

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

In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket Nos. 9 and 55

**CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO PAY (A) PREPETITION
WAGES, SALARIES, AND OTHER COMPENSATION, (B) REIMBURSABLE EMPLOYEE
EXPENSES, AND (C) EMPLOYEE MEDICAL AND SIMILAR BENEFITS;
AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

On June 16, 2009, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed their Motion for Entry of an Order (I) Authorizing the Debtors to Pay (A) Prepetition Wages, Salaries, and Other Compensation, (B) Reimbursable Employee Expenses, and (C) Employee Medical and Similar Benefits; and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers [Docket No. 9] (the "Motion"). On June 17, 2009, the Court entered an order [Docket No. 55] (the "Interim Order") approving the Motion on an interim basis. Subsequent to the filing of the Motion and entry of the Interim Order, the Debtors received comments from the Office of the United States Trustee (the "U.S. Trustee") and the Official Committee of Unsecured Creditors (the "Committee") regarding 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.

The Debtors have worked with the U.S. Trustee and the Committee to address their concerns and have resolved them through the proposed form of final order for the Motion (the "Proposed Order"), a copy of which is attached hereto as Exhibit A.² The Debtors submit that the Proposed Order is appropriate and consistent with the Debtors' discussions with the U.S. Trustee and the Committee, and that entry of the Proposed Order is in the best interests of the Debtors, their estates and creditors.

Accordingly, the Debtors respectfully request the Court to enter the Proposed Order at its earliest convenience without further notice or hearing.

Dated: Wilmington, Delaware
July 15, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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----and----

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² For ease of reference, attached hereto as Exhibit B is a copy of the Proposed Order marked against the Interim Order.

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Telephone: (214) 698-3100
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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

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

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹**

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket Nos. 9, 55 and _____

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY (A) PREPETITION WAGES, SALARIES, AND OTHER COMPENSATION, (B) REIMBURSABLE EMPLOYEE EXPENSES, AND (C) EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

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 (I) authorizing the Debtors to pay prepetition (a) wages, salaries, and other compensation, (b) reimbursable employee expenses, and (c) employee medical and similar benefits; and (II) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Order, all as set forth in the Motion; and upon the Street Declaration² in support thereof; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.

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.

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

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 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 on a final basis as set forth below.
2. Subject to other provisions of this Order, the Debtors are authorized, but not directed, to honor and pay, in the ordinary course of business and in accordance with the Debtors' prepetition policies and prepetition practices, employee wages and benefits, including, without limitation, (i) any prepetition amounts owed in connection with the Employee Wage and Benefit Obligations, provided that payments on account of prepetition amounts owed in connection with the Employee Wage and Benefit Obligations shall not exceed \$12,900,000 in the aggregate, and (ii) cash on account of prepetition vacation or paid time off obligations to Employees.
3. No payments to any individual on account of Unpaid Compensation, the Commissions Programs, Unpaid Independent Contractor Compensation, or Unpaid Temporary Employee Compensation shall exceed the caps set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code.
4. The Debtors are authorized, but not directed, to make severance payments to any Employees that are terminated after the Petition Date in accordance with the Debtors' past practices

with respect to similarly situated Employees, in the ordinary course of business; provided, however, that the Debtors shall not make any severance payments to an insider, as defined in the Bankruptcy Code, that would be subject to section 503(c)(2) of the Bankruptcy Code without first seeking Court approval thereof, and this Order does not apply to any employees that are party to an executive severance plan. The Debtors shall provide to counsel for the Official Committee of Unsecured Creditors written reports of all payments made under this paragraph on an every-other-week basis, and reasonable and timely access to information sufficient to enable it to monitor payments, obligations satisfied, and other actions taken pursuant to the relief authorized under this paragraph.

5. Nothing contained herein shall be deemed to direct the Debtors to pay any of the disputed amounts sought by former employees of the Debtors in the Wage and Hour Litigation without further order of the Court.

6. Nothing contained herein shall be deemed to authorize the payment of any amounts that may be subject to section 503(c) of the Bankruptcy Code.

7. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

8. The Debtors are authorized to pay costs and expenses incidental to payment of the Employee Wage and Benefit Obligations, including all administrative and processing costs and payments to outside professionals, including the ADP Service Fees, in the ordinary course of business.

9. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Wage and Benefit Obligations.

10. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this order, and such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of the Employee Wage and Benefit Obligations that are dishonored or rejected.

12. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of any Employee Wage or Benefit Obligation pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

13. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder.

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

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of applicable rules.

16. Pursuant to 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
July __, 2009

KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Blackline of Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. <u>Nos. 99, 55 and</u>

**INTERIMINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY (A) PREPETITION
WAGES, SALARIES, AND OTHER COMPENSATION, (B) REIMBURSABLE EMPLOYEE
EXPENSES, AND (C) EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (II)
AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

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 (I) authorizing the Debtors to pay prepetition (a) wages, salaries, and other compensation, (b) reimbursable employee expenses, and (c) employee medical and similar benefits; and (II) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Order, all as set forth in the Motion; and upon the Street Declaration² in support thereof; 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

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

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 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 on a final basis as set forth below.

2. ~~With the exception of Severance Pay and Retention Pay items, and subject~~ Subject to other provisions of this Order, the Debtors are authorized, but not directed, to honor and pay, in the ordinary course of business and in accordance with the Debtors' prepetition policies and prepetition practices, employee wages and benefits, including, without limitation, (i) any prepetition amounts owed in connection with the Employee Wage and Benefit Obligations, provided that payments on account of prepetition amounts owed in connection with the Employee Wage and Benefit Obligations shall not exceed \$12,900,000 in the aggregate; ~~provided further, that pending a final hearing on this Motion, nothing herein authorizes the Debtors to pay, and~~ (ii) cash on account of prepetition vacation or paid time off obligations to Employees ~~unless such payment is required by applicable state law.~~

3. No payments to any individual on account of Unpaid Compensation, the Commissions Programs, Unpaid Independent Contractor Compensation, or Unpaid Temporary Employee Compensation shall exceed the caps set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code.

4. ~~A final hearing with respect to the Motion (including Severance Pay, Retention Pay and any "cash out" of prepetition vacation or paid time off obligations upon termination) shall be held on July 16, 2009 at 4:30 p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before July 9, 2009, and served on the parties, as required by the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware.~~ The Debtors are authorized, but not directed, to make severance payments to any Employees that are terminated after the Petition Date in accordance with the Debtors' past practices with respect to similarly situated Employees, in the ordinary course of business; provided, however, that the Debtors shall not make any severance payments to an insider, as defined in the Bankruptcy Code, that would be subject to section 503(c)(2) of the Bankruptcy Code without first seeking Court approval thereof, and this Order does not apply to any employees that are party to an executive severance plan. The Debtors shall provide to counsel for the Official Committee of Unsecured Creditors written reports of all payments made under this paragraph on an every-other-week basis, and reasonable and timely access to information sufficient to enable it to monitor payments, obligations satisfied, and other actions taken pursuant to the relief authorized under this paragraph.

5. Nothing contained herein shall be deemed to direct the Debtors to pay any of the disputed amounts sought by former employees of the Debtors in the Wage and Hour Litigation without further order of the Court.

6. Nothing contained herein shall be deemed to authorize the payment of any amounts that may be subject to section 503(c) of the Bankruptcy Code.

7. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

8. The Debtors are authorized to pay costs and expenses incidental to payment of the Employee Wage and Benefit Obligations, including all administrative and processing costs and payments to outside professionals, including the ADP Service Fees, in the ordinary course of business.

9. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Wage and Benefit Obligations.

10. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this order, and such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of the Employee Wage and Benefit Obligations that are dishonored or rejected.

12. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of any Employee Wage or Benefit Obligation pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

13. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder.

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

15. ~~Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**")~~
~~has been satisfied.~~

15. ~~16.~~ Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of applicable rules.

16. ~~17.~~ Pursuant to Bankruptcy Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. ~~18.~~ This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
~~June 17,~~July, 2009

KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE