

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

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

Debtors.

Chapter 11

Case No. 09-12074-KJC

Jointly Administered

*Ref. Docket No. 169*

**ORDER REGARDING CREDITOR ACCESS TO INFORMATION AND  
SETTING AND FIXING CREDITOR INFORMATION SHARING PROCEDURES  
AND PROTOCOLS PURSUANT TO 11 U.S.C. §§ 105(A), 1102(B)(3) AND 1103(C)**

Upon the motion, dated July 10, 2009 (the "Motion"), filed by the Official Committee of Unsecured Creditors of Building Materials Holding Corporation, *et al.*, the debtors and debtors-in-possession in the above-captioned cases (the "Debtors"), seeking an order pursuant to sections 105(a), 1102(b)(3) and 1103(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), fixing and clarifying the Committee's requirement to provide access to information and solicit and receive comments and setting and fixing creditor information sharing procedures and protocols *nunc pro tunc* to June 26, 2009, the date the Committee was appointed; and the Court having considered the Committee's proposed creditor information sharing procedures and protocols, and having received no objection to the relief sought therein, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Jurisdiction and Venue; Core Proceeding. The Court has jurisdiction to grant the relief provided for herein pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b).

<sup>1</sup> 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).  
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B. Statutory Predicates. The statutory predicates for the relief sought in the Motion are sections 105(a), 1102(b)(3) and 1103 of the Bankruptcy Code.

C. Adequacy of Notice. Notice of the Motion was timely, adequate, proper and sufficient and constituted the best notice practicable under the particular circumstances, and no other or further notice of the Motion is required.

D. Opportunity to be Heard. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein and granted in this Order has been afforded.

NOW THEREFOR, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT:

1. Objections. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein, which are not otherwise resolved in this Order, are overruled on the merits.

2. Motion. The Motion is granted to the extent provided herein.

3. Access To Creditor Information. In satisfaction of the Committee's obligations to provide access to information for creditors and solicit and receive comments in accordance with section 1102(b)(3)(A) and (B) of the Bankruptcy Code, and to otherwise clarify and fix the requirements to provide access to information for creditors ("Creditor Information Protocol"), the Committee may, in its reasonable discretion, but has no obligation to do so, until the earliest to occur of dissolution of the Committee, dismissal of these chapter 11 cases, or conversion of these chapter 11 cases, or upon further order of the Court:

(a) Establish and maintain an electronic mail address for creditors to submit questions and comments to the Committee.

(b) Establish and maintain a password protected Internet-accessed website (the "Committee Website") for the benefit of constituent unsecured creditors who have registered for access with the Committee that may provide, without limitation:

- (1) general information concerning the chapter 11 cases of the Debtors including, case dockets and docket filings, or access or links or the internet address to the case dockets and docket filings, and general information concerning significant parties in the cases;
- (2) quarterly Committee written reports summarizing recent proceedings, events and public financial information;
- (3) highlights of significant and material events in the cases;
- (4) a calendar with upcoming significant and material events or hearings in the cases;
- (5) the internet address, access or links to the claims docket as and when established by the Debtors or any claim agent retained in the case;
- (6) a general overview of the chapter 11 process, press releases (if any) issued by each of the Committee and the Debtors;
- (7) responses to creditor questions, comments and requests for access to information; provided, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in the light of the nature of the information request and the creditor's agreements to appropriate confidentiality and trading of claims or interests constraints;
- (8) answers to frequently asked questions;
- (9) access or links or the internet address to other relevant websites;
- (10) No access or link will bypass the login and password requirements of the PACER or ECF websites; and
- (11) To obtain a PACER account and password, contact the PACER Service Center at (800) 676-6856 or visit its website via the Internet at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)

4. Privileged and Confidential Information. The Committee shall not be required or obligated to disseminate to any entity (all references to "entity" herein shall be as defined in section 101(15) of the Bankruptcy Code, "Entity"): (i) without further order of the Court, confidential, proprietary, or other non-public information concerning the Debtors including (without limitation) with respect to the acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of the Debtors' business the desirability of the continuance of such business and sale of the Debtors' business or assets or other strategic or financial transactions, or any other matter relevant to these cases or to the formulation of one or more chapter 11 plans (including any and all confidential, proprietary, or other

nonpublic materials of the Committee) whether provided (voluntarily or involuntarily) by or on behalf of the Debtors or by any third party or prepared by or for the Committee or (ii) any other information if the effect of such disclosure would constitute a breach or violation under any agreement or contract to which the Debtors are parties (collectively, the "Confidential Information"), or (iii) any other information if the effect of such disclosure would constitute a general waiver of the attorney-client, work-product, or other applicable privilege possessed by the Committee.

5. Information Subject to Discovery. Any information received (formally or informally) by the Committee from any entity in connection with an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or in connection with any formal or informal discovery in any contested matter, adversary proceeding or other litigation in these chapter 11 cases or related to the Debtors shall not be governed by the terms of this Order but, rather, by any order governing such discovery or adversary proceeding, contested matter or other litigation.

6. Identification. The Debtors shall assist the Committee in identifying any Confidential Information concerning the Debtors that is provided by the Debtors or their agents or professionals, or by any third party, to the Committee, its agents and professionals.

7. Creditor Information Requests. If a creditor (the "Requesting Creditor") submits a written request (including via electronic mail) (the "Information Request") for the Committee to disclose or provide information, the Committee shall as soon as practicable, but no more than twenty (20) days after receipt of the Information Request, provide a response to the Information Request (including on the Committee Website) (the "Response"), including providing access to the information requested or the reasons the Information Request cannot be complied with. If the Response is to deny the Request because the Committee believes the Information Request implicates Confidential Information that need not be disclosed pursuant to the terms of this Order or otherwise under 11 U.S.C. §1102(b)(3)(A), or that the Information Request is unduly burdensome, the Requesting Creditor may, after a good faith effort to meet and confer with an authorized representative of the Committee regarding the Information Request and the Response, seek to compel such disclosure for cause pursuant to a motion. Such motion shall be served

and the hearing on such motion shall be filed with the Bankruptcy Court and noticed to all required interested parties and scheduled pursuant to the rules of the court. The Committee shall not object to any Requesting Creditor's request to participate in any such hearing by telephone conference. Nothing herein shall be deemed to preclude the Requesting Creditor from requesting (or the Committee objecting to such request) that the Committee provide the Requesting Creditor a log or other index of any information specifically responsive to the Requesting Creditor's request that the Committee deems to be Confidential Information or protected by the attorney/client, work product, or any other privilege. Furthermore, nothing herein shall be deemed to preclude the Requesting Creditor from requesting that the Court conduct an in camera review of any information specifically responsive to the Requesting Creditor's request that the Committee claims is Confidential Information or subject to the attorney/client, work product, or other privilege.

8. Committee Response. In its Response to an Information Request for access to Confidential Information, the Committee shall consider whether

(a) the Requesting Creditor is willing to agree in writing to reasonable confidentiality and trading restrictions with respect to such Confidential Information and represents that such trading restrictions and any information-screening process complies with applicable securities laws, Bankruptcy Rules or contract; and

i. Claims Traders: If the Requesting Creditor is involved in claims trading, the Requesting Creditor must file a document with the Court, and serve upon counsel to the Committee, the Debtors and the United States Trustee confirming that it has established an information screening barrier ("Screening Wall") that will be enforced, that no Confidential Information will be revealed to claims traders, trading desk or any persons or entities involved in trading and listing the name of the person that has been designated as monitor to ensure compliance with the provisions hereof; and

ii. Market Competitors: If the Requesting Creditor is a competitor of the Debtors (or is a prospective competitor) and the information requested may impair the Debtors, no information will be disclosed unless the Court orders such disclosure after notice and a hearing; and

(b) under the particular facts, such agreement and any information-screening process that it implements will reasonably protect the confidentiality of such information; provided,

however, that if the Committee elects to provide access to Confidential Information on the basis of such confidentiality and trading restrictions, the Committee shall have no responsibility for the Requesting Creditor's compliance with, or liability for violation of, applicable or contract laws. Any disputes with respect to this paragraph shall be resolved as provided in the preceding paragraph, and, to the extent applicable, the next paragraph.

9. Release of Confidential Information of Third Parties. In addition, if the Information Request implicates Confidential Information of the Debtors (or any other Entity) and the Committee agrees that such request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Information to creditors, the Committee shall demand (the "Demand") for the benefit of the Debtors' creditors: (a) if the Confidential Information is information of the Debtors, by submitting a written request, each captioned as a "Committee Information Demand," to ("Debtors' Counsel"), stating that such information will be disclosed in the manner described in the Demand unless the Debtors object to such Demand on or before fifteen (15) days after the service of such Demand; and, after the lodging of such an objection, the Requesting Creditor may file a motion on notice, pursuant to the rules of this Court and as set forth in Paragraph 7 above, seeking a ruling with respect to the Demand under 11 U.S.C. § 704(a)(7); and (b) if the Confidential Information is information of another Entity, by submitting a written request to such Entity and its counsel of record, with a copy to Debtors' Counsel, stating that such information will be disclosed in the manner described in the Demand unless such Entity objects to such Demand on or before fifteen (15) days after the service of such Demand; and, after the lodging of such an objection, the Committee, the Requesting Creditor, such Entity and the Debtors shall schedule a hearing with the Court pursuant to the rules of this Court seeking a ruling with respect to the Demand.

10. Limitations. Nothing in this Order requires the Committee to provide access to information or solicit comments from any Entity that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in section 1102(b)(3) of the Bankruptcy Code.

11. Exculpation. The Debtors and the Committee and any of their respective directors, officers, employees, members, attorneys, consultants, advisors and agents (acting in such capacity) (collectively, the "Exculpated Parties"), shall not have or incur any liability to any Entity (including the Debtors and their affiliates) for any act taken or omitted to be taken in connection with the preparation, dissemination, or implementation of the Creditor Information Protocol, the Committee Website and other information to be provided pursuant to section 1102(b)(3) of the Bankruptcy Code provided that the act of or omission is performed in compliance with the terms of this Order; provided, however, that the foregoing shall not affect the liability of any Exculpated Party protected pursuant to this paragraph 11 that otherwise would result from any such act or omission to the extent that such act or omission is determined in a final non-appealable order to have constituted a breach of fiduciary duty, gross negligence, or willful misconduct, including, without limitation, fraud and criminal misconduct, or the breach of any confidentiality agreement or Order. Without limiting the foregoing, the exculpation provided in this paragraph shall be coextensive with any Exculpated Party's qualified immunity or similar protections under applicable law.

12. Effective Date. This Order shall be effective as of June 26, 2009.

13. Binding. This Order shall be binding in all respects upon the Debtors, Committee and affected parties and any successors thereto and all creditors and parties-in-interest.

14. Nonseverable. The provisions of this Order are nonseverable and mutually dependent.

15. Jurisdiction. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of this Order in all respect and further to hear and determine all matters arising from the construction and implementation of this Order.

Dated: Sept 9, 2009  
Wilmington, Delaware

  
UNITED STATES BANKRUPTCY JUDGE