

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION	)	
	)	Jointly Administered
Debtor.	)	Obj. Deadline: August 4, 2009 by 4:00 p.m.
	)	Hearing Date: August 11, 2009 @ 2:30 p.m.

**MOTION OF EL PASO LUMBER & PLYWOOD, INC. FOR  
ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

El Paso Lumber & Plywood, Inc. (“El Paso Lumber”), requests that the Court enter an order allowing it an administrative expense claim under and pursuant to 11 U.S.C. §§503(a), 503(b)(9) and 507(a)(2) (“this Motion”); and, in support, respectfully represents as follows:

**Jurisdiction And Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in these cases and over this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is 11 U.S.C. §503(b)(9).

**Background**

3. Building Materials Holding Corporation, and various subsidiaries and affiliates, including without limitation BMC West Corporation (the “Debtor”), filed a voluntary petition for protection with this Bankruptcy Court under Chapter 11 of the U.S. Bankruptcy Code on or about June 16, 2009 (the “Petition Date”).

4. The Debtor continues to operate its business and manage its properties as a Debtor in Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. An official committee of unsecured creditors (the "Committee") was appointed in these cases. No trustee or examiner has been appointed in the Debtor's bankruptcy case to date.

6. No administrative bar date has been set.

7. Within the twenty (20) days prior to the Petition Date, El Paso Lumber supplied certain goods to the Debtor in the ordinary course of business, for which El Paso Lumber has not been paid. The transactions at issue consisted of the following:

<u>Date of Shipment</u>	<u>Inv.#</u>	<u>Invoice Date</u>	<u>Type of Goods</u>	<u>Purchase Price</u>
6/8/09	8025	6/8/09	7/16 OSB A lumber	\$5,652.48
6/9/09	8039	6/9/09	7/16 OSB A lumber	\$5,652.48
6/11/09	8052	6/11/09	7/16 OSB A lumber	\$5,652.48.

The value of those goods delivered is \$16,957.44.

### **RELIEF REQUESTED**

9. El Paso Lumber respectfully requests entry of an order from this Bankruptcy Court pursuant to 11 U.S.C. §503(b)(9) that grants it an allowed administrative expense claim of \$16,957.44 against the Debtor (the "Administrative Expense Claim"). Further, El Paso Lumber requests that the allowed Administrative Expense Claim sought herein have the priority and right to payment afforded administrative expenses under 11 U.S.C. §507(a)(2).

10. Section 503(b)(9) of the Bankruptcy Code states:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

....

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor in the ordinary course of such debtor's business.

A seller of goods to a debtor need not make a written demand on the debtor in order to assert its rights under Section 503(b)(9). *See* 11 U.S.C. §546(c)(2).

11. In this case, the Debtor received goods from El Paso Lumber: (i) within the twenty (20) days prior to the Petition Date; and (ii) these goods were sold by El Paso Lumber to the Debtor in the ordinary course of the Debtor's business.

12. As a result, El Paso Lumber is now entitled to an allowed administrative expense claim in the amount of \$16,957.44 against the Chapter 11 bankruptcy estate of the Debtor.

### **RESERVATION OF RIGHTS**

13. El Paso Lumber reserves all of its rights, claims, counterclaims, defenses and remedies under the Bankruptcy Code, and other applicable law.

### **NOTICE**

14. Notice of this Motion has been given to counsel for the Debtor, the Office of the United States Trustee, counsel for the Committee, and all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, El Paso Lumber submits that no other or further notice need be given.

### **NO PRIOR REQUEST**

15. No motion or application for the relief requested herein was previously made to this or any other court.

WHEREFORE, El Paso Lumber respectfully requests that this Court enter an order pursuant to 11 U.S.C. §503(b)(9) and 507(a)(2): (i) allowing El Paso Lumber an administrative expense claim against Debtor in the amount of \$16,957.44; (ii) requiring the Debtor to pay \$16,957.44 to El Paso Lumber in satisfaction of such administrative claim at a time to be

determined by the Bankruptcy Court; and (iii) for such other and further relief as this Court may deem just and proper.

Dated: July 15, 2009

STEVENS & LEE, P.C.

/s/ John D. Demmy

John D. Demmy (DE Bar No. 2802)

1105 North Market Street, 7th Floor

Wilmington, DE 19801

Telephone: (302) 425-3308

Telecopier: (610) 371-8515

Email: jdd@stevenslee.com

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Of Counsel:

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& GALATZAN

A Professional Corporation

P.O. Drawer 1977

El Paso, Texas 79950-1977

(915) 532-2000

Fax: (915) 541-1548

Attn: Clyde A. Pine, Jr.

CERTIFICATE OF SERVICE

John Demmy hereby certifies that on this 15th day of July, 2009, in addition to the notification and service provided by the Court's CM/ECF system, a true and correct copy of the foregoing *Motion Of El Paso Lumber & Plywood, Inc. For Allowance Of Administrative Expense Claim* also was served by regular United States mail delivery on:

Donald J. Bowman, Jr., Esquire  
Robert F. Poppiti, Esquire  
Sean Matthew Beach, Esquire  
Young, Conaway, Stargatt & Taylor  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801

United States Trustee  
844 King Street  
Room 2207, Lockbox #35  
Wilmington, DE 19801

Bradford J. Sandler, Esquire  
Benesch Friedlander Coplan & Aronoff  
222 Delaware Avenue, Suite 801  
Wilmington, DE 19801

Christopher J. Giaimo, Esquire  
Arent Fox, PLLC  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339.

And the Parties on the attached Service List.

/s/ John D. Demmy  
John Demmy

# EXHIBIT 1



## EL PASO LUMBER &amp; PLYWOOD, INC.

ORDER RELEASE

3880 DONIPHAN DR.  
BLDG. A, 2nd FLOOR  
EL PASO, TX 79822  
PH. (915) 833-8788  
FAX (915) 833-5781

8033

DATE	CUSTOMER ORDER NO.	OUR INVOICE NO.	TERMS	DELIVERY DATE	FILLED BY	CHECKED BY
06/09/09	600-90682	8193	1 % 10 DA			MARTHA
<b>SOLD TO:</b> BMC WEST P.O. BOX 70006 BOISE, ID 93707-0106			<b>SHIP TO:</b> BMC WEST P.O. BOX 70006 BOISE, ID 93707-0106			

7  
Date  
Shipped

ITEM NO.	DESCRIPTION	ORDERED	SHIPPED
7/16 OSB A Cat No. 112X866915 L. Bundle TR MARTC	7/16 OSB A Class OS Pcs/Length 960/8	960 Unit/Pcs 12/80	960 Pieces 960 960

CLERICAL ERRORS ARE SUBJECT TO CORRECTIONS

ALL RETURNED MERCHANDISE SUBJECT TO 10% HANDLING CHARGE.

OFFICE

SIGN

HERE

RECEIVED IN GOOD ORDER

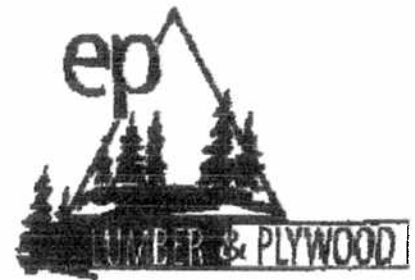
DATE

BMC# 80063

EL PASO LUMBER & PLYWOOD INC.  
 3880 DONIPHAN DR BLDG A 2ND  
 FLOOR  
 EL PASO, TX 79922

# Original Invoice

Date	Invoice #
6/9/2009	EPLP-8203



Bill To
BMC WEST CORP. P.O. BOX 70006 BOISE, ID 83707-0106

Ship To
BMC WEST 1366 Lomaland Drive El Paso, TX 79935 USA

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Delivery Ticket
600-90682	10 days	HA	6/9/2009	Truck	EL PASO, TX	8039
Quantity	Item Code	Description	Price ...	Units	Pcs. Unit	Amount
960	7/16 OS...	7/16 OSB A tr41-20360	5.888	12	80	5,652.48
				<b>Total</b>		
				\$5,652.48		



EL PASO LUMBER &amp; PLYWOOD, INC.

3880 DONIPHAN DR.  
BLDG. A, 2nd FLOOR  
EL PASO, TX 79922  
PH. (815) 833-5788  
FAX (815) 833-5781

ORDER RELEASE

8025

SO-5206-1

DATE	CUSTOMER ORDER NO.	OUR INVOICE NO.	TERMS	DELIVERY DATE	FILLED BY	CHECKED BY
06/08/09	600-90681	8181	1 % 10 DA			CARLOS V

late  
shipped

SOLD TO:  
BMC WEST  
P.O. BOX 70006  
BOISE, ID 93707-0106

SHIP TO:  
BMC WEST  
P.O. BOX 70006  
BOISE, ID 93707-0106

ITEM NO.	DESCRIPTION	ORDERED	SHIPPED
7/16 OSB A Car No. 112X866915 1x Bundle TR MARIC	7/16 OSB A Class OS Pcs/Length 960/8'	960 Unit/Pcs 12/80	960 Pieces 960 960

BMC #01

CLERICAL ERRORS ARE SUBJECT TO CORRECTIONS

ALL RETURNED MERCHANDISE SUBJECT TO 15% HANDLING CHARGE.  
OFFICESIGN  
HERE

RECEIVED IN GOOD ORDER

DATE

6-8-09

EL PASO LUMBER & PLYWOOD INC.

3880 DONIPHAN DR BLDG A 2ND

FLOOR

EL PASO, TX 79922

## Original Invoice

Date	Invoice #
6/8/2009	EPLP-8194



**Bill To**

BMC WEST CORP.  
P.O. BOX 70006  
BOISE, ID 83707-0106

**Ship To**

BMC WEST  
1366 Lomaland Drive  
El Paso, TX 79935  
usa

P.O. Number		Terms	Rep	Ship	Via	F.O.B.	Delivery Ticket
600-90681		10 days	HA	6/8/2009	Truck	EL PASO, TX	8025
Quantity	Item Code	Description		Price ...	Units	Pcs. Unit	Amount
960	7/16 OS...	7/16 OSB A tr4120360-  inv#- 8181 so#- 5206		5.888	12	80	5,652.48



## EL PASO LUMBER &amp; PLYWOOD, INC.

ORDER RELEASE

3880 DONIPHAN DR.  
BLOG. A, 2nd FLOOR  
EL PASO, TX 79922  
PH. (915) 833-5788  
FAX (915) 833-5781

8052

80-5236-1

DATE	CUSTOMER ORDER NO.	OUR INVOICE NO.	TERMS	DELIVERY DATE	FILLED BY	CHECKED BY
06/11/09	500-90683	8209	1 X 10 DA			CARLOS V

SOLD TO:  
BMC WEST  
P.O. BOX 70006  
BOISE, ID 93707-0106

SHIP TO:  
BMC WEST  
P.O. BOX 70006  
BOISE, ID 93707-0106

Date  
Shipped

ITEM NO.	DESCRIPTION	ORDERED	SHIPPED
7/16 OSB A Cat No. 1. Bundle CHIT273406 TR	7/16 OSB A Class KARTC Pcs/Length 960/8'	960 Unit/Pcs 12/80	960 Pieces 960 960
<p><i>ASPER</i> BMC # 80063</p>			

CLERICAL ERRORS ARE SUBJECT TO CORRECTIONS

ALL RETURNED MERCHANDISE SUBJECT TO 10% HANDLING CHARGE

OFFICE

SIGN

HERE

RECEIVED IN GOOD ORDER

DATE

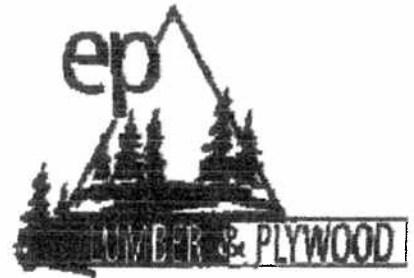
*Jan*  
6-11-09

EL PASO LUMBER & PLYWOOD INC.

3880 DONIPHAN DR BLDG A 2ND  
FLOOR  
EL PASO, TX 79922

## Original Invoice

Date	Invoice #
6/11/2009	EPLP-8220



**Bill To**

BMC WEST CORP.  
P.O. BOX 70006  
BOISE, ID 83707-0106

**Ship To**

BMC WEST  
1366 Lomaland Drive  
El Paso, TX 79935  
usa

P.O. Number		Terms	Rep	Ship	Via	F.O.B.	Delivery Ticket
600-90683		10 days	HA	6/11/2009	Truck	EL PASO, TX	8052
Quantity	Item Code	Description	Price ...	Units	Pcs. Unit	Amount	
960	7/16 OS...	7/16 OSB A TR4120361-	5.888	12	80	5,652.48	
					<b>Total</b>	\$5,652.48	

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION	)	
	)	Jointly Administered
Debtor.	)	Obj. Deadline: August 4, 2009 by 4:00 p.m.
	)	Hearing Date: August 11, 2009 @ 2:30 p.m.

**NOTICE OF HEARING ON MOTION OF EL PASO LUMBER & PLYWOOD, INC.  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

PLEASE TAKE NOTICE that on July 15, 2009, El Paso Lumber & Plywood, Inc. (“El Paso Lumber”) filed its *Motion Of El Paso Lumber & Plywood, Inc. For Allowance Of Administrative Expense Claim* (the “Motion”), which seeks allowance of an administrative expense claim under and pursuant to 11 U.S.C. §§503(a), 503(b)(9) and 507(a)(2) relating to goods and products supplied by El Paso Lumber to the Debtor BMC West Corporation.

PLEASE TAKE NOTICE FURTHER that You are required to file any response or objection to the Motion by 4:00 p.m. on August 4, 2009. At the same time, you must also serve a copy of the response upon El Paso Lumber’s undersigned attorneys

PLEASE TAKE NOTICE FURTHER that if any responses or objections are timely and properly filed and served, a hearing on the Motion will be held before the Honorable Kevin J. Carey on August 11, 2009 at 2:30 p.m. in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware, 19801.

PLEASE TAKE NOTICE FURTHER THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 15, 2009

STEVENS & LEE, P.C.

/s/ John D. Demmy

John D. Demmy (DE Bar No. 2802)

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Attn: Clyde A. Pine, Jr.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION	)	
	)	Jointly Administered
Debtor.	)	

**ORDER GRANTING MOTION OF EL PASO LUMBER & PLYWOOD, INC.  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

This matter came before the Court upon the Motion (the “Motion”) of El Paso Lumber & Plywood, Inc. (“El Paso Lumber”), a creditor of BMC West Corporation (the “Debtor”) for entry of an order pursuant to 11 U.S.C. §503(b)(9) allowing El Paso Lumber an administrative claim for \$16,957.44 (the “§503(b)(9) Claim”) against the Debtor.

The Court, having reviewed the Motion, finds that BMC received goods valued at \$16,957.44 from El Paso Lumber in the ordinary course of business within the twenty (20) days immediately proceeding its filing of a Chapter 11 petition; that the §503(b)(9) Claim may and should be allowed as an administrative expense in the amount of \$16,957.44 against the Debtor’s estate pursuant to section 503(b)(9) of the Bankruptcy Code.

Accordingly, it is hereby ORDERED that:

1. The Motion of El Paso Lumber is hereby granted;
2. El Paso Lumber's §503(b)(9) Claim is allowed as an administrative expense against the Debtor’s estate pursuant to 11 U.S.C. §503(b)(9) in the amount of \$16,957.44, with the §503(b)(9) Claim having the priority afforded administrative expenses under 11 U.S.C. §507(a)(2).
3. The administrative expense priority claim granted herein shall be binding on the Debtor and the Debtor’s estate and any successors to the Debtor.

4. The Court shall retain jurisdiction to address any dispute arising out of the enforcement or interpretation of the terms of this Order.

Dated: \_\_\_\_\_, 2009.

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Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE

**2002 SERVICE LIST**  
**BUILDING MATERIALS HOLDING CORPORATION**  
**7/13/2009**

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Philadelphia, PA 19114

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