

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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2010 APR 12 PM 1:44  
U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: )  
BUILDING MATERIALS HOLDING ) Chapter 11  
CORPORATION, et al., ) Case No. 09-12074 (KJC)

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RESPONSE TO OBJECTION TO PROOF OF CLAIM (Claim Number 2904,  
Case No. 09-12075).

Shortly before the bankruptcy in this case was filed, Empire Building Materials, Inc., (“Empire”) through its General Manager, Anthony Tangaro (“Tangaro”), was contacted by a representative of the Debtor in Missoula, Montana and was informed of the pending bankruptcy petition. As set forth in the affidavit of Anthony Tangaro attached hereto, he was advised that the Debtor would continue doing business with Empire and that its delinquent account with Empire in the amount of \$21,202.04 would be paid upon Debtor’s emergence from bankruptcy. Tangaro was again contacted by the Debtor’s representative after the bankruptcy was filed and was told that the Debtor would continue doing business with Empire and the delinquent amount would be paid after the Debtor’s bankruptcy plan was confirmed. Based upon these conversations, Tangaro believed that Empire need not file a proof of claim in this case.

However, after learning that the Debtor’s Chapter 11 plan required a proof of claim to be filed, Tangaro filed the claim immediately.

Wherefore, Empire asks the Court to allow its proof of claim as a timely filed claim.

DATED this 7<sup>th</sup> day of April, 2010.

By:  
Anthony Tangero

**AFFIDAVIT**

STATE OF MONTANA     )  
  : ss.  
County of Silver Bow )


That I am the General manager for Empire Building Materials Inc., (“Empire”);

That I was contacted by a representative of the Debtor, who had office in Missoula, Montana, and advised that a bankruptcy would be filed. However, the representative advised me that the Debtor wished to continue doing business with Empire and that the delinquent obligation (\$21,202.04) would be paid after the Debtor emerged from bankruptcy.

After the bankruptcy case was filed, I was again contacted by the same representative who again assured me that the Debtor wished to continue its business relationship with Empire and that the delinquent balance would be paid by the Debtor to Empire after the bankruptcy case was confirmed.

Based upon this conversation, I did not believe that Empire would need to file a proof of claim to be paid the pre-petition obligation;

I later learned that the Debtor’s Chapter 11 plan required creditors to file a timely proof of claim to be paid. Once I learned this I caused the proof of claim to be filed.

  
Anthony Tangero

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of April, 2010.

(Seal)

Printed Name: Gretchen A Thornton  
Notary Public for STATE OF MONTANA  
Residing at three forks,  
My Commission expires: 7/19/2010

CERTIFICATE OF SERVICE BY MAIL

I, Anthony Tangero do hereby certify that on the 7<sup>th</sup> day of April, 2010, served the foregoing RESPONSE by depositing a copy thereof in the United States Mail, postage prepaid thereon, addressed to counsel of record, as follows:

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By:   
Anthony Tangero

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