

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

**BUILDING MATERIALS HOLDING  
CORPORATION, *et al.*,<sup>1</sup>**

## Chapter 11

### Jointly Administered

Ref. Docket Nos. 96 and 182

## ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS

Upon consideration of the motion (the "**Motion**") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order pursuant to sections 105(a), 327 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rule 2016-1 establishing procedures for interim compensation and reimbursement of expenses for professionals in the Chapter 11 Cases;<sup>2</sup> all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion

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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted as set forth below.
2. Except as may otherwise be provided in orders of the Court authorizing the retention of specific Professionals, all Professionals in the Chapter 11 Cases pursuant to order of the Court may seek compensation for professional services rendered and reimbursement of expenses incurred in accordance with the procedures established as follows (collectively, the "**Compensation Procedures**");

- (a) No earlier than the 5th day of each calendar month following the month (or partial month) for which compensation is sought, each Professional seeking interim allowance of its fees and expenses may file an application (including the relevant time entry and description and expense detail) (a "**Monthly Fee Application**") with the Court pursuant to section 331 of the Bankruptcy Code for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month and will serve the Monthly Fee Application, by hand or overnight delivery, on (i) Building Materials Holding Corporation, 720 Park Boulevard, Suite 200, Boise, Idaho 83712, Attn.: Paul S. Street; (ii) Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, New York 10166, Attn.: Michael A. Rosenthal and Matthew K. Kelsey; (iii) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn.: Sean M. Beach and Robert F. Poppiti, Jr.; (iv) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Joseph McMahon; (v) Arcent Fox, LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339, Attn.: Christopher J. Giaimo and Katie A. Lane; (vi) Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, Delaware 19801, Attn.: Bradford J. Sandler; and (vii) Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, Twenty-Fourth Floor, San

Francisco, California 94105, Attn: Kevin B. Fisher (collectively, the "*Notice Parties*").

- (b) Each Notice Party will have 15 days after service of a Monthly Fee Application to object thereto (the "*Objection Deadline*"). If no objections are raised prior to the expiration of the Objection Deadline, the Professional submitting the Monthly Fee Application shall file a certificate of no objection with the Court, after which the Debtors shall be authorized to pay such Professional an amount equal to 80% of the fees and 100% of the expenses requested in its Monthly Fee Application (the "*Maximum Interim Payment*"). If an objection is properly filed, the Debtors shall be authorized to pay the Professional 80% of the fees and 100% of the expenses not subject to an objection (the "*Actual Interim Payment*"). The first Monthly Fee Application submitted by each Professional shall cover the period from the Petition Date through and including June 30, 2009.
- (c) If any Notice Party objects to a Professional's Monthly Fee Application, it must, on or before the expiration of the Objection Deadline, file with the Court and serve on such Professional and each other Notice Party a written objection (an "*Objection*") so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable fees and/or expenses, including the amount of such objected-to fees and/or expenses, and the basis for such Objection. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution within 15 days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Interim Payment and the Actual Interim Payment made to such Professional (the "*Incremental Amount*"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and rule on the Objection if requested by the parties.
- (d) Beginning with the approximate three-month period from the Petition Date and ending on August 31, 2009, and at each three-month period thereafter, each Professional shall file with the Court and serve on the Notice Parties an application (an "*Interim Fee Application*") for interim allowance of compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during such three-month period (the "*Interim Fee Period*") pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application must identify the covered Monthly Fee Applications and include any other information requested by the Court or required by the Local Rules. Interim Fee Applications shall be filed with the Court and served on the Notice Parties within 20 days after the end of the applicable Interim Fee Period. Each Professional shall file its first Interim Fee Application on or before September 21, 2009, and the first

Interim Fee Application shall cover the Interim Fee Period from the Petition Date through and including August 31, 2009.

- (e) The Debtors shall request that the Court schedule a hearing on Interim Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate.
- (f) The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses pursuant to the Compensation Procedures.
- (g) Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures, nor (ii) the filing of or the failure to file an Objection to any Monthly Fee Application or Interim Fee Application will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation for services rendered and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals in accordance with the Compensation Procedures are subject to disgorgement until final allowance by the Court.

3. Each member of a any statutory creditors' committee appointed in the Chapter 11 Cases (the "*Committee*") shall be permitted to submit statements of expenses and supporting vouchers to the Committee's counsel, which counsel shall collect and submit such requests for reimbursement in accordance with the Compensation Procedures; *provided, however*, that Committee members' requests for reimbursement of attorneys' fees must be made by separate application and scheduled for hearing upon proper notice.

4. Service of the Monthly Fee Applications, Interim Fee Applications, final fee applications and Hearing Notices is approved as follows: (i) the Notice Parties shall be entitled to receive the Monthly Fee Applications, Interim Fee Applications, final fee applications, and Hearing Notices and (ii) the parties in interest requesting notice pursuant to Bankruptcy Rule 2002 shall be entitled to receive only the Interim Fee Applications and Hearing Notices.

5. Upon motion or application, and after due notice to all Application Recipients, additional professionals employed by the Debtors or the Committee may be authorized to participate in the Compensation Procedures as set forth in this order.

6. All Professionals subject to this order shall be required to monitor their own compliance with the terms of this order and shall include the following certification on each Monthly Fee Application: I hereby certify that I am in compliance with the terms of the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. All time periods set forth in this order shall be calculated in accordance with Bankruptcy Rule 9006(a).

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Date: Wilmington, Delaware  
July 14, 2009



Kevin J. Carey  
Chief United States Bankruptcy Judge