

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

BUILDING MATERIALS HOLDING CORP.

Debtor,

MARIO CRUZ LUNA,

Movant,

No.: 09-12074  
Chapter 11 Proceeding

**MOTION FOR RELIEF FROM STAY**

COMES NOW MARIO CRUZ LUNA, hereinafter called Movant, seeking modification of the automatic stay in this case in order to exercise any and all rights Movant may have and for cause would show the Court as follows:

I.

**NOTICE**

**AN ORDER WILL BE ENTERED GRANTING THE RELIEF REQUESTED  
HEREIN WITHOUT FURTHER HEARING UNLESS A WRITTEN OBJECTION  
AND REQUEST FOR HEARING IS FILED WITH THE CLERK WITHIN  
TWENTY (20) DAYS OF THE DATE OF ISSUANCE OF THIS NOTICE. ANY  
SUCH OBJECTION MUST ALSO BE SERVED UPON THE MOVING PARTY  
AND UPON ALL OTHER PERSONS INDICATED ON THE CERTIFICATE OF  
SERVICE ATTACHED TO THIS PLEADING.**

II.

**WAIVER OF THIRTY DAY REQUIREMENT**

**MOVANT DESIRES TO WAIVE THE REQUIREMENT OF A HEARING THIRTY (30) DAYS UNDER §362E AND REQUESTS A HEARING AT THE NEXT AVAILABLE DATE.**

This Motion is brought pursuant to 11 U.S.C. Section 362(d) and in accordance with Rule 9014 of the Bankruptcy Rules.

III.

On or about June 16, 2009, BUILDING MATERIALS HOLDING CORPORATION, ("Debtor") filed for relief under Chapter 11 of the United States Bankruptcy Code.

IV.

The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to Rule 28 U.S.C. Section 147 and 11 U.S.C. Section 362.

V.

By the provisions of 11 U.S.C. Section 362, all persons are enjoined and stayed from commencing or continuing a suit against the Debtor.

VI.

The Movant filed suit against Debtor in Cause No. 2007-3332 pending in the 34<sup>TH</sup> Judicial District Court of El Paso County, El Paso, Texas to recover damages for a wrongful termination case sustained by Movant as a result of the actions or omissions of Debtor/Defendant.

VII.

It is the belief of Movant that the above debtor is insured by a third party insurance

company and its attorney is defending the claim of Movant and to pay all sums, not exceeding the limits of the policy which the Debtor should become liable to pay as damages imposed on it by law.

VIII.

Movant moves this Honorable Court to grant relief from automatic stay to authorize and permit Movant to prosecute their claims against Debtor to final Judgment and if Judgment is in excess of insurance limits, Movant reserves the right to amend it's Proof of Claim for the excess and will make no claims against debtor beyond the stated policy limits of debtor's insurance policy.

IX.

Movant is prejudiced if not permitted to proceed.

X.

The continuation of the State Court suit will not hinder, burden, delay or be inconsistent with this case .

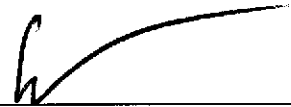
XI.

Movant waives the thirty (30) day notice requirement.

WHEREFORE, Movant prays that the stay afforded by 11 U.S.C. Section 362 be modified so as to permit Movant to continue the aforementioned suit and collect judgment against the Debtor now through their insurance carrier, pending in the State Court action, and for such other and further relief as may be proper.

Respectfully submitted,

**SCHERR & LEGATE, PLLC**  
Attorneys for Plaintiff  
109 N. Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901  
(915) 544-0100  
(915) 532-1759 (Facsimile)



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**SAM J. LEGATE**  
State Bar No. 12166600

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of July, 2009, a true and correct copy of the foregoing was DELIVERED to:

CHARLES C. HIGH, JR.  
Kemp Smith LLP  
221 North Kansas, Ste. 1700  
El Paso, Texas 79901-1441

Sean M. Beach  
Young, Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, Delaware 19801



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**SAM J. LEGATE**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

BUILDING MATERIALS HOLDING CORP.

Debtor,

MARIO CRUZ LUNA,

Movant,

No.: 09-12074

Chapter 11 Proceeding

**ORDER TERMINATING AUTOMATIC STAY**

On this date came on to be considered the Motion for Relief from Stay filed by MARIO CRUZ LUNA, by and through his Attorney of Record, SAM J. LEGATE.

IT IS ORDERED that the automatic stay of 11 U.S.C. Section 362 be and is hereby terminated with respect to MARIO CRUZ LUNA to permit him to proceed with that suit pending in cause number 2007-3332 in the 34<sup>TH</sup> Judicial District, El Paso County, Texas, El Paso, Texas to recover damages for wrongful termination damages sustained by Movant as a result of the actions of Debtor/Defendant.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
**J U D G E**

United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

BUILDING MATERIALS HOLDING CORP.

Debtor,

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PROOF OF CLAIM

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NAME OF CREDITOR: MARIO CRUZ LUNA  
c/o SAM J. LEGATE

MAILING ADDRESS : 109 North Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901

CLASSIFICATION: unsecured

1. This claim is made by Mario Cruz Luna, c/o SAM J. LEGATE, 109 North Oregon, 12<sup>TH</sup> Floor, El Paso, Texas 79901.
2. The Debtor was, at the time of the filing of the petition initiating same, and still is indebted (or liable) to each claimant, in the sum of \$250,000.00 plus interest and costs of suit.
3. The consideration for this debt [or ground of liability] is as follows: see attached petition.
4. [If the claim is founded on a writing] The writing on which this claim is founded is none.
5. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.
6. This claim is not subject to any setoff or counter-claim except NONE.
7. No security interest is held for this claim except NONE.

8. This claim is an unsecured claim. [If priority is claimed, state the amount and basis thereof].

TOTAL AMOUNT CLAIMED \$250,000.00 plus  
interest and costs  
of suit

Claim Number

Name of Creditors: MARIO CRUZ LUNA,  
c/o SAM J. LEGATE

(For office use Only)

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

Signed: \_\_\_\_\_  
**SAM J. LEGATE**  
Attorney at Law  
109 N. Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901  
PH #: (915) 544-0100  
FAX#: (915) 532-1759  
Texas Bar No.: 12166600