

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> , ¹)	
)	Jointly Administered
Debtors.)	
)	Ref. Docket Nos. 114 and 198
)	

**AMENDED ORDER AUTHORIZING AND APPROVING OMNIBUS PROCEDURES
FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION BROUGHT
OR THREATENED BY OR AGAINST THE DEBTORS IN JUDICIAL,
ADMINISTRATIVE, ARBITRAL, OR OTHER ACTIONS OR PROCEEDINGS**

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 authorizing and approving an omnibus procedure for settling and allowing certain claims and causes of action threatened or brought by or against the Debtors in judicial, administrative, arbitral or other actions or proceedings (the "***De Minimis Claims***"), all as set forth in the Motion; and the Court having entered an order [Docket No. 198] (the "Original Order") on July 14, 2009 approving 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

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.

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 as set forth below.
2. This Order shall supersede and replace the Original Order in its entirety.
3. The Debtors are authorized to settle De Minimis Claims involving
(a) Settling Parties² against the Debtors, or (b) the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against the Debtors by the Settling Parties (or against the Settling Parties by the Debtors), where such claims are filed, or threatened to be filed, in a judicial, administrative, arbitral or other action or proceeding brought by or against the Debtors, in accordance with the following Settlement Procedures:

- (a) no settlement of a De Minimis Claim will be agreed to unless it is reasonable in the sound business judgment of the affected Debtor upon consideration of (i) the probability of success if the claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claims, (iii) other factors relevant to assessing the prudence of the settlement, and (iv) the fairness of the settlement to such Debtor's estate, creditors and shareholders;
- (b) no settlement will be effective unless it is executed by an authorized representative of both the Debtors and the Settling Party;

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

- (c) with respect to any Settled Value that is equal to or less than \$250,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action on any reasonable terms and may enter into, execute and consummate a written agreement of settlement that will be binding on it and its estate without notice by such Debtor to any third party or further action by this Court;
- (d) with respect to any Settled Value that is greater than \$250,000 but does not exceed \$1,000,000, such affected Debtor, in its discretion, may agree to settle such claim or cause of action only if (i) it provides written notice (the "**Notice**") to the Office of the United States Trustee for the District of Delaware, counsel for the Creditors' Committee and counsel for the administrative agent for the Debtors' prepetition and postpetition secured lenders (the "**Negative Notice Parties**") of the terms of the settlement, and (ii) such terms are not objected to in writing by any of the Negative Notice Parties within ten days after the date of service of the Notice by filing such objection with this Court and serving such objection on Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Michael A. Rosenthal and Matthew K. Kelsey and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, Wilmington, Delaware 19801, Attn: Sean M. Beach and Robert F. Poppiti, Jr., so that it is actually received on or before the tenth day after the date of service of the Notice (the "**Objection Period**"). In the absence of any such objection, the Debtor may enter into, execute, and consummate a written agreement of settlement that will be binding on it and its estate without further order of this Court;
- (e) if any Negative Notice Party properly and timely objects to the terms of any settlement during the Objection Period, and the Debtor, in its sole discretion, still desires to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed except upon (i) resolution of the objection by the Debtors and the objecting party or parties, or (ii) further order of the Court after a hearing; and
- (f) any settlement that is not authorized pursuant to the foregoing procedure, or pursuant to any other order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties in interest.

4. All time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

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

6. To the extent that the Debtors are authorized by this Order to fix the allowed amount and priority of a filed claim without further order of this Court, then the allowed amount and priority of such filed claim, and the Debtor against which such filed claim is allowed, shall be as set forth in the applicable agreement between the Debtor and the Settling Party, and such agreement shall be fully binding upon the applicable Debtor's estate.

7. If the settlement calls for payment by the Debtors, such payment shall be made by the Debtors' agreement to an allowed prepetition claim which shall be paid pursuant to the Plan, except with respect to claims deemed to be administrative expense claims in accordance with the terms of the settlement or under 11 U.S.C. §§ 503 and 507, and with respect to such claims only in the Debtors' sole discretion; *provided, however*, that a settlement may provide for equitable relief with respect to any claim, subject to the limits on Settled Value contained in the Settlement Procedures; *provided, further*, that with respect to cross-claims and counter-claims, the settlement may provide for offsets in favor of the Settling Parties against, and up to but not exceeding, the amount of any monetary payments to be otherwise made by the Settling Parties to, or on behalf of, the Debtors.

8. To the extent that a Settling Party holds a valid reclamation claim on goods in the Debtors' possession pursuant to 11 U.S.C. § 546(c)(1) that is not subject to the prior rights of a holder of a security interest in such goods, the Debtors are authorized to enter into a settlement, subject to the Settlement Procedures, providing for the return of such goods to the Settling Party, the granting of an administrative expense claim to the Settling Party, or any other performance agreed to by the Debtors in their sole discretion. Upon entering into any settlement pursuant to this paragraph, and provided that the settlement is not pursuant to the provisions of that certain Order (A) Authorizing the Debtors to Pay Certain Critical Provider Administrative

Claims; (B) Authorizing the Debtors to Pay Certain Additional Critical Provider Claims; and (C) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers [Docket No. 64] (the "*Critical Vendor Order*"), the Debtors shall provide notice of such settlement to counsel for the Creditors' Committee and the Creditors' Committee shall thereafter have three business (3) days to object to the proposed settlement and to file such objection with the Court. In the absence of an objection from the Creditors' Committee on or before the third (3rd) business day, the Debtors shall be authorized to proceed with the proposed settlement. Nothing in the foregoing sentence is intended or otherwise shall be deemed to impair, prejudice, diminish, restrict or otherwise affect the Debtors' ability to make payments pursuant to the Critical Vendor Order.

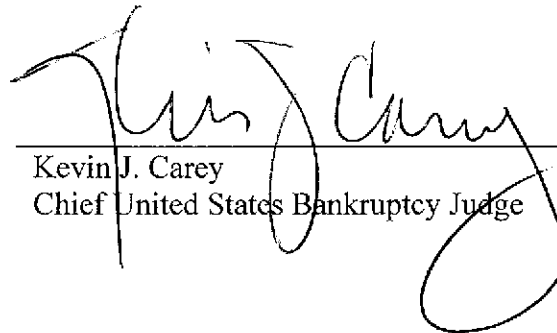
9. Nothing in the Motion or this Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

10. Notwithstanding the possible applicability of Rules 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: July 16, 2009
Wilmington, Delaware



Kevin J. Carey
Chief United States Bankruptcy Judge