

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	§	Chapter 11
	§	
Building Materials Holding Corporation (BMHC) et al.	§	Case No. 09-12074(KJC)
Debtors	§	Jointly Administered

**MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER 11 USC §362
NOTICE OF OPPORTUNITY FOR HEARING**

1. John Robert Linahan, Movant, while in the course and scope of his employment with Abilene Lumber, which is a subsidiary and wholly owned by Building Materials Holding Corporation, was severely injured when his foot was crushed by a forklift. Movant has made a claim with the insurance carrier for Abilene Lumber. A state court lawsuit has not been filed.
2. Debtor, BMHC and Abilene Lumber, has indicated that it carries a policy or policies of insurance which would provide coverage for its liability, if any, in connection with any damages a trier of fact finds to be sustained by Movant.
4. Movant seeks relief from the automatic stay for the limited purpose of continuing its claim and possibly commencing suit against Debtor to adjudicate Debtor's liability in connection with the injuries and damages sustained by Movant.
4. As a condition of the requested relief, Movant stipulates and agrees to limit the extent of Movant's recovery against Debtor to the funds available under any and all insurance policies which may provide coverage for Respondent's adjudicated liability, if any. Also, Movant seeks authority, to the extent it may be necessary, to execute, levy, and collect upon such judgment as may be obtained by Movant in a state court action from Debtor's insurance carrier or carriers, only.
5. Movant alleges the Court should lift the automatic stay to permit the continuation of the claim against debtor and potentially commencing litigation in state court because no great prejudice to either the Debtor or the bankruptcy estate would result from the continuation of the civil action. Additionally, the hardship to Movant caused by the

continuation of the stay considerably outweighs the hardship caused to the Debtor by modification of the stay.

7. Movant alleges the imposition of the automatic stay denies and damages the opportunity to litigate because further time delays will result on the aging of evidence and loss of witnesses.

8. Movant further alleges cause exists for relief from the automatic stay to continue with State Court litigation since a jury trial has been requested, discovery is pending, and all issues are based entirely on state law.

WHEREFORE, PREMISES CONSIDERED, Movant respectfully prays for an order granting relief from the Automatic Stay to permit Movant to continue to pursue its claim, potentially file litigation and proceed to judgment, if necessary, in State Court, and to execute, levy, and collect upon such judgment as may be obtained by Movant in a State Court action to the extent of available policies of insurance only which provide coverage in such matters, and for such other and further relief to which the Court finds Movant justly entitled.

/s/ Kevin W. Willhelm
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Debtors	§	Jointly Administered
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**ORDER: MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER
11 USC §362 NOTICE OF OPPORTUNITY FOR HEARING**

It is hereby ORDERED:

1. The Automatic Stay is lifted so as to permit Movant John Robert Linahan to continue to pursue his claim, as described in the captioned motion; and
2. The Movant is permitted to file litigation and proceed to judgment, if necessary, in State Court (as that term is defined in the captioned motion), and to execute, levy, and collect upon such judgment as may be obtained by Movant in a State Court action to the extent – and only to the extent – of available policies of insurance only which provide coverage in such matters.

Judge, U.S. Bankruptcy Court

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FOR THE DISTRICT OF DELAWARE

In re	§	Chapter 11
	§	
Building Materials Holding Corporation	§	Case No. 09-12074(KJC)
(BMHC) et al.	§	
Debtors	§	Jointly Administered
	§	
	§	Obj. Deadline: 4/11/11 at
	§	4.00 p.m. ET

**NOTICE: MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER
11 USC §362 NOTICE OF OPPORTUNITY FOR HEARING**

PLEASE TAKE NOTICE that the captioned motion will be scheduled for hearing on the next omnibus hearing regularly scheduled in this matter.

PLEASE TAKE FURTHER NOTICE that any objection or response to the Motion, must be made in writing, and be filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before April 11, 2011 at 4:00 p.m. prevailing Eastern time. At the same time, you must also serve a copy of the objection or response, if any, upon the following: (i) Counsel to the Movant: Mark M. Billion, 2 Mill Road, Ste. 202; Wilmington, DE 19806; (ii) the United States Trustee: United States Trustee's Office, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (iii) the Official Committee of Unsecured Creditors: Bradford J. Sandler, Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801; and (iv) the Debtor: Robert F. Poppiti, Jr., Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801.

IF YOU FAIL TO RESPOND OR OBJECT IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

Respectfully submitted,

/s/ Kevin W. Willhelm
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**COS: MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER
11 USC §362 NOTICE OF OPPORTUNITY FOR HEARING**

I caused the foregoing to be served on all parties on the list attached hereto as Exhibit A via First Class Mail.

Respectfully submitted,

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EXHIBIT A

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