

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
) Chapter 11
BUILDING MATERIALS HOLDING)
CORPORATION,)
) Case No. 09-12074
)
) July 1, 2009
Debtors)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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I N D E XPAGE

Final hearing on the approval 3
of the debtor in possession
financing

1 (Court in Session)

2 THE CLERK: All rise.

3 THE COURT: Good afternoon, everyone.

4 MR. ROSENTHAL: Good afternoon, Your Honor. Michael
5 Rosenthal from Gibson, Dunn & Crutcher on behalf of Building
6 Materials Holding Corporation and its subsidiaries.
7 Your Honor, with me today is Matt Kelsey from Gibson, Dunn and
8 Sean Beach from Young, Conaway.

9 Your Honor, we hope to make this last afternoon
10 before you go on vacation relatively painless for you.

11 THE COURT: Well, I share in that sentiment.

12 MR. ROSENTHAL: There were two matters up for hearing
13 today. The first -- one of the matters was the question of the
14 de minimis sales procedures. We have adjourned that to the
15 July 16th hearing date.

16 The second matter, Your Honor, is the matter of the
17 final hearing on the approval of the debtor in possession
18 financing. Your Honor, I'm pleased to report that we've
19 resolved all the objections, formal and informal, that were
20 raised with respect to this, and I'd like to have just -- just
21 a few minutes to -- to tell the Court about the DIP motion
22 again.

23 We are here today on final approval of an
24 \$80.0 million debtor in possession financing. \$40.0 million of
25 that was approved on an interim basis at the hearing on

1 July 17th. In support of the DIP, Your Honor, we're relying on
2 the affidavit of Paul Street that was filed in connection with
3 the first day papers.

4 As I said at the first day hearing, Your Honor, the
5 debtor in possession financing is absolutely necessary to
6 provide comfort to the -- to the companies, vendors, suppliers,
7 and employees that they will be paid if they continue to deal
8 with or be employed by the company on an ongoing basis, and we
9 think it's absolutely essential to maintaining the -- the
10 reorganization value of these businesses for the benefit of all
11 of the creditor constituencies.

12 The terms of the DIP are relatively simple and very
13 beneficial to the debtor. It's an \$80.0 debtor in possession
14 financing. The rate is base rate plus 450 basis points, which
15 is significantly lower than the majority or perhaps all of the
16 dips that have recently been proposed. I hate to say that with
17 the lender sitting here, but it's -- but it's a very favorable
18 rate. The maturity provision is January 2nd of 2010, but at
19 the election of the debtors, that can be extended to March 31st
20 of 2010.

21 The DIP lenders are being given a -- a priming lien
22 and super priority administrative expense status. The priming
23 liens, however, Your Honor, are subject to certain permitted
24 priority liens that are set forth in the -- in the DIP credit
25 agreement.

1 There were two objections filed to the financing.
2 One was by some Texas State taxing authorities, and the taxing
3 authorities were objecting to the extent that the DIP purported
4 to prime their liens. We reached an agreement with the State
5 authorities to insert a provision into the -- into the final
6 order that says we were not -- we were not priming their liens,
7 that to the extent that the properties in Texas which were
8 subject to the statutory liens of the Texas taxing authorities
9 -- to the extent those properties were sold, that the proceeds
10 would be placed in a segregated account, and the liens would
11 attach to the proceeds to the same -- in the same priority as
12 they attach to the property.

13 The parties have reserved -- in this provision, the
14 parties have reserved all of their rights to challenge the
15 liens and the claims, et cetera, but that has been agreed to by
16 the -- by the objector and all of the other parties here.

17 The Committee, Your Honor, was formed last Friday,
18 and here today, a representative of the Committee, Chris --
19 Chris Giamo and Katie Lane from Arent, Fox. I'm sure they'll
20 be happy to introduce themselves to you.

21 What I want to say, Your Honor, is that we have -- we
22 have been unbelievably impressed by the speed with which the
23 committee has gotten up to speed on the matters related to the
24 DIP. I mean, basically, they had three or four days to review
25 these documents. We had conference calls over the weekend.

1 They raised some informal -- some issues with us informally.
2 We had discussions with the bank group and committee counsel
3 and have resolved the objections that they raised.

4 As a result of their objections, we have amended the
5 order to provide that the default notice time period would be
6 extended from three days to five days, meaning that if there is
7 a default in the DIP, we'll be given five days notice of that.

8 The challenge period with respect to the liens of the
9 prepetition lenders has been extended by approximately ten days
10 for the benefit of the -- of the creditors committee. So there
11 is still a 90-day challenge period for all constituencies other
12 than the Creditors Committee. Of course, the debtors have
13 stipulated, but as to the Creditors Committee, the challenge
14 period is 90 days, but it starts to run from the date of
15 formation of the committee, which is July 17th.

16 In addition, Your Honor, we have amended the
17 provision which provides that \$50,000 can be used for
18 investigation of the lien avoidance claims. We have increased
19 that to \$75,000.

20 The other objections, Your Honor -- there were no
21 other objections to the final order. However, as the Court
22 will recall in connection with the interim order, Mr. McMahon
23 on behalf of the U.S. Trustee's Office raised some issues and
24 some counsel for Ace Insurance raised some issues, and we have
25 -- we have essentially tracked the language that we agreed to

1 in connection with the interim order through to the final order
2 and have the sign off of Mr. McMahon and the lawyers for Ace as
3 well to -- to the final order.

4 Your Honor, if I may approach with a redline copy of
5 the final order.

6 THE COURT: Does it differ from that which was
7 delivered to chambers earlier?

8 MR. ROSENTHAL: No, Your Honor.

9 THE COURT: Okay. I have that, and I have reviewed
10 it.

11 MR. ROSENTHAL: Would you like me to walk through
12 these changes, Your Honor?

13 THE COURT: Just the material provisions.

14 MR. ROSENTHAL: That's fine. Your Honor, the first
15 change I'd point the Court to is on page 6 -- I'm sorry -- on
16 page 18, paragraph -- paragraph 6. These are the changes in 6A
17 that relate to the expanded avoidance period available to the
18 Committee, and then if the Court looks at the bottom of the
19 page and the top of the next page, the -- the Committee and the
20 debtors and the lenders have agreed to cooperate in -- and
21 expedited in informal discovery related to the -- to any
22 potential lien claims.

23 Page 19, again, the Creditors Committee is given
24 authority to challenge the -- to prosecutor or challenge of the
25 lien claims. That's a new change. Then I would ask the court

1 to look at paragraph 7E, which is on page 24 carrying over to
2 25. This is the language that resolves the objection of the
3 Texas tax authorities in the way that I described for the
4 Court.

5 The next change, Your Honor, is on page 27, paragraph
6 10, which reflects the increase in the amount available to --
7 to investigate a -- a challenge from 50,000 to 75,000, and then
8 on the -- on the next page, paragraph 12 on page 28 is the
9 language increasing the notice period from three days to five
10 days.

11 Other than that, Your Honor, you'll notice that this
12 is a -- this is a redline of the final order to the -- to the
13 interim DIP. So that's why at the end of the document, you
14 have the notice provisions that notify people of the -- of the
15 final hearing deleted.

16 So with that, Your Honor, I -- I would ask the Court
17 to enter the final order approving the debtor in possession
18 financing facility pursuant to the -- to the terms of the final
19 order that we've presented to you. We believe it's in the best
20 interest of the -- of the estate and its creditors and hope
21 it's approved.

22 THE COURT: All right. Let me ask if anyone else
23 wishes to be heard in connection with the proposed financing
24 order.

25 (No verbal response)

1 THE COURT: I hear no response. I do have the form
2 of order that was submitted to chambers earlier.

3 MR. ROSENTHAL: May I approach, Your Honor, with --
4 Sean does, he have -- does the Judge have this with the
5 attachments?

6 THE COURT: I do, unless there -- again, unless there
7 have been any changes, but I have the order, and the attachment
8 is the credit agreement.

9 MR. ROSENTHAL: There have been no changes,
10 Your Honor.

11 THE COURT: All right. That order has been signed.

12 MR. ROSENTHAL: Thank you very much, and we -- I hope
13 you have a nice vacation.

14 THE COURT: I plan to, but thank you very much.

15 MR. ROSENTHAL: Thank you.

16 THE COURT: That concludes this hearing. Court will
17 stand adjourned. Enjoy your holiday.

18 (Court adjourned)

19

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C E R T I F I C A T I O N

I, Maureen Emmons, court approved transcriber,
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MAUREEN EMMONS

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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

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