the extent necessary.

21 THE COURT: You know, that's a good idea. The time is
22 minimal enough that that, I think, would be an appropriate
23 result.

24 MR. BEACH: Thank you, Your Honor.

25 THE COURT: Otherwise the professionals will spend

1 more time than would be saved. Okay.

2 (Pause)

3 THE COURT: Thank you.

4 (Pause)

5 MR. BEACH: Your Honor, for the record, those orders
6 should reflect the voluntary reductions that all parties agreed
7 to, as well.

8 THE COURT: Very well.

9 (Pause)

10 THE COURT: All right. All four orders presented
11 have been signed. Is there anything further for today?

12 MR. BEACH: Thank you, Your Honor, no. There's
13 nothing further for today's hearing.

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

16 MR. BEACH: Thank you, Your Honor.

17 (Whereupon, at 11:21 A.M., the hearing was adjourned.)

18 CERTIFICATE

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

22

23 /s/ Karen Hartmann AAERT CET**D0475 Date: January 12, 2010

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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 1/5/2010 was filed on 1/12/2010 . 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 2/2/2010 .

If a request for redaction is filed, the redacted transcript is due 2/12/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 4/12/2010 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.



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Date: 1/12/10

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