

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING</b>	)	
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 597</b>

**DEBTORS' OBJECTION TO WEIS BUILDERS, INC.'S MOTION  
FOR ORDER GRANTING MODIFICATION OF THE AUTOMATIC STAY**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), respectfully submit this Objection to Weis Builders, Inc.'s Motion for Order Granting Modification of the Automatic Stay [Docket No. 597] filed on September 11, 2009 (the "***Motion***") as follows:

**PRELIMINARY STATEMENT**

1. Although styled as a lift-stay motion, Weis's Motion is nothing less than an indirect attempt to circumvent the August 31, 2009 deadline for filing proofs of claim (the "***Bar Date***") that has been established in these cases. Despite clear and repeated notice of these cases and the Bar Date, Weis failed to file any proof of claim by that date. Indeed, it still has filed no proof of claim. Rather than attempt to demonstrate why its neglect was excusable (which it cannot), Weis simply ignores that central issue, and instead asks this Court to lift the automatic stay so that it can begin a lengthy and complex litigation of its time-barred claims against certain

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<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

Debtors in New Mexico state court. Weis cannot so easily sidestep the fundamental fact that its claims are now barred, and for that reason alone it cannot show that cause exists to lift the automatic stay.

2. Even if Weis's claims were not time-barred, lifting the stay in this case would still be inappropriate. Lifting the stay would seriously prejudice the Debtors and the successful progression of these bankruptcy proceedings, and Weis's arguments to the contrary are based on incorrect statements concerning the applicable facts and law. For example, Weis's primary argument that the Debtors will not be prejudiced by modification of the stay is based on the erroneous assertion that any recovery Weis obtains in the state court action will come "solely from available insurance proceeds." Mot. ¶ 30. As Weis acknowledges, however, insurance is available only after the Debtors pay the first \$1,000,000 deductible. *See id.* ¶ 20. Because, according to Weis's own Motion, the "maximum exposure of the Debtors in the State Court Action is approximately \$700,000.00," *id.* ¶ 31, insurance will not be paying any of Weis's alleged damages, or defense costs, if the automatic stay is lifted. Instead, those substantial costs will all be borne directly by the Debtors' estate. Once that is understood, Weis has not demonstrated that any hardship to it in maintaining the stay significantly outweighs the prejudice to the Debtors and these proceedings. Moreover, Weis offers no evidence that it has a probability of prevailing in the state court action, but asserts only that the case "clearly presents triable factual issues." Mot. ¶ 40. That is not the standard Weis must meet to lift the stay. Under the proper standard, the automatic stay should remain in effect.

3. In the alternative, Weis asks this Court to rule that it "is not precluded from proceeding against the non-debtor third-party defendants" in the state court action. Mot. ¶ 45. The Debtors have never suggested otherwise. Rather, the Debtors have contended only that if

Weis is to proceed in the state court action, it should take some affirmative action to ensure that the litigation remains stayed as to the Debtors—such as severing or dismissing them from the case—because Debtor BMC West Corporation currently remains an active defendant that action. To date, Weis has taken no such action; thus, any proceedings against other defendants necessarily continue against the Debtors, thereby violating the automatic stay.

### **BACKGROUND**

4. On February 6, 2007, RainbowVision Santa Fe, LLC, an owner and developer of property in Santa Fe, New Mexico, filed suit against Weis, its general contractor, in New Mexico state court (the "*RainbowVision Action*"). *See* Mot. ¶ 7. Over the next couple of years, Weis joined various "inspectors, subcontractors, engineers, and/or designers" in that suit, by filing a third-party complaint and amending that complaint three times. *Id.* ¶¶ 12-17. Apparently, Weis attempted to join certain Debtors<sup>2</sup> when it filed its second amended third-party complaint on March 7, 2008. *Id.* ¶ 15. Weis never served the Debtors with its second amended third-party complaint, however, but instead served that complaint on "Tammy Cheshire," who was neither an employee nor authorized agent of the Debtors. *See* Decl. of Leonard C. Baumann ¶ 2 (attached hereto as *Exhibit A*); Decl. of Martin Diamond ¶ 2 (attached hereto as *Exhibit B*). Thus, no Debtors were joined as a party in the RainbowVision Action until March 4, 2009, just a few months before the June 16, 2009 Petition Date, when Weis actually served the Debtors with its third amended third-party complaint. *See* Decl. of Leonard C. Baumann ¶ 3; Decl. of Martin Diamond ¶ 3.

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2 Weis filed its second and third amended complaints against BMCW Southcentral, L.P., along with many other third-party defendants. *See* Mot., Exhs. 5, 6. BMCW Southcentral, L.P. was merged into BMC West Corporation, a Debtor in these bankruptcy proceedings.

5. New Mexico counsel for certain Debtors first entered an appearance in the RainbowVision Action on April 10, 2009, and filed an answer to the third amended third-party complaint on behalf of Debtor BMC West Corporation on April 24, 2009. Decl. of Martin Diamond ¶ 4. The Debtors then filed in the RainbowVision Action a Notice of Bankruptcy Filing on June 23, 2009. *Id.* ¶ 5. Beyond that nascent involvement, the Debtors have had almost no additional participation in the RainbowVision Action. No discovery has been served upon or by the Debtors.<sup>3</sup> No depositions have been taken of or by the Debtors. The Debtors have not hired any experts or interviewed any witnesses. *Id.* ¶ 6. The scheduling order applicable in the RainbowVision Action was not even entered by the New Mexico court until April 21, 2009, less than two months before the imposition of the automatic stay. *See* Mot., Exh. 8. That scheduling order did not require witnesses and experts to be designated, much less prepared and deposed, until October and November 2009—well after the automatic stay went into effect. *Id.* Discovery was not to be completed until June 1, 2010, a year after the automatic stay, and trial was scheduled for August 30, 2010. *Id.* Indeed, as Weis points out (*see* Mot. ¶ 21), "initial mediation" of Weis's third-party claims in the RainbowVision Action was not even scheduled to be completed until August 31, 2009, more than two months after the automatic stay became effective. Mot., Exh. 8 (emphasis added). In short, the third-party litigation against Debtor BMC West Corporation in the RainbowVision Action had barely begun when it was halted by the automatic stay, and remains in its infancy to this day.

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3 Weis in its Motion claims it "served discovery on the Debtors on November 20, 2008." Mot. ¶ 22. That is incorrect. The certificate of service attached to Weis's Motion shows that Weis served the discovery at "808 Hensley Lane, Wylie, TX 75098." Mot., Exh. 10. That was not a valid address for the Debtors or their authorized agent, and the Debtors were never served that discovery. *See* Decl. of Leonard C. Baumann ¶ 4. In any event, Weis could not properly serve discovery on any of the Debtors until March 4, 2009, when the Debtors were first served a summons with respect to the RainbowVision Action.

6. If the Court were to lift the stay in the RainbowVision Action, Debtor BMC West Corporation would be required to start from the beginning a long and enormously complicated case in which it is merely a secondary player. In addition to Weis's claims against Debtor BMC West Corporation, the resulting litigation would almost certainly require cross-claims by and against BMC West Corporation and multiple other subcontractors, resulting in additional complexity and expense. BMC West Corporation would be required to hire several consulting and testifying experts. It would need to track down, interview, and depose a large number of witnesses, including suppliers, managers, and employees—both those of its predecessor and those of other subcontractors. Litigation would require extensive written discovery, to and from Weis and the other subcontractors, and would require many depositions of experts and witnesses. Hotly contested summary judgment motions would likely be required, followed by a complex trial involving many parties and issues. Decl. of Martin Diamond ¶ 7.

7. On June 16, 2009 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). On July 16, 2009, the Court entered an Order Pursuant to Sections 501, 502, and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 248] (the "**Bar Date Order**") establishing August 31, 2009 as the bar date (the "**Bar Date**") in these Chapter 11 Cases.

8. The Debtors scheduled a contingent, unliquidated, disputed, unsecured claim in this bankruptcy case relating to Weis's RainbowVision Action against the Debtors, under the name of Weis's counsel in that action, Williams C. Salmon of Rhodes & Salmon, P.C., and referencing the case number for the RainbowVision Action. See Decl. of Craig E. Johnson ¶ 2

(attached hereto as *Exhibit C*). On July 10, 2009, The Garden City Group, Inc., the claims and noticing agent, mailed to Weis's counsel the Debtors' Notice of Commencement of Chapter 11 Bankruptcy Cases and Meeting of Creditors (the "*Notice of Commencement*"), referencing "Case# D0101 CV 2007-00010," the case number for the RainbowVision Action. *Id.* ¶ 3. Also on July 10, 2009, the claims and noticing agent mailed to Weis's counsel the Debtors' Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors (the "*Disclosure Statement Hearing Notice*"), also referencing the RainbowVision Action case number. *Id.* ¶ 4. On July 23, 2009 the claims and noticing agent mailed to Weis's counsel the Notice of Entry of Bar Date Order Establishing Deadlines for Filing Proofs of Claim Against the Debtors (Including Claims Pursuant to Bankruptcy Code § 503(b)(9)) (the "*Bar Date Notice*") along with a Proof of Claim Form, again referencing the RainbowVision Action case number. *Id.* ¶ 5. The Debtors also published the Notice of Commencement and Bar Date Notice in nine different publications. *See* Docket Nos. 146, 147, 148, 149, 153, 154, 167, 250, 312, 366, 367, 368, 411, 498, 499, 500, 501, and 524.

9. As mentioned, on June 23, 2009, New Mexico counsel for BMC West Corporation filed a Notice of Bankruptcy Filing in the RainbowVision Action, further notifying Weis that the Debtors "on June 16, 2009 . . . filed for Chapter 11 protection in the United States Bankruptcy Court for the District of Delaware . . . ." Decl. of Martin Diamond ¶ 5. In addition, as Weis acknowledges in its Motion, counsel for the Debtors on July 10, 2009—more than 50 days before the Bar Date—sent a letter to Weis's counsel discussing at length this bankruptcy and the effect of the stay on the RainbowVision Action. *See* Mot. ¶ 42; *id.*, Exh. 9. Weis was repeatedly notified, well in advance of the Bar Date, of these Chapter 11 Cases and the pending

Bar Date. Even so, Weis filed no proof of claim in these cases before the Bar Date. *See* Decl. of Craig E. Johnson ¶ 8.

10. Instead, after the Bar Date, Weis filed its September 11, 2009 Motion asking the Court to lift the automatic stay in the RainbowVision Action so that it can begin litigating that case against the Debtors and, if it prevails, return to this Court with a liquidated claim. *See* Mot. at 1. In the alternative, Weis seeks an order that will permit it to continue litigating the RainbowVision Action against the other defendants in that case while the Debtors remain an active third-party defendant. *Id.* Nowhere in Weis's motion does it mention or try to excuse its failure to file a proof of claim.

### **ARGUMENT**

11. The automatic stay set forth in section 362(a) of the Bankruptcy Code is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midatlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986). The purpose of the automatic stay is "to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor." *Borman v. Raymark Indus., Inc.*, 946 F.2d 1031, 1036 (3rd Cir. 1991); *accord In re DBSI, Inc.*, 407 B.R. 159, 166 (Bankr. D. Del. 2009).

12. Section 362 permits the Court to grant relief from the automatic stay only "for cause." 11 U.S.C. § 362(d)(1). The movant bears the initial burden "to produce evidence that cause exists to grant relief from the automatic stay." *In re DBSI, Inc.*, 407 B.R. at 166. "To establish cause, the party seeking relief from the stay must show that 'the balance of hardships

from not obtaining relief tips significantly in its favor.'" *In re Am. Classic Voyages, Co.*, 298 B.R. 222, 225 (D. Del. 2003) (emphasis added; alteration marks omitted).

13. The Court should deny the Motion because Weis has not established that cause exists to lift the stay. First, Weis has not shown—indeed, makes no attempt to show—why it should be allowed to litigate a lengthy and complicated state court action against the Debtors when, as a result of its failure to file a proof of claim, it would be prevented from presenting any claims based on the outcome of that action in these Chapter 11 Cases. Second, Weis could not meet the standard for lifting the stay even if its claims were not barred. The Court should also deny Weis's alternative request that it be allowed to continue litigating the RainbowVision Action while BMC West Corporation remains an active defendant in that action.

**A. No Cause Exists to Lift the Stay Because Any Claims Weis May Have Against the Debtors Are Time-Barred.**

14. Because "cause" is not defined by the Bankruptcy Code, courts conduct a "fact intensive case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay." *In re SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007); *see also In re Lincoln*, 264 B.R. 370, 372 (Bankr. E.D. Pa. 2001) ("Each request for relief for 'cause' under [section] 362(d)(1) must be considered on its own facts."). In this instance, one critical fact is dispositive of Weis's request to lift the stay: Weis did not file a proof of claim on or before the August 31, 2009 Bar Date. Therefore, even assuming that Weis prevailed after a long and difficult litigation of its claims against the Debtors, Weis would be barred from asserting those liquidated claims in these Chapter 11 Cases. Thus, Weis cannot meet its initial burden to show that cause exists to require the Debtors to devote valuable and substantial effort and resources litigating time-barred claims in the RainbowVision Action.



15. Weis in its Motion does not even mention its failure to file a proof of claim in these Chapter 11 Cases, much less demonstrate that its failure was due to excusable neglect. Weis's silence is understandable. As described above, Weis received actual notice of these Chapter 11 Cases and the Bar Date at least five different times, including four different notices mailed to its counsel in the RainbowVision Action, as well as a Notice of Bankruptcy filed in the RainbowVision Action.<sup>4</sup>

16. As the Third Circuit has recognized, the "strict bar date" in bankruptcy proceedings is intended "to facilitate the equitable and orderly intake of . . . claims." *In re Am. Classic Voyages Co.*, 405 F.3d 127, 133 (3d Cir. 2005). Accordingly, delay in filing a proof of claim that was "entirely avoidable and within [the movant's] control," as is the case here where Weis had clear and repeated notice, "strongly disfavors" that movant in seeking permission to file a late claim. *Id.* at 134 (refusing to extend the bar date for a late-filed claim). Indeed, numerous courts have condemned attempts to extend the bar date for creditors who received actual notice, because of the prejudice to debtors and the orderly progress of their reorganization efforts, as well as the unfairness towards other creditors who timely filed and due process concerns. As one court in this Circuit has explained,

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4 Notice to Weis's counsel in the RainbowVision Action was notice to Weis itself. "[N]otice to the attorney can be imputed to the client if the attorney is representing the client regarding a claim against the debtor." *In re Grand Union Corp.*, 204 B.R. 864, 875 (Bankr. D. Del. 1997) (quoting *Linder v. Trump's Castle Assocs.*, 155 B.R. 102, 105 (D.N.J. 1993)); see also *In re Marino*, 195 B.R. 886, 895 (Bankr. N.D. Ill. 1996) ("It is well recognized that an attorney's actual notice of the pendency of a bankruptcy may be imputed to his client if it occurs within the scope of the attorney-client relationship."). As the Third Circuit has explained, "the negligence of [a creditor's] counsel in failing to review the Notice sent to him by [the debtor] . . . must [be] impute[d]" to the creditor itself. *In re Am. Classic Voyages Co.*, 405 F.3d 127, 134 (3d Cir. 2005) (emphasis added); see also *In re Nw. Airlines Corp.*, 2007 WL 2815917, at \*4 (Bankr. S.D.N.Y. Sept. 26, 2007) (stating the notice of the bar date sent to creditors' counsel "was, *prima facie*, reasonable"); *In re Walker*, 149 B.R. 511, 516 (Bankr. N.D. Ill. 1992) (explaining that where "the creditors' attorneys—presumed experts in law—received the information . . . those creditors through their counsel were armed with presumed awareness of their rights and risks in bankruptcy").

Tinkering with an established bar date may raise due process claims of parties who have timely filed claims by originally-established bar dates, since it gives late filers a second bite at an apple which is likely to be less than fully satisfying, and thus effect unfair diminution of the timely filer's share of a distribution.

*In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 23-24 (Bankr. E.D. Pa. 1995); *see also In re Musicland Holding Corp.*, 362 B.R. 644, 655 (Bankr. S.D.N.Y. 2007) (noting "the irony" of "extending the bar date for the benefit of those who sat on their rights . . . at the expense of the vigilant creditors who observed the bar date"; "unfair to permit 'a second bite at the apple for those creditors who received notice of the bankruptcy filing and of the Claims Bar Date, and who chose not to file'"); *In re Bally Fitness of Greater N.Y., Inc.*, 402 B.R. 616, 622 (Bankr. S.D.N.Y. 2009) ("[E]xpansion of the Bar Date for notified class members who failed to file individual claims in a timely manner will violate due process and prejudice the rights of timely filers."); *In re FirstPlus Fin., Inc.*, 248 B.R. 60, 73 (Bankr. N.D. Tex. 2000) ("[A] creditor who has received actual notice of the claims bar date, and who does not file a proof of claim, is barred and has no claim."); *In re Jamesway Corp.*, 1997 Bankr. LEXIS 825, at \*34 (Bankr. S.D.N.Y. June 11, 1997) ("The bar date is akin to a statute of limitations, and must be strictly observed.").

17. Here, Weis received repeated notice of these Chapter 11 Cases and the Bar Date, yet filed no proof of claim. Weis cannot show that its failure was due to excusable neglect, and therefore any claims it may have against the Debtors in the RainbowVision Action are barred. Weis cannot show cause to lift the stay to litigate claims it no longer has.

**B. Lifting the Automatic Stay Would Be Unwarranted In Any Event.**

18. Even if Weis had not sat on its rights, but instead timely filed a proof of claim, lifting the stay would still be inappropriate. As courts in this jurisdiction and elsewhere have recognized, "[t]he most important factor in determining whether to grant relief from the automatic stay to permit litigation to proceed against a debtor in another forum is the effect of

such litigation on the administration of the estate." *In re W.R. Grace & Co.*, 2007 Bankr. LEXIS 1214, at \*9 n.7 (Bankr. D. Del. Apr. 13, 2007) (quoting *In re Curtis*, 40 B.R. 795, 806 (Bankr. D. Utah 1984)). "Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Id.*; see also *In re Towner Petroleum Co.*, 48 B.R. 182, 191 (Bankr. W.D. Okla. 1985) (same); *In re Penn-Dixie Indus., Inc.*, 6 B.R. 832, 836 (Bankr. S.D.N.Y. 1980) ("Interference by creditors in the administration of the estate, no matter how small, through the continuance of a preliminary skirmish in a suit outside the Bankruptcy Court is prohibited."). In considering the effect of lifting the stay on the bankruptcy proceedings, courts have been guided by the policies underlying the stay itself, as outlined by the Second Circuit in *In re Sonmax Indus., Inc.*, 907 F.2d 1280, 1287 (2d Cir. 1990);<sup>5</sup> see *In re DBSI, Inc.*, 407 B.R. at 167. In addition, courts in this jurisdiction use a "three-part balancing test" to determine whether to lift the stay to allow litigation to continue: (1) whether permitting continuation of the civil suit will cause great prejudice to the debtor; (2) whether, if the stay is maintained, the hardship to the creditor outweighs the hardship to the debtor; and (3) whether the creditor is likely to prevail on the merits of the civil suit. *Id.* at 166-67. Here, these factors all militate in favor of leaving the automatic stay in place.

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5 The twelve *Sonmax* factors are: "1) whether relief would result in a partial or complete resolution of the issues; 2) lack of any connection with or interference with the bankruptcy case; 3) whether the other proceeding involves the debtor as a fiduciary; 4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; 5) whether the debtor's insurer has assumed full responsibility for defending it; 6) whether the action primarily involves third parties; 7) whether litigation in another forum would prejudice the interests of other creditors; 8) whether the judgment claim arising from the other action is subject to equitable subordination; 9) whether the moving party's success in the other proceeding would result in a judicial lien avoidable by the debtor; 10) the interests of judicial economy and the expeditious and economical resolution of litigation; 11) whether the parties are ready for trial in the other proceeding; and 12) impact of the stay on the parties and the balance of the harms." *In re SCO Group*, 395 B.R. at 857 (quoting *In re Sonmax*, 907 F.2d at 1287).

19. First, and most importantly, lifting the stay would greatly prejudice the Debtors and the administration of these Chapter 11 Cases. In arguing otherwise, Weis relies primarily on its claim that it "seeks to recover on any judgment it obtains against the Debtors solely from available insurance coverage."<sup>6</sup> Mot. ¶ 30. This argument makes no sense. As Weis recognizes in its Motion, "the Debtors have in place a [deductible] in the amount of \$1,000,000.00." *Id.* ¶ 20. Because, as Weis also acknowledges, "the maximum exposure of the Debtors in the [RainbowVision Action] is approximately \$700,000.00"—well below the Debtors' \$1,000,000 deductible—there is no insurance available to pay the costs of defense or any settlement or judgment with respect to Weis's suit. *Id.* ¶ 31. Weis's main argument that the Debtors and these bankruptcy proceedings will not be prejudiced by lifting the stay is therefore without foundation.

20. Weis also argues that the Debtors would not "at this late date" in the RainbowVision Action "be prejudiced" because "discovery was served on the Debtors pre-petition on November 20, 2008." Mot. ¶ 33. As already explained, and contrary to Weis's assertion, no discovery has ever been served on the Debtors in the RainbowVision Action. *See* Decl. of Leonard C. Baumann ¶ 4. Weis could not properly serve the Debtors with discovery on November 20, 2008 in any event because the Debtors were not even a party to the RainbowVision Action until March 4, 2009, when they first received a summons and complaint. More fundamentally, contrary to Weis's attempt to portray its stayed case against the Debtors as having reached a "late date," virtually nothing has happened with respect to Weis' claims against

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6 Immediately following Weis's assurance that it "seeks to recover . . . solely from available insurance coverage," Mot. ¶ 30 (emphasis added), Weis in a footnote claims just the opposite, stating that it "will pursue recovery of the first \$1,000,000.00 of any judgment awarded through the claims process in this bankruptcy case," *id.* n.3.

any Debtors in the litigation. *See* Decl. of Martin Diamond ¶ 6. The Debtors would literally be building their case from the ground up if this Court lifts the stay.

21. Weis's argument that continuation of the RainbowVision Action "would not distract the Debtors from their reorganization efforts because the Debtors have separate counsel" in the RainbowVision Action is similarly flawed. *See* Mot. ¶ 32. Beginning a case of the complexity and magnitude that Weis seeks to impose on the Debtors would require substantial attention by the Debtors' management, regardless whether separate counsel litigated the matter. The additional attorneys and start-up expenses would also "deplet[e] . . . the debtor's assets due to legal costs in defending proceedings against it," directly undermining one of the key purposes of the automatic stay. *Borman v. Raymark Indus., Inc.*, 946 F.2d 1031, 1036 (3rd Cir. 1991). This depletion of the estate would be especially prejudicial to those unsecured creditors who, unlike Weis, timely filed claims.

22. The great prejudice to the Debtors and the orderly progression of these Chapter 11 Cases is further demonstrated by a review of several of the factors identified in *In re Sonnax*, 907 F.2d at 1287. As courts in this jurisdiction have noted, those factors helpfully outline the "general policies underlying the automatic stay." *In re SCO*, 395 B.R. at 857; *In re DBSI, Inc.*, 407 B.R. at 167. The first *Sonnax* factor considers whether lifting the stay "would result in a partial or complete resolution of the issues." Here, that factor decidedly favors keeping the stay in place. Lifting the stay would not itself resolve any of Weis's claims, but would only force the Debtors to divert scarce resources and energy to a long and arduous legal action that will include extensive discovery, depositions, cross-claims, motions, and a complex trial before Weis's claims are even liquidated. This process would take well over a year—maybe several years. And even then, Weis's claims would be unresolved because it would still need to seek to have its time-

barred claims allowed in the Chapter 11 Cases. Lifting the stay would also substantially "interfere with the bankruptcy case" (the second *Sonnax* factor), because of the resultant expense and distraction, the long delay before Weis's claims would be liquidated and presented in the Chapter 11 Cases, and the resulting prejudice to other creditors who timely filed their claims (the seventh *Sonnax* factor). The tenth and eleventh *Sonnax* factors also support leaving the stay in place. Far from being "ready for trial" (the eleventh *Sonnax* factor), Weis's claims against the Debtors have barely progressed beyond service of the complaint. The "interests of judicial economy" (the tenth *Sonnax* factor) also clearly disfavor lifting the stay, because both the judge and parties in the RainbowVision Action have invested very little in Weis's embryonic third-party claim against the Debtors. Moreover, it would be a colossal waste of judicial resources to fully litigate time-barred claims. Finally, as discussed above, here the Debtors' insurer has not "assumed full responsibility for defending it" (the fifth *Sonnax* factor); no insurance is available for the Debtors' defense or any resultant damages or settlement in the RainbowVision Action because the amounts asserted are less than the applicable deductible. As these *Sonnax* factors demonstrate, lifting the stay in the RainbowVision Action would be inconsistent with the reasons for the automatic stay and harm the orderly progression of these Chapter 11 Cases.

23. Weis cannot show that any hardship to it significantly outweighs the harm that would result to the Debtors from modifying the stay. Unsecured creditors, such as Weis, bear "the heavy and possibly insurmountable burden of proving that the balance of hardships tips significantly in favor of granting relief." *In re W.R. Grace & Co.*, 2007 Bankr. LEXIS 1214, at \*11 (Bankr. D. Del. Apr. 13, 2007) (quoting *In re Micro Design, Inc.*, 120 B.R. 363, 369 (E.D. Pa. 1990)); *In re Boyertown Auto Body Works*, 1991 U.S. Dist. LEXIS 17372, at \*11 (E.D. Pa. Nov. 27, 1991) ("Clearly, if unsecured creditors could easily obtain relief from the stay to pursue

their claims in other forums, rather than in the bankruptcy claims process, much of the purpose for bankruptcy filings, featuring a summary process for resolving claims, would be undermined." ). In attempting to show that the balance of the hardships favors lifting the stay, Weis relies heavily on *In re Bock Laundry Machine Co.*, 37 B.R. 564 (Bankr. N.D. Ohio 1984). See Mot. ¶¶ 38-39. Weis neglects to mention that insurance was available for the creditors' claims in *In re Bock*. Indeed, several courts in this Circuit in denying lift stay requests have limited the rationale in *In re Bock* to circumstances where, unlike here, insurance will respond. In *In re Ronald Perlstein Enterprises, Inc.*, for example, the court explained that *In re Bock* was a "products liability action in which creditor agreed to pursue debtor only to extent he was insured," and distinguished that case because "[h]ere, of course, there is no insurer ready to pay any judgment, or to provide counsel necessary to defend the State court action at no cost to the debtor." 70 B.R. 1005, 1009-10 (Bankr. E.D. Pa. 1987); see also *In re Boyertown Auto Body Works*, 1991 U.S. Dist. LEXIS 17372, at \*11-12 (E.D. Pa. Nov. 27, 1991) (same). As the court in *In re Boyertown* explained, "[t]he fact that a loss will be sustained is not enough to warrant relief from the stay based on the balance of hardships. There must be extraordinary circumstances. Such relief is granted most commonly when the creditor's claim would not be payable out of the debtor's estate." *Id.* at \*11. Here, Weis's claim—and the substantial costs of defending that claim—would all "be payable out of the debtor's estate," to the detriment of the Debtors, other creditors who timely filed proofs of claim, and these bankruptcy proceedings. Under these circumstances, Weis cannot show that the balance of the hardships significantly tips in its favor.<sup>7</sup>

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<sup>7</sup> Weis's failure to timely file a proof of claim weighs strongly against any hardship it claims to suffer as a result

[Footnote continued on next page]

24. Finally, the third prong of this Court's three-part test—whether the creditor has a probability of prevailing on the merits—also favors keeping the RainbowVision Action stayed. As Weis in its Motion correctly noted, the "required showing" for this factor is "very slight." Mot. ¶ 40. But it is not nonexistent; Weis must make some showing. The only offering Weis has made in this regard is an unsupported assertion that the RainbowVision Action "presents triable factual issues." Mot. ¶ 40.<sup>8</sup> That is not evidence, even "very slight" evidence, of a probability of prevailing on the merits. Because Weis offers "no evidence of the slightest probability of success on the merits . . . , it would be inappropriate to lift the stay." *In re Peregrine Sys.*, 314 B.R. 31, 47 (Bankr. D. Del. 2004), *aff'd in part and rev'd in part on other grounds*, 2005 U.S. Dist. LEXIS 21707 (D. Del. Sept. 29, 2005).

25. In its Motion, Weis cites a string of cases from this jurisdiction where "relief from the stay was granted." Mot. ¶ 28 (citing cases). But Weis never discusses the reasons the courts gave for lifting those stays. In fact, those reasons underscore the sharp differences between cases where cause exists to lift the stay, and the situation at hand. In *In re Continental Airlines, Inc.*, for example, the court deemed highly relevant that the debtor was already litigating, "at its own initiation, a full blown lawsuit over similar issues" in a different state court. 152 B.R. 420, 424 (D. Del. 1993). The court further noted that lifting the stay would require only "[r]esponding to a very discrete motion," *id.* at 425, and that the creditor was "not attempting to obtain payment from [the debtor] to the detriment of other creditors," *id.* at 426. None of those decisive factors

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[Footnote continued from previous page]

of the stay. To the extent that Weis is prejudiced by its inability to litigate claims against the Debtors, that hardship results from Weis's failure to timely file a proof of claim, not the automatic stay.

8 Weis also mentions that "no party has filed a motion for summary judgment." Mot. ¶ 40. The fact that no summary judgment motions have been filed in a case that has barely started is not evidence of anything.



are present here. In *In re Pursuit Athletic Footwear*, the court similarly relied on the fact that the debtor had already on its own initiative filed a substantially identical adversary proceeding in the bankruptcy court against the creditor, that the judge in the stayed case had "heard testimony on the merits" and "advanced significantly along the judicial learning curve," and that the debtor had already "invested significant human resources and about \$800,000 in legal fees in prosecuting the [stayed] action." 193 B.R. 713, 718-19 (Bankr. D. Del. 1996). Again, the opposite is true in this case. Likewise, in *In re SCO*, the court explained that the litigation was stayed after all discovery was completed, summary judgment had been granted on some issues, "the parties were on the door-step of beginning a five-day trial of complex issues," and the other court had acquired "extensive knowledge of the facts and issues and . . . already made detailed findings." 395 B.R. at 857. Not so here. And in *In re Rexene Products Co.*, the court in lifting the stay repeatedly emphasized that "[d]iscovery [was] virtually complete," that the district court judge had "already heard and decided two issues," and that "the lawsuit will come to trial quickly." 141 B.R. 574, 575, 577 (Bankr. D. Del. 1992). None of the cases cited by Weis are analogous to the RainbowVision Action. Quite the opposite, by their gross dissimilarity those cases powerfully illustrate that there is no compelling basis to lift the stay here.

26. In sum, allowing a complex and drawn-out lawsuit against the Debtors to start from scratch right in the middle of these Chapter 11 Cases is hardly consistent with the goals of bankruptcy and the policies underlying the automatic stay. The Debtors, their estates, and other creditors who timely filed proofs of claim would all be greatly prejudiced by the time, money, and energy that would be required. The hardship to Weis would not significantly outweigh that prejudice, and Weis has made no attempt to show that it has even a slight probability of prevailing even if the stay was lifted. The RainbowVision Action should remain stayed.

**C. Weis Should Not Proceed with the RainbowVision Action While Any Debtors Remain in the Case.**

27. In the alternative, Weis asks this Court to order that "Weis is not precluded from proceeding against the non-debtor third party defendants." Mot. ¶ 45. The Debtors do not object to Weis proceeding against the other defendants in the RainbowVision Action, so long as Weis takes some action to ensure that the case will not by default also proceed against any Debtors who were sued as third-party defendants. *See, e.g., Cushman & Wakefield, Inc. v. Backos*, 129 B.R. 35, 38 (E.D. Pa. 1991) (granting plaintiff's motion to sever the debtor so that it could proceed against remaining defendants); *Evans v. Johns-Manville Sales Corp.*, 1982 U.S. Dist. LEXIS 17374, at \*9 (D.N.J. Oct. 5, 1982) (ordering that "[a]ll remaining actions will proceed according to schedule" after severing "all claims, counterclaims, cross-claims, and third party claims brought by or against" the debtor); *In re McCoy*, 1999 Bankr. LEXIS 1461 (Bankr. E.D. Pa. Nov. 29, 1999), at \*4-5 (allowing action to proceed against non-debtor co-defendants where the debtor was "severed" from the action); *Fanning v. Black & Decker, Inc.*, 1999 U.S. Dist. LEXIS 3407, at \*8 (E.D. Pa. Mar. 18, 1999) (same). Weis's refusal to sever or dismiss any Debtors from the RainbowVision Action is especially puzzling in light of the fact that, as discussed above, any claims Weis had against the Debtors are now time-barred.

**CONCLUSION**

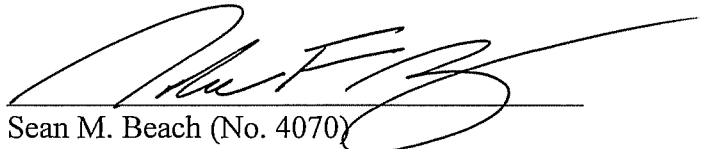
28. For the reasons set forth above, the Debtors respectfully request that the Court deny Weis's Motion in its entirety. Weis cannot meet its initial burden to show cause exists to force the Debtors to litigate in state court a claim that is time-barred. Even if Weis's claim was not barred, the incommensurate prejudice to the Debtors and these Chapter 11 Cases, as well as Weis's total failure to show any likelihood of success on the merits, would counsel in favor of leaving the stay in place. Weis's alternative request that the RainbowVision Action be allowed

to proceed, with no affirmative action taken to ensure that any Debtors are not pulled along as an active defendant, should also be denied.

WHEREFORE, the Debtors therefore respectfully request that the Court enter an order denying the Motion in its entirety, and grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware  
September 25, 2009

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP



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Donald J. Bowman, Jr. (No. 4383)  
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---- and ----

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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**  
**Declaration of Leonard C. Baumann**

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	
	)	<b>Case No. 09-12074 ( KJC)</b>
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	

**DECLARATION OF LEONARD C. BAUMANN**

I, Leonard C. Baumann, declare and state as follows:

1. I am Director of Risk Management for Building Materials Holding Corporation and its affiliated Debtors in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*"). I have been so employed by the Debtors since approximately September 1, 2004.
2. In November of 2008, Tammy Cheshire was not an employee or authorized agent of BMCW Southcentral L.P. or BBD Construction L.P., nor was she authorized to accept service on behalf of those entities.
3. To my knowledge, BMCW Southcentral L.P. (which has been merged with BMC West Corporation) and BBD Construction L.P. (which was dissolved in December 2004) first received service of a summons and complaint in the case titled *Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc.* (No. D-0101-CV-2007-00010) on March 4, 2009, when I was personally served with a copy of the Third Amended Third-Party Complaint.

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<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

4. The address "808 Hensley Lane, Wylie, TX 75098" was not a valid address for BMCW Southcentral, L.P., BMC West Corporation, or any of the Debtors in this bankruptcy proceeding in 2008. To the best of my knowledge, those premises have not been occupied by anyone associated with the Debtors since 2005.

5. Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on September 24, 2009.

  
Leonard C. Baumann

**EXHIBIT B**  
**Declaration of Martin Diamond**

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING</b>	)	
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	<b>Case No. 09-12074 ( KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	

**DECLARATION OF MARTIN DIAMOND**

I, Martin Diamond, declare and state as follows:

1. I am an attorney with the law firm of Butt Thorton & Baehr PC. I am counsel of record for BMC West Corporation<sup>2</sup> in the Santa Fe, New Mexico state court action titled Rainbow Vision Santa Fe, LLC v. Weis Builders, Inc. (No. D-0101-CV-2007-00010) (the "*RainbowVision Action*"). See Docket Sheet (attached hereto as *Attachment 1*).

2. According to the RainbowVision Action docket sheet entry dated November 14, 2008, the summons issued on September 9, 2008 to BMCW Southcentral L.P. and BBD Construction L.P. were served on "Tammy Cheshire."

3. According to the RainbowVision Action docket sheet entry dated March 19, 2009, "Len Baumann" was served with a summons on March 4, 2009.

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<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> Weis Builders, Inc. misidentified BMC West Corporation as BMCW Southcentral L.P., d/b/a/ BMC Construction and BBD Construction L.P. in its filings in the RainbowVision Action.



4. I first entered a notice of appearance in the RainbowVision Action on April 10, 2009. I filed an answer in the RainbowVision Action on behalf of BMC West Corporation on April 24, 2009 (attached hereto as *Attachment 2*)

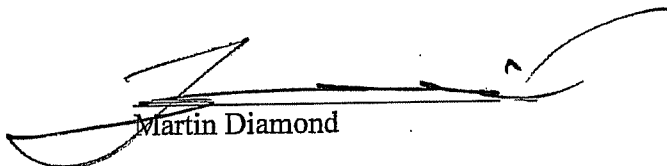
5. On June 23, 2009, I filed a Notice of Bankruptcy Filing on behalf of the Debtors in the RainbowVision Action (attached hereto as *Attachment 3*).

6. Other than the actions recounted above, I have engaged in no other litigation activity of substance on behalf of BMC West Corporation in the RainbowVision Action. No discovery requests have been exchanged by BMC West Corporation with any other party in the RainbowVision Action. No depositions have been taken or defended by BMC West Corporation. No experts have been hired or witnesses interviewed.

7. Litigating the RainbowVision Action on behalf of BMC West Corporation would be an extensive and time-consuming undertaking. Cross-claims would likely be filed against BMC West Corporation by other subcontractor third-party defendants, and BMC West Corporation would likely be required to file cross-claims of its own. Multiple consulting and testifying experts would need to be hired, prepared, and deposed, and the many experts hired by other parties would need to be deposed. Many witnesses—including suppliers, managers, and employees of both BMC West Corporation and other parties to the case—would need to be interviewed and deposed. Extensive written discovery would be exchanged with Weis Builders, Inc. and other parties. Summary judgment motions would likely be filed by both BMC West Corporation and other parties. Finally, a trial in the RainbowVision Action would be exceedingly complicated, given the number of parties and issues involved.

8. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on September 23, 2009.



Martin Diamond

# **EXHIBIT C**

## **Declaration of Craig E. Johnson**

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

**IN RE:**

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

**Debtors.**

**Chapter 11**

**Case No. 09-12074 ( KJC)**

**Jointly Administered**

**DECLARATION OF CRAIG E. JOHNSON**

I, Craig E. Johnson, declare and state as follows:

1. I am a Director, Business Reorganization of The Garden City Group, Inc., (“*GCG*”) the claims and noticing agent in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”).

2. In the Amended Schedule F of BMC West Corporation (“*BMC West*”), one of the debtors and debtors in possession in these Chapter 11 Cases (the “*Debtors*”), BMC West scheduled a contingent, unliquidated, disputed, unsecured litigation claim under the name and address of “William C. Salmon, Rhodes & Salmon, PC, 1801 Lomas Blvd., Northwest, Albuquerque, NM 87104.” That claim included the reference number “D0101 CV 2007-00010.” A true and correct copy of the relevant page of the Schedule F is attached hereto as *Attachment 1*.

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<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

3. On July 10, 2009, I caused the Debtors' Notice of Commencement of Chapter 11 Bankruptcy Cases and Meeting of Creditors (the "**Notice of Commencement**") to be mailed by first class U.S. mail to the following address:

Rhodes & Salmon, PC  
Attn: William C. Salmon  
1801 Lomas Blvd. NW  
Re: Case# D0101 CV 2007-00010  
Albuquerque, NM 87104

A true and correct copy of the Notice of Commencement that was mailed to this address is attached hereto as **Attachment 2**.

4. On July 10, 2009, I caused the Debtors' Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors (the "**Disclosure Statement Hearing Notice**") to be mailed by first class U.S. mail to the following address:

Rhodes & Salmon, PC  
Attn: William C. Salmon  
1801 Lomas Blvd. NW  
Re: Case# D0101 CV 2007-00010  
Albuquerque, NM 87104

A true and correct copy of the Disclosure Statement Hearing Notice that was mailed to this address is attached hereto as **Attachment 3**.

5. On July 23, 2009, I caused the Debtors' Notice of Entry of Bar Date Order Establishing Deadlines for Filing Proofs of Claim Against the Debtors (Including Claims Pursuant to Bankruptcy Code § 503(b)(9)) (the "**Bar Date Notice**") along with a customized proof of claim form (the "**Proof of Claim**") to be mailed by first class U.S. mail to the following address:

Rhodes & Salmon, PC  
Attn: William C. Salmon  
1801 Lomas Blvd. NW  
Re: Case# D0101 CV 2007-00010  
Albuquerque, NM 87104

A true and correct copy of the Bar Date Notice and customized Proof of Claim are attached hereto as *Attachment 4* and *Attachment 5*, respectively.

6. All customized proofs of claim generated and mailed by GCG, including the Proof of Claim mailed to William C. Salmon, contained the name, address and GCG's internal database reference number (both in numeric and barcode formats) of the individual receiving the claim form. In addition, to the extent that a proof of claim was mailed on account of a claim scheduled by one of the Debtors, that proof of claim set forth the name of the Debtor, the amount and classification of the claim, and whether such claim was scheduled as contingent, unliquidated or disputed.

7. As filed proofs of claim were received by GCG, GCG scanned each claim into a secure proprietary database maintained exclusively for these Chapter 11 cases (the "*Database*"). When GCG received a proof of claim containing a GCG barcode, GCG's scanning equipment read the barcode and programmatically linked the claim to the appropriate Database record. When GCG received a proof of claim that did not contain a GCG barcode, a trained claims processor created a new Database record for that claim by data entering the claimant's name, address and other contact information provided on the claim form. All proofs of claim (whether barcoded or not barcoded) were then fully reviewed and the details asserted thereon were entered into the Database.

8. I have reviewed the Database, and verified that, as of the date hereof, no proof of claim has been filed in the Chapter 11 Cases on behalf of Weis Builders, Inc.; Rhodes & Salmon, PC; or William C. Salmon.

9. Moreover, as part of our customary practice, GCG tracks any mail that is returned to GCG as undeliverable. I have reviewed the Database and verified that, as of date hereof, no mail that GCG sent to William C. Salmon at the address set forth in paragraph 2 including the Notice of Commencement, Notice of Disclosure Statement Hearing, Bar Date Notice, and/or Proof of Claim was returned to GCG as undeliverable.

10. Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on September 24, 2009.

/s/ Craig E. Johnson  
Craig E. Johnson

## **ATTACHMENT 1**



In re **BMC West Corporation**Case No. **09-12075**

Debtor

**AMENDED**  
**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No. <b>D0101 CV 2007-00010</b>		<b>LITIGATION CLAIM</b>				
<b>WILLIAM C. SALMON RHODES &amp; SALMON, PC 1801 LOMAS BLVD. NORTHWEST ALBUQUERQUE, NM 87104</b>	-		X	X	X	Unknown
Account No.		<b>TRADE DEBT</b>				
<b>WILLIAM FUCHS C/O REXBURG 1800</b>	-		X	X	X	Unknown
Account No.		<b>TRADE DEBT</b>				
<b>WILLIAM HEGGER C/O ISSAQUAH (7259)</b>	-		X	X	X	Unknown
Account No.		<b>TRADE DEBT</b>				
<b>WILLIAM KRING C/O CENTENNIAL 4000</b>	-		X	X	X	Unknown
Account No.		<b>TRADE DEBT</b>				
<b>WILLIAM NEWMAN C/O ABILENE 6800</b>	-		X	X	X	Unknown
Subtotal (Total of this page)						<b>0.00</b>

Sheet no. **1057** of **1080** sheets attached to Schedule of  
 Creditors Holding Unsecured Nonpriority Claims

## **ATTACHMENT 2**

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

On **June 16, 2009**, Building Materials Holding Corporation, and its wholly owned subsidiaries, the debtors and debtors in possession in the above-captioned cases (the “**Debtors**”), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors, their addresses, case numbers and last four digits of their federal tax identification numbers are as follows:

068301.1001

DEBTORS (Other names, if any, used by the Debtors in the last 6 years)	ADDRESS	CASE NO.	EID No.
SelectBuild Nevada, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12083	8912
SelectBuild Arizona, LLC	720 Park Blvd. Suite 200 Boise, ID 83712	09-12084	0036
SelectBuild Illinois, LLC (f/k/a RCI Construction, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12085	0792

**DATE, TIME AND LOCATION OF MEETING OF CREDITORS.** JULY 17, 2009 AT 10:00 A.M. (PREVAILING EASTERN TIME), J. CALEB BOGGS FEDERAL BUILDING, 844 NORTH KING STREET, ROOM 5209, WILMINGTON, DELAWARE 19801.

**MEETING OF CREDITORS.** The Debtors' representative, as specified in Rule 9001(5) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, creditors may examine the Debtors and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time-to-time by notice at the meeting, without further written notice to the creditors.

**COMMENCEMENT OF CASES.** A petition under chapter 11 of the Bankruptcy Code has been filed in the United States Bankruptcy Court for the District of Delaware (the "**Court**") by each of the Debtors, and orders for relief have been entered. Pursuant to that certain order entered by the Court, dated June 17, 2009 [Docket No. 52], the chapter 11 cases filed by each of the Debtors will be jointly administered under the following caption: In re Building Materials Holding Corporation *et al.*, Case No. 09-12074 (KJC). You will not receive notice of all documents filed in these cases. All documents filed with the Court, including lists of the Debtors' property and debts, are available for inspection at the Office of the Clerk of the Court (the "**Clerk's Office**"). In addition, such documents may be available at [www.deb.uscourts.gov](http://www.deb.uscourts.gov). A PACER password is needed to access these documents and can be obtained from the PACER Service Center at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov). In addition, such documents are available through the website of The Garden City Group, Inc., the claims agent in these cases, at [www.bmhcrestructuring.com](http://www.bmhcrestructuring.com). Information regarding the cases is also available by phone at 1-866-364-4266.

**DEADLINE TO FILE A PROOF OF CLAIM.** Notice of this deadline will be sent by and through a separate notice.

**NAME, ADDRESS AND TELEPHONE NUMBER OF TRUSTEE.** None appointed to date.

**COUNSEL FOR THE DEBTORS.**

Michael A. Rosenthal, Esq.  
Matthew K. Kelsey, Esq.  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, New York 10166-0193

Sean M. Beach, Esq.  
Donald J. Bowman, Jr., Esq.  
Robert F. Poppiti, Jr., Esq.  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
The Brandywine Building  
1000 West Street, 17th Floor, P.O. Box 391  
Wilmington, Delaware 19899-0391  
Telephone: (302) 571-6731

**PURPOSE OF CHAPTER 11 FILING.** Chapter 11 of the Bankruptcy Code enables debtors to reorganize pursuant to a plan. A plan is not effective unless approved by the Court at a confirmation hearing. Creditors will be given notice concerning any

plan, or in the event these cases are dismissed or converted to another chapter of the Bankruptcy Code. The Debtors will remain in possession of their property and will continue to operate their businesses unless a trustee is appointed.

**CREDITORS MAY NOT TAKE CERTAIN ACTIONS.** A creditor is anyone to whom any of the Debtors owe money or property. Under the Bankruptcy Code, the Debtors are granted certain protections against creditors. Common examples of prohibited actions by creditors are contacting the Debtors to demand repayment, taking action against the Debtors to collect money owed to creditors or to take property of the Debtors, and starting or continuing foreclosure actions or repossessions. If unauthorized actions are taken by a creditor against the Debtors, the Court may penalize that creditor. A creditor who is considering taking action against the Debtors or the property of the Debtors should review section 362 of the Bankruptcy Code and may wish to seek legal advice. *The staff of the Clerk's Office is not permitted to give legal advice.*

**CLAIMS.** Schedules of creditors will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim, which is not listed as disputed, contingent, or unliquidated as to amount, may, but is not required to, file a proof of claim in these cases. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in these cases or share in any distribution must file a proof of claim. A creditor who desires to rely on the schedules of creditors has the responsibility for determining that its claim is listed accurately. *Separate notice of the deadlines to file proofs of claim and proofs of claim forms will be provided to the Debtors' known creditors.* Proofs of claim forms also are available in the clerk's office of any United States Bankruptcy Court and from the Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov).

**DISCHARGE OF DEBTS.** Confirmation of a chapter 11 case may result in a discharge of debts, which may include all or part of your debt. *See* 11 U.S.C. § 1141(d). A discharge means that you may never try to collect the debt from the Debtors, except as provided in the plan.

For the Court: /s/ David D. Bird  
Clerk of the United States Bankruptcy  
Court for the District of Delaware

Dated: June 22, 2009

## **ATTACHMENT 3**

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

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>BUILDING MATERIALS HOLDING</b>	)	
<b>CORPORATION, et al.,<sup>1</sup></b>	)	<b>Case No. 09-12074 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Ref. Docket No. 19</b>

**NOTICE OF HEARING TO CONSIDER APPROVAL OF THE DISCLOSURE  
STATEMENT FOR JOINT PLAN OF REORGANIZATION FOR THE DEBTORS**

**PLEASE TAKE NOTICE THAT** on June 16, 2009, the above-captioned debtors (collectively, the "*Debtors*") filed with the United States Bankruptcy Court for the District of Delaware (the "*Court*") (a) the *Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "*Plan*") and (b) the *Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "*Disclosure Statement*") pursuant to section 1125 of title 11 of the United States Code (the "*Bankruptcy Code*").

**PLEASE TAKE FURTHER NOTICE THAT** a hearing (the "*Disclosure Statement Hearing*") will be held before the Honorable Kevin J. Carey, Chief United States Bankruptcy Judge, at the Court, 824 Market Street, 6<sup>th</sup> Floor, Wilmington, Delaware 19801 on **July 29, 2009 at 10:00 a.m. (prevailing Eastern Time)** to consider the entry of an order, among other things, finding that the Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code, approving the Disclosure Statement and establishing procedures for the solicitation and tabulation of votes to accept or reject the Plan. The Disclosure Statement may be amended or modified at or prior to the Disclosure Statement Hearing, and the Disclosure Statement Hearing may be adjourned from time to time without further notice, except for the announcement of the adjourned date(s) at the Disclosure Statement Hearing or any continued hearing(s).

**PLEASE TAKE FURTHER NOTICE THAT** objections, if any, to the approval of the Disclosure Statement must be in writing and must: (a) state the name and address of the objector or entity proposing a modification to the Disclosure Statement and the amount of its claim or nature of its interest in the Debtors' chapter 11 cases; (b) specify the basis and nature of any objection and set forth the proposed modification to the Disclosure Statement, together with suggested language; (c) be filed with the Clerk's Office, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on July 22, 2009** (the "*Objection Deadline*"); and (d) be served, so as to be actually received on or before the Objection Deadline, upon (i) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, New York 10166 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899-0391 (Attn: Sean M. Beach and Robert F. Poppiti, Jr.), counsel for the Debtors; (ii) Arent Fox LLP, 1050 Connecticut Ave, Washington, DC 20036-5339 (Attn: Christopher J. Giaimo and Katie A. Lane), counsel to the official committee of

<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

unsecured creditors appointed in these chapter 11 cases; (iii) Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, 24th Floor, San Francisco, CA 94105 (Attn: Kevin Fisher and Seth Mennillo) and Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Paul N. Heath), counsel for Wells Fargo Bank, N.A., as administrative agent under the Prepetition Credit Agreement and the DIP Facility (as defined in the Plan); and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware 19801 (Attn: Joseph J. McMahon).

**PLEASE TAKE FURTHER NOTICE THAT** if any objection to the Disclosure Statement is not filed and served as prescribed herein, the objecting party may be barred from objecting to the adequacy of the Disclosure Statement and may not be heard at the Disclosure Statement Hearing.

**PLEASE TAKE FURTHER NOTICE THAT** copies of the Plan and Disclosure Statement may be obtained by parties in interest free of charge on The Garden City Group, Inc.'s dedicated webpage related to these cases ([www.bmhcrestructuring.com](http://www.bmhcrestructuring.com)). Copies of the Plan and Disclosure Statement are also available for inspection during regular business hours at the Clerk's Office, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801. In addition, copies of the Plan and Disclosure Statement may be viewed on the Internet at the Court's website (<http://www.deb.uscourts.gov>) by following the directions for accessing the ECF system on such website.

**PLEASE TAKE FURTHER NOTICE THAT** this notice is not a solicitation of votes to accept or reject the Plan. Votes on the Plan may not be solicited unless and until the proposed Disclosure Statement is approved by an order of the Court. Following approval of the Disclosure Statement by the Court, holders of claims against, or interests in, the Debtors will receive a copy of the Disclosure Statement, the Plan and various documents related thereto, unless otherwise ordered by the Court.

*Para obtener una versión en español de esta notificación, por favor contactar a The Garden City Group en el telefono (866) 364-4266.*

Dated: Wilmington, Delaware  
June 30, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Sean M. Beach

Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
Telephone: 302.571.6731  
Facsimile: 302.571.1253

----and----

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal (admitted *pro hac vice*)  
Matthew K. Kelsey (admitted *pro hac vice*)  
200 Park Avenue, 47th Floor  
New York, NY 10166-0193  
Telephone: 212.351.4000  
Facsimile: 212.351.4035

PROPOSED ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION



## **ATTACHMENT 4**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
CORPORATION, <i>et al.</i> , <sup>1</sup>	)	Case No. 09-12074 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Ref. Docket No. 248
	)	

*Para obtener una versión en español de esta notificación, por favor contactar a The Garden City Group en el telefono (866) 364-4266.*

NOTICE OF ENTRY OF BAR DATE ORDER ESTABLISHING  
DEADLINES FOR FILING PROOFS OF CLAIM AGAINST THE DEBTORS  
(INCLUDING CLAIMS PURSUANT TO BANKRUPTCY CODE § 503(b)(9))

**PLEASE TAKE NOTICE THAT:**

The United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*") has entered an order [Docket No. 248] (the "*Bar Date Order*") establishing deadlines to file proofs of claim for all claims (as defined below), including claims pursuant to section 503(b)(9) (a "*503(b)(9) Claim*") of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "*Bankruptcy Code*") against the above-captioned debtors and debtors-in-possession (collectively, the "*Debtors*") that arose prior to June 16, 2009 (the "*Petition Date*").

You should not file a proof of claim if you do not have a claim against the Debtors. The fact that you received this notice (the "*Notice*") does not necessarily mean that you have a claim or that either the Debtors or the Bankruptcy Court believe that you have a claim.

Pursuant to the terms of the Bar Date Order, and except as otherwise provided herein, each person or entity<sup>2</sup> (including, without limitation, each individual, partnership, joint venture, corporation, limited liability company, estate, trust, or governmental unit<sup>3</sup>) that holds or asserts a claim against any of the Debtors must file a proof of claim with original signature, substantially conforming to the proof of claim form enclosed herewith, so that it is actually received by The Garden City Group, Inc. ("*GCG*"), the approved Bankruptcy Court claims and noticing agent in these chapter 11 cases (the "*Chapter 11 Cases*"), on or before the applicable bar date set forth below. Proofs of claim sent by *first-class mail* must be sent to the following address:

The Garden City Group, Inc.  
Attn: Building Materials Holding Corporation  
P.O. Box 9393  
Dublin, OH 43017-4293

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's tax identification number, and chapter 11 case number, are as follows: Building Materials Holding Corporation (4269) Case No. 09-12074, BMC West Corporation (0454) Case No. 09-12075, SelectBuild Construction, Inc. (1340) Case No. 09-12076, SelectBuild Northern California, Inc. (7579) Case No. 09-12077, Illinois Framing, Inc. (4451) Case No. 09-12078, C Construction, Inc. (8206) Case No. 09-12079, TWF Construction, Inc. (3334) Case No. 09-12080, H.N.R. Framing Systems, Inc. (4329) Case No. 09-12081, SelectBuild Southern California, Inc. (9378) Case No. 09-12082, SelectBuild Nevada, Inc. (8912) Case No. 09-12083, SelectBuild Arizona, LLC (0036) Case No. 09-12084, and SelectBuild Illinois, LLC (0792) Case No. 09-12085. The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

<sup>2</sup> "Entity" has the meaning given to it in section 101(15) of the Bankruptcy Code.

<sup>3</sup> "Governmental Unit" has the meaning given to it in section 101(27) of the Bankruptcy Code.

Proofs of claim sent by *messenger* or *overnight courier* must be sent to the following address:

The Garden City Group, Inc.  
Attn: Building Materials Holding Corporation  
5151 Blazer Parkway, Suite A  
Dublin, OH 43017

To be properly filed, a proof of claim must be filed in the bankruptcy case of the specific Debtor against which the claimant holds or asserts a claim. For example, if a claimant holds or asserts a claim against SelectBuild Arizona, LLC, the proof of claim must be filed against SelectBuild Arizona, LLC in case number 09-12084. If a claimant wishes to assert a claim against more than one Debtor, separate proof of claim forms must be filed against each applicable Debtor. A complete list of Debtors with corresponding case numbers is set forth in footnote 1 of this Notice.

Proofs of claim will be deemed timely filed only if *actually received* by GCG on or before the bar date applicable to such claim. Further, GCG will not accept proofs of claim sent by facsimile, telecopy, e-mail, or other electronic submission, and such claims will not be deemed to be properly filed claims.

**General Bar Date.** Except as otherwise provided herein, each person or entity holding or asserting a claim (including a 503(b)(9) Claim) against one or more of the Debtors that arose prior to the Petition Date must file a proof of claim so that it is actually received by GCG on or before **August 31, 2009 at 5:00 p.m.** (prevailing Eastern Time) (the "**General Bar Date**").

**Governmental Unit Bar Date.** Each governmental unit holding or asserting a claim against one or more of the Debtors that arose prior to the Petition Date must file a proof of claim so that it is actually received by GCG on or before **December 16, 2009 at 5:00 p.m.** (prevailing Eastern Time) (the "**Governmental Bar Date**").

**Amended Schedules Bar Date.** If, on or after the date on which the Debtors serve this Notice, the Debtors amend or supplement their schedules of assets and liabilities, list of equity holders, and statements of financial affairs (collectively, the "**Schedules**") (i) to reduce the undisputed, noncontingent, and liquidated amount of a claim, (ii) to change the nature or characterization of a claim or the Debtor against whom the claim is scheduled, or (iii) to add a new claim to the Schedules, the affected claimant is required to file a proof of claim or amend any previously filed proof of claim in respect of the amended scheduled claim so that the proof of claim is actually received by GCG on or before the later of (x) the General Bar Date or (y) 30 days after the claimant is served with notice of the applicable amendment or supplement to the Schedules.

**Rejection Bar Date.** A proof of claim relating to a Debtor's rejection of an executory contract or unexpired lease pursuant to a Bankruptcy Court order entered prior to the applicable Debtor's plan of reorganization must be filed so that it is actually received by GCG on or before the later of (i) the General Bar Date or (ii) 30 days after the effective date of such Bankruptcy Court order.

For purposes of the Bar Date Order and this Notice, the term "claim" means (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured as of the Petition Date.

For purposes of the Bar Date Order and this Notice, a "503(b)(9) Claim" is a claim for the value of any goods received by the Debtors within 20 days prior to the Petition Date in which the goods have been sold to the Debtors in the ordinary course of the Debtors' business.

The following persons and entities need **NOT** file a proof of claim:

- a. any person or entity that has already properly filed a proof of claim against the applicable Debtor(s) with either GCG or the Clerk of the Court for the Bankruptcy Court;
- b. any person or entity (i) whose claim is listed in the Debtors' Schedules or any amendments thereto, *and* (ii) whose claim is not described therein as "disputed," "contingent," or "unliquidated," *and* (iii) who does not dispute the amount or characterization of its claim (including that the claim is an

obligation of the specific Debtor against which the claim is listed in the Schedules) as set forth in the Schedules;<sup>4</sup>

- c. professionals retained by the Debtors or the Official Committee of Unsecured Creditors pursuant to orders of the Bankruptcy Court who assert administrative claims for fees and expenses subject to the Bankruptcy Court's approval pursuant to sections 330, 331, and 503(b) of the Bankruptcy Code;
- d. any person or entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code; *provided, however*, that, any person or entity that has a 503(b)(9) Claim must file a proof of claim on or before the General Bar Date;
- e. any Debtor asserting a claim against another Debtor; and
- f. any person or entity whose claim against the Debtors has been allowed by an order of the Bankruptcy Court entered on or before the General Bar Date.

Any person or entity (including, without limitation, any individual, partnership, joint venture, corporation, limited liability company, estate, trust or governmental unit) holding an interest in the Debtors (an "Interest Holder"), which interest is based exclusively upon the ownership of common or preferred stock in the corporation or warrants or rights to purchase, sell or subscribe to such a security (any such security being referred to in this Notice as an "Interest"), need not file a proof of interest on or before the General Bar Date; provided, however, that Interest Holders who wish to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of such Interest, must file proofs of claim on or before the General Bar Date (or, in the case of a governmental unit, the Governmental Bar Date), unless another exception identified in the Bar Date Order applies.

Pursuant to Rule 3003(c)(2) of the Federal Rules of Bankruptcy Procedure, any person or entity (including, without limitation, any individual, partnership, joint venture, corporation, limited liability company, estate, trust or governmental unit) that is required to file a timely proof of claim in the form and manner specified by the Bar Date Order and this Notice and that fails to do so on or before the bar date applicable to such claim shall not be treated as a creditor of the Debtors for the purposes of voting upon, or receiving distributions under, any plan of reorganization in the Chapter 11 Cases in respect of that claim.

The Debtors reserve the right to (a) dispute, or to assert offsets or defenses against, any claim filed or any claim listed or reflected in the Schedules as to nature, amount, liability, classification, or otherwise; and (b) subsequently designate any claim as disputed, contingent, or unliquidated. Nothing contained in this Notice shall preclude the Debtors from objecting to any filed claim on any grounds.

Acts or omissions of the Debtors, if any, that occurred prior to the Petition Date, including acts or omissions related to any indemnity agreements, guarantees, or services provided to or rendered by the Debtors, may give rise to claims against the Debtors notwithstanding the fact that such claims (or any injuries on which they are based) may be contingent or may not have matured or become fixed or liquidated prior to the Petition Date. Therefore, any person or entity that holds or asserts a claim or a potential claim against the Debtors, no matter how remote or contingent, must file a proof of claim on or before the General Bar Date.

You may be listed as the holder of a claim against the Debtors in the Schedules. If you hold or assert a claim that is not listed in the Schedules or if you disagree with the amount or priority of your claim as listed in the Schedules, or your claim is listed in the Schedules as "contingent," "unliquidated," or "disputed," you must file a proof of claim. Copies of the Schedules and the Bar Date Order are available for inspection during regular business hours at the office of the Clerk of the Court for the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. In addition, copies of the Debtors' Schedules and Bar Date Order may be obtained for a charge through Delaware Document Retrieval, 2 East 7th Street, 2nd Floor, Wilmington, Delaware 19801; or viewed and downloaded free of

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<sup>4</sup> If the administrative agent under the Debtors' Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (the "*Prepetition Credit Agreement*") disputes the scheduled amount of claims thereunder, the administrative agent may file a proof of claim on behalf of all such lenders.

charge on GCG's dedicated website for the Chapter 11 Cases ([www.bmhcrestructuring.com](http://www.bmhcrestructuring.com)); or viewed and downloaded for a fee at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website. Information relating to the Debtors' restructuring, including all documents referenced in this Notice, can be viewed at [www.bmhcrestructuring.com](http://www.bmhcrestructuring.com).

Questions concerning the contents of this Notice and requests for proofs of claim should be directed to GCG at 1-866-364-4266. Please note that GCG's staff is not permitted to give legal advice. You should consult your own attorney for assistance regarding any other inquiries, such as questions concerning the completion or filing of a proof of claim.

Dated: Wilmington, Delaware  
July 23, 2009

BY ORDER OF THE HONORABLE KEVIN J. CAREY  
CHIEF UNITED STATES BANKRUPTCY JUDGE

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal (admitted *pro hac vice*)  
Matthew K. Kelsey (admitted *pro hac vice*)  
200 Park Ave, 47th Floor  
New York, NY 10166-0193  
Telephone: 212.351.4000  
Facsimile: 212.351.4035

---- and ----

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
The Brandywine Building  
1000 West St., 17th Floor  
Wilmington, DE 19801  
Telephone: 302.571.6731  
Facsimile: 302.571.1253

*ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION*

## **ATTACHMENT 5**

01101108

BMC0271478945



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE				PROOF OF CLAIM
<b>Name of Debtor (Check Only One):</b> <input type="checkbox"/> Building Materials Holding Corporation <input type="checkbox"/> BMC West Corporation <input type="checkbox"/> SelectBuild Construction, Inc. <input type="checkbox"/> SelectBuild Northern California, Inc. <input type="checkbox"/> Illinois Framing, Inc. <input type="checkbox"/> C Construction, Inc.	<b>Case No.</b> 09-12074 09-12075 09-12076 09-12077 09-12078 09-12079	<b>Name of Debtor</b> <input type="checkbox"/> TWF Construction, Inc. <input type="checkbox"/> H.N.R. Framing Systems, Inc. <input type="checkbox"/> SelectBuild Southern California, Inc. <input type="checkbox"/> SelectBuild Nevada, Inc. <input type="checkbox"/> SelectBuild Arizona, LLC <input type="checkbox"/> SelectBuild Illinois, LLC	<b>Case No.</b> 09-12080 09-12081 09-12082 09-12083 09-12084 09-12085	<b>Your Claim is Scheduled As Follows:</b>  BMC WEST CORPORATION  Unsecured: Unknown Contingent / Unliquidated / Disputed
<b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.				If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights. The Bar Date Notice is available online at <a href="http://www.bmcrestructuring.com">www.bmcrestructuring.com</a> or upon request at the address on the back of this form.  <b>THIS SPACE IS FOR COURT USE ONLY</b>
<b>Name of Creditor (the person or other entity to whom the Debtor owes money or property):</b> WILLIAM C. SALMON	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  <b>Filed on:</b> _____		<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	
<b>Name and address where notices should be sent:</b>  WILLIAM C. SALMON RHODES & SALMON, PC 1801 LOMAS BLVD. NORTHWEST ALBUQUERQUE NM 87104	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.			
<b>Telephone number:</b> <b>Email Address:</b>	<b>Name and address where payment should be sent (if different from above):</b>  <b>Telephone number:</b>			
<b>2. Basis for Claim:</b> _____ <i>(See instruction #2 on reverse side.)</i>				<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a).</b> <b>If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507(a)( ). [Note: Do not include Section 503(b)(9) Claims here.]  <b>Amount entitled to priority:</b> \$ _____
<b>3. Last four digits of any number by which creditor identifies Debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ <i>(See instruction #3a on reverse side.)</i>				
<b>4. Secured Claim (See instruction #4 on reverse side.)</b> Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other <b>Describe:</b> _____  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> % _____  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____				
<b>6. Claim Pursuant to 11 U.S.C. § 503(b)(9):</b> Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009: Attach documentation supporting such claim. \$ _____				
<b>7. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.				<b>FOR COURT USE ONLY</b>
<b>8. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction #8 and definition of "redacted" on reverse side.)</i> <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b> If the documents are not available, please explain in an attachment.				
<b>Date:</b> _____	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.			

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.  
 Modified B10 (GCG) (12/08)

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules. The attorneys for the Debtors and their court-appointed claims agent are not authorized and are not providing you with any legal advice.*

PLEASE SEND YOUR ORIGINAL, COMPLETED PROOF OF CLAIM AS FOLLOWS: **IF BY MAIL:** THE GARDEN CITY GROUP, INC., ATTN: BUILDING MATERIALS HOLDING CORPORATION, P.O. BOX 9393, DUBLIN, OH 43017-4293. **IF BY HAND OR OVERNIGHT COURIER:** THE GARDEN CITY GROUP, INC., ATTN: BUILDING MATERIALS HOLDING CORPORATION, 5151 BLAZER PARKWAY, SUITE A, DUBLIN, OH 43017. ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR E-MAIL WILL NOT BE ACCEPTED.

**THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 31, 2009 AT 5:00 P.M. (PREVAILING EASTERN TIME).**  
**THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS DECEMBER 16, 2009 AT 5:00 P.M. (PREVAILING EASTERN TIME).**

### Court, Name of Debtor, and Case Number:

These chapter 11 cases were commenced in the United States Bankruptcy Court for the District of Delaware on June 16, 2009. You should select the Debtor against which you are asserting your claim.

**A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR AGAINST WHICH THE CREDITOR HOLDS OR ASSERTS A CLAIM.**

### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

#### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor as of June 16, 2009. Follow the instructions concerning whether to complete items 4, 5 and/or 6. Check the box if interest or other charges are included in the claim.

#### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

#### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

##### 3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

#### 4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

#### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507(a):

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

#### 6. Claim Pursuant to 11 U.S.C. § 503(b)(9):

Indicate the amount of your claim arising from your provision of goods to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009. Attach documentation supporting such claim.

#### 7. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

#### 8. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction #2. Do not send original documents, as attachments may be destroyed after scanning.

#### Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

## DEFINITIONS

### Debtor

A Debtor is the person, corporation, or other entity that has filed a bankruptcy case.

### Creditor

A creditor is the person, corporation, or other entity owed a debt by the Debtor on the date of the bankruptcy filing.

### Claim

A claim is the creditor's right to receive payment on a debt that was owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101(5). A claim may be secured or unsecured.

### Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with The Garden City Group, Inc. as described in the instructions above and in the Bar Date Notice.

### Secured Claim Under 11 U.S.C. § 506(a)

A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

### Section 503(b)(9) Claim

A Section 503(b)(9) claim is a claim for the value of any goods received by the Debtor within 20 days before the date of commencement of a bankruptcy case in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business.

### Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

### Claim Entitled to Priority Under 11 U.S.C. § 507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

### Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

### Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

## INFORMATION

### Acknowledgment of Filing of Claim

To receive acknowledgment of your filing from The Garden City Group, Inc., please provide a stamped self-addressed envelope and a copy of this proof of claim when you submit the original claim to The Garden City Group, Inc.

### Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

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

Debtors.

Chapter 11


Case No. 09-12074 (KJC)

Jointly Administered

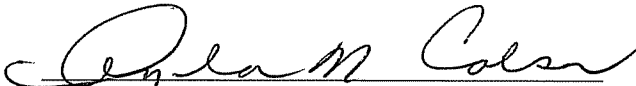
**AFFIDAVIT OF SERVICE**

STATE OF DELAWARE     )  
                                      ) SS  
NEW CASTLE COUNTY    )

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on September 25, 2009, she caused a copy of the **Debtors' Objection to Weis Builders, Inc.'s Motion for Order Granting Modification of the Automatic Stay** to be served as indicated upon the parties identified on the attached service lists.

  
Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 25th day of September, 2009.

  
Notary Public  
My Commission Expires:

ANGELA M. COLSON  
NOTARY PUBLIC  
STATE OF DELAWARE  
My commission expires Aug. 31, 2011

<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). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

**BUILDING MATERIALS HOLDING CORPORATION  
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