

**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>Case No. 09-12074 (KJC)</b>
<b>CORPORATION, <i>et al.</i>,<sup>1</sup></b>	)	
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	

**NOTICE OF AGENDA OF MATTERS SCHEDULED  
FOR HEARING ON OCTOBER 22, 2009 AT 2:00 P.M. (ET)<sup>2</sup>**

**MATTERS GOING FORWARD**

1. Debtors' Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 Approving Commitment Letter and Related Fee Letter By and Between Building Materials Holding Corporation and Wells Fargo Bank, N.A.  
[D.I. 684, 10/2/09]

Response Deadline: October 15, 2009 at 4:00 p.m. (ET)

Responses Received: None.

Related Documents:

- A. Notice of Filing of Fully Executed Commitment Letter and Fee Letter  
[D.I. 742, 10/14/09]
- B. Certificate of No Objection [D.I. 753, 10/20/09]
- C. Notice of Withdrawal of Certificate of No Objection [D.I. 754, 10/20/09]

Status: This matter will be going forward.

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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> Those parties wishing to participate telephonically must make arrangements with CourtCall by telephone at 888-882-6878 or on the internet at [www.courtcall.com](http://www.courtcall.com) no later than 12:00 p.m. (ET) on October 21, 2009.

2. Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 6, 2009 [D.I. 713, 10/6/09]

Response Deadline: July 22, 2009 at 4:00 p.m. (ET); Extended to July 27, 2009 at 11:00 a.m. (ET) for ACE Insurance Company, to September 9, 2009 for the Securities and Exchange Commission, to October 5, 2009 at 10:00 a.m. (ET) for the United States Trustee, and to October 19, 2009 at 4:00 p.m. (ET) for the Official Committee of Unsecured Creditors

Responses Received:

- A. Response of Vincent E. Rhynes [D.I. 253, 7/17/09]
- B. Response of William H. Milligan [D.I. 257, 7/20/09]
- C. Response of Dixon Big-O-Tires [D.I. 258, 7/20/09]
- D. Response of Steven H. Pearson [D.I. 302, 7/24/09]
- E. Response of Martin Uriarte [D.I. 307, 7/27/09]
- F. Objection of the Official Committee of Unsecured Creditors to the Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 564, 9/4/09]
- G. Objection of the Official Committee of Unsecured Creditors to the Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 [D.I. 692, 10/5/09]
- H. Maricopa County's Objection to Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 746, 10/15/09]

Related Documents:

- I. Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code [D.I. 19, 6/16/09]
- J. Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 316, 7/27/09]

- K. Blackline of Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 317, 7/27/09]
- L. Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 [D.I. 678, 10/1/09]
- M. Blackline of Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 [D.I. 680, 10/1/09]
- N. Blackline of Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 6, 2009 [D.I. 714, 10/6/09]
- O. Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code [D.I. 18, 6/16/09]
- P. Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 314, 7/27/09]
- Q. Blackline of Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 [D.I. 315, 7/27/09]
- R. Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 [D.I. 677, 10/1/09]
- S. Blackline of Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 [D.I. 679, 10/1/09]
- T. Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 6, 2009 [D.I. 711, 10/6/09]
- U. Blackline of Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 6, 2009 [D.I. 712, 10/6/09]
- V. Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors [D.I. 120, 6/30/09]
- W. Scheduling Order [D.I. 735, 10/9/09]

Status: This matter will be going forward. A chart identifying the nature and responses/status of all objections is annexed hereto.

3. Debtors' Motion for an Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving the Form and Manner of Solicitation Procedures, (B) Approving the Form and Manner of Notice of the Confirmation Hearing, (C) Establishing a Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing the Deadline for Receipt of Ballots, and (F) Approving the Procedures for Vote Tabulations; (III) Establishing the Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed Under the Plan; and (IV) Granting Related Relief [D.I. 172, 7/13/09]

Response Deadline: July 22, 2009 at 4:00 p.m. (ET); Extended to October 5, 2009 at 10:00 a.m. (ET) for the United States Trustee and to October 19, 2009 at 4:00 p.m. (ET) for the Official Committee of Unsecured Creditors

Responses Received: None.

Related Documents:

- A. Notice of Filing of Revised Exhibits to Debtors' Motion for an Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving the Form and Manner of Solicitation Procedures, (B) Approving the Form and Manner of Notice of the Confirmation Hearing, (C) Establishing a Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing the Deadline for Receipt of Ballots, and (F) Approving the Procedures for Vote Tabulations; (III) Establishing the Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed Under the Plan; and (IV) Granting Related Relief [D.I. 681, 10/1/09]

Status: This matter will be going forward.

Dated: Wilmington, Delaware  
October 20, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

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## **CHART OF OUTSTANDING OBJECTIONS TO DISCLOSURE STATEMENT**

**(UPDATED OCTOBER 20, 2009)**

### **A. Objection to Debtor(s) Disclosure Statement for Joint Plan of Reorganization filed by Vincent Rhynes. (Docket No. 253)**

<b>Objection</b>	<b>Response</b>
Mr. Rhynes objects to the Disclosure Statement "On the Grounds That the Debtor(s) Seek to Subordinate & Provide Less Favorable Treatment to Certain Register Holders & Beneficial Owners Of The Debtor(s) Exsiting Common Stock (1125-c)." [sic] He also objects "Against Any Subordination As Found Under Section 510(a) of The Bankruptcy Code." Finally, he objects to "Any Less Favorable Treatment. See Section 1123(a)(4) Of The Bankruptcy Code." Mr. Rhynes attached to the objection a copy of a BMHC Certificate of Stock in his name.	Mr. Rhynes's objection does not address the adequacy of the Disclosure Statement. Instead, it appears to object to the proposed cancellation of BMHC Equity Security Interests. If anything, the issues he raises should be addressed at confirmation of the plan. In that regard, the Debtors submit that the cancellation of the BMHC Equity Interests is mandated by the absolute priority rule.

### **B. Letter Dated July 15, 2009 from William Milligan (Docket No. 257)**

<b>Objection</b>	<b>Response</b>
Mr. Milligan writes to voice his rejection of the Disclosure Statement. In sum, he states that he "would like Company along with Secured Creditors to restructure its plan to negotiate a guarantee payout of all employee related claims as part of the reorganization plan."	Mr. Milligan's letter does not address the adequacy of the Disclosure Statement. Instead, he requests that all employee-related claims be paid in full. If anything, the issues he raises should be addressed at confirmation of the plan. In that regard, the Debtors submit that the proposed treatment of General Unsecured Claims is appropriate in light of the Liquidation Analysis.

**C. Letter Dated July 16, 2009 from Dixon Big-O-Tires (Docket No. 258)**

<b>Objection</b>	<b>Response</b>
The Dixon Big-O-Tires letter states the owner's belief that the Debtors "should pay off their debt to my business so we can continue to service them during their reorganization."	Dixon Big-O-Tires' objection does not address the adequacy of the Disclosure Statement. Instead, it contends that the debt owed to them should be paid. If anything, the issues raised should be addressed at confirmation of the plan. In that regard, the Debtors submit that the proposed treatment of General Unsecured Creditors is appropriate in light of the Liquidation Analysis.

**D. Letter Dated July 23, 2009 from Steven H. Pearson (Docket No. 302)**

<b>Objection</b>	<b>Response</b>
Mr. Pearson's letter offers some suggestions with respect to treatment of the SERP and Deferred Compensation Plans.	Mr. Pearson's letter does not address the adequacy of the Disclosure Statement. Instead, it addresses "potential inequities of the current plan." If anything, such issues should be addressed at confirmation of the plan. In that regard, the assets of the SERP are available to all unsecured creditors and the Debtors submit that the proposed liquidation and distribution of those assets is appropriate.

**E. Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization For the Debtors, with Attached Arizona Registrar of Contractors Complaint Form for Licensed and Unlicensed Contractors, Filed by Martin Uriarte (Docket No. 307)**

<b>Objection</b>	<b>Response</b>
Mr. Uriarte filed a copy of the Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors that the Debtors mailed, with an attached Arizona Registrar of Contractors Complaint Form for Licensed and Unlicensed Contractors (the "Complaint Form")	The Complaint Form seems to assert a claim for \$4,481. It asserts no objection to the Disclosure Statement and should be disregarded.

**F. Objection of the Official Committee of Unsecured Creditors to the Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 (Docket No. 564)**

Note: On October 13, 2009, counsel for the Committee provided to Debtors' counsel a list of forty-nine comments to the Disclosure Statement. Counsel for the Debtors has endeavored to revise the Disclosure Statement with respect to such comments and expect to file an amended version of the Disclosure Statement incorporating such revisions. The Debtors would expect that such revisions, coupled with the responses below, would resolve any objection the Committee may have to the Disclosure Statement.

Objectors' Objection	Response and/or Status
<p>The Disclosure Statement states that the Reorganized Debtors will obtain exit financing from a Revolving Credit Agreement in the amount of \$100 million. However the description of the availability and uses of such funds is so complex and confusing as to be meaningless to the average creditor. See Disclosure Statement § I.B. 2 at p. 4. This section should be modified to make it easier for creditors voting on the Plan to understand this critical piece of information. Such language should also be consistent with the language found in Section VIII. B.I. (p. 62) of the Disclosure Statement. (¶ 12)</p>	<p>In the Disclosure Statement filed on October 6, 2009, the Debtors revised this section to reflect the new parameters of the Exit Credit Facilities. In addition, as requested by the Committee, the Debtors clarified in this section that the Exit Credit Facilities shall be due and payable on the third anniversary of the Effective Date. The Debtors believe that the language in section I.B. is consistent with section VIII.B.I (although section I.B contains more detail as Article I of the Disclosure Statement is designed to be a summary of the most material aspects of the Disclosure Statement). In addition, the Debtors have added a chart to section I.B. of the Disclosure Statement showing sources and uses of cash.</p>
<p>The Disclosure Statement further provides that the Reorganized Debtors will enter into a Term Loan Credit Agreement of \$135 million that may be increased to as much as \$190 million, depending on the extent to which the Prepetition Letters of Credit are drawn upon. See Disclosure Statement § I.B.2 at p. 4 &amp; § VIII.B.1-2. at p. 62. Nowhere does the Disclosure Statement describe the risks associated with this arrangement. Specifically, there is no discussion of the impact on the Debtors' ability to service its secured debt going forward and the resulting effect on cash flow (and thus the proposed 55.2% distribution proposed to the unsecureds) if the term notes increase to the full \$190 million. The</p>	<p>The Disclosure Statement states in section I.B.3 that "[t]he Debtors do not expect that there will be draws on the Prepetition Letters of Credit during these Chapter 11 Cases or after the Effective Date." As noted above, the Debtors have added a statement to section I.B. specifying that "[t]he outstanding amount of the Exit Credit Facilities shall be due and payable in full on the third anniversary of its effective date."</p>

Disclosure Statement further fails to prominently display the relatively short three-year term of the exit revolver and the Debtors' need to refinance that debt upon its expiration in the near future. (¶ 13)	
The Disclosure Statement further provides for a Liquidating Trust from which allowed claims of general unsecured creditors are to be paid. See Disclosure Statement § 1.B.4 at p. 5 & VIII.C. at pp. 64-66. The description of the Liquidating Trust and related treatment of unsecured claims suffers from numerous infirmities. . . . (¶ 14)	Because the Plan no longer contains a Liquidating Trust, all discussion with respect to it has been eliminated from the Disclosure Statement.
A casual reading of the Disclosure Statement, at least the first two pages summarizing the Plan, could lead a creditor to believe that the Liquidating Trust is entitled to 20% of EBITDA after the initial \$50 million. . . . (¶ 14(a))	Because the Plan no longer contains a Liquidating Trust, all discussion with respect to it has been eliminated from the Disclosure Statement.
It is likely that most creditors will not understand the concept of EBITDA. . . . (¶ 14(b))	The Plan no longer contains potential payments to General Unsecured Creditors from EBITDA.
The reduction to the Unsecured Cash Fund in the event one or more subclasses votes against the Plan will undoubtedly confuse and alarm unsecured creditors. Yet, the Disclosure Statement does not explain why, if one or more subclasses rejects the Plan, the portion of the \$10 million attributable to that subclass does not remain available to the accepting subclasses, rather than, presumably, reverting to the Debtors' secured lenders (and then owners). If the Pre-Petition Lenders are requiring this term, as the Committee presumes they are, the Debtors should make that clear and why the Debtors believe it is appropriate. (¶ 14(c))	The Unsecured Cash Fund is now \$5 million, subject to reduction if one or more subclasses votes against the Plan; provided, however, that the Plan and Disclosure Statement now contain language providing that Wells Fargo Bank may elect to waive the reduction of the consideration to rejecting classes if it does so prior to the Confirmation Hearing. The Unsecured Cash Fund will also be funded with any consideration received by the Debtors upon the sale of certain Life Insurance Policies to the extent such consideration exceeds the approximately \$16.3 million cash surrender value thereof, again subject to reduction if one or more subclasses votes against the Plan (and WFB does not elect otherwise). The Disclosure Statement now states in Article I: "As a condition of funding the Unsecured Cash Fund . . . the Prepetition Lenders are requiring that if a Class of General Unsecured Claims against a particular Debtor does not vote to accept the Plan, then the rejecting Class will



	<p>receive no distribution under the Plan and the amount funded into the Unsecured Cash Fund will be reduced proportionately. Such treatment is appropriate based on the Liquidation Analysis which shows that Holders of General Unsecured Claims would receive no distribution in a hypothetical chapter 7 liquidation of the Debtors.”</p>
<p>The Disclosure Statement not only fails to provide adequate information, but the information that is provided is done so in an unnecessarily burdensome and confusing way. (¶ 15)</p>	<p>Article I of the Disclosure Statement is designed as a summary of the most material parts of the Disclosure Statement that could be read and understood without necessarily reading the rest of the Disclosure Statement. In addition, the revised Plan has a less complex structure from the perspective of General Unsecured Creditors than the previous version.</p>
<p>One example will more than illuminate this point. In the summary of Classes 2(a)-(l), the Funded Lender Claims, the Disclosure Statement includes the following <i>sentence</i>:</p> <p>Each Holder of an Allowed Funded Lender Claim shall, in full satisfaction, release and discharge of an in exchange for such Claim, receive (i) the Funded Lender’s Share of Sale Cash Collateral Excess Proceeds Account Effective Date Amount as to such Claim, (ii) a Term Note issued by the Reorganized BMHC under the Term Loan Credit Agreement in an original principal amount equal to the Maximum Funded Lenders Term Note Cap multiplied by such Holder’s Pro Rata share of all Allowed Funded Lender Claims, and (iii) its Pro Rata share of the Reorganized BMHC equity Interest Funded Lender Issuance, subject to dilution by (a) any Reorganized BMHC Equity Interests issued on the Effective Date and from time to time thereafter to the Holders of Allowed L/C Lender Claims and (b) any Reorganized BMHC Equity Interests issued after the Effective Date in respect of the Long Term Incentive Plan. (¶ 16)</p>	<p>The Debtors have added to Article I of the October 6 Disclosure Statement the following summary of the treatment of Funded Lender Claims: “The Holders of the Prepetition Funded Lender Claims in Classes 2(a)-(l), which are claims under the Debtors’ prepetition secured credit agreements in the amount of approximately \$302 million, shall receive a pro rata share of notes under a term loan credit agreement in the aggregate principal amount of \$135 million, less amounts such Holders receive from the sale of certain excess real estate. On the Effective Date, Reorganized BMHC will emerge from chapter 11 as a private company and 100% of the Reorganized BMHC Equity Interests shall be owned by the Holders of Prepetition Funded Lender Claims. This ownership interest is subject to dilution by up to 10% in connection with the Long Term Incentive Plan and by the Reorganized BMHC Equity Interests, if any, issued to the Holders of liquidated Allowed L/C Lender Claims (i.e., holders of any prepetition letters of credit that are drawn in the future).”</p> <p>At the request of the Committee, in the most current version of the Disclosure Statement, the above paragraph has been revised to add a clarifying clause specifying that the “Long</p>

	Term Incentive Plan shall provide, as an incentive mechanism, for the allocation to management of the Reorganized Debtors of restricted stock units, stock options, and/or stock appreciation rights”.
In short, the Disclosure Statement’s significant reliance on defined terms is unnecessarily confusing and burdensome . . . . (§ 18)	<p>As noted above, the Debtors have added nearly all applicable revisions to the October 6 Disclosure Statement requested by the Committee in their September 3, 2009 mark-up and have added additional language to Article I to make that section a virtually stand-alone summary of the Disclosure Statement.</p> <p>In addition, in the most current version of the Disclosure Statement the Debtors have made substantial revisions in response to the Committee’s list of forty-nine comments provided on October 13, 2009.</p>
Similarly, the summary of the treatment of Classes 3(a)-3(l), the L/C Lender Claims, is all but unreadable (except, presumably, to the L/C Lenders)—continuing for nearly two single-spaced pages with more than 25 defined terms from the Glossary and almost half a dozen dense and complex sentences that are 10 lines or more in length. (§ 19)	<p>Section I.B.3 of the Disclosure Statement contains this summary description of the treatment of Prepetition Letters of Credit: “More specifically, if the Prepetition L/C Lender funds a draw under a Prepetition Letter of Credit on or after the Petition Date, the Prepetition L/C Lender shall have an L/C Lender Claim. Each Holder of an L/C Lender Claim shall receive term notes issued under the Term Loan Credit Agreement based on a formula set forth in the Plan. If there are draws on the Prepetition Letters of Credit, this formula is designed to give the Prepetition L/C Lenders a distribution of term notes that is equivalent to the distribution that the Holders of Prepetition Funded Lender Claims receive on account of their claims. The formula is complex and takes into consideration a number of factors. Basically, the maximum amount of term notes that could be issued on account of L/C Lender Claims is approximately \$51 to 52 million and the percentage, if any, of these term notes that are actually issued would be equal to the ratio between Prepetition Letters of Credit that are drawn and all Prepetition Letters of Credit. Accordingly, for example, if 10% of the Prepetition Letters of Credit are drawn, roughly \$5.1 to \$5.2 million of</p>

	additional term notes will be issued under the Term Loan Credit Agreement.”
Classes 5(a)-(l), the L/C General Unsecured Claims, are entirely undefined. The Disclosure Statement fails to provide what these general unsecured claims are or how and why they will be reinstated and paid in full. (§ 19)	Article I of the Disclosure Statement contains this summary description of Classes 5(a)-(l): “Holders of Unsecured Claims that are beneficiaries of Prepetition Letters of Credit, or that have claims against the Debtors that are covered by insurance or performance bonds that would entitle an insurer or surety to draw under a Prepetition Letter of Credit if the claim was not paid, are grouped in Classes 5(a)-(l). These claims shall be paid in full by the applicable Reorganized Debtors to avoid draws on the Prepetition Letters of Credit.”
[T]he Disclosure Statement describes a Plan that appears to afford these Classes [6(a)-6(l)] a “take it or leave it” alternative pursuant to which the creditors receive virtually nothing if they fail to vote in favor of the Plan. See Disclosure Statement § I.C. at pp. 9-16 (Treatment of Classes 6(a)-6(l)). The Disclosure Statement does not explain the reason for this unnecessarily punitive treatment toward the general unsecured creditors who have supported the company for years. This is particularly worrisome due to the harsh reality that, presumably, the Debtors can rely on the Pre-Petition Lenders as an impaired accepting class and thus do not need the general unsecured creditors to vote in favor of the Plan in order to achieve confirmation. Such harsh treatment will undoubtedly have a negative effect on general unsecured creditors, who are the true stakeholders in these cases, thus, explanation is essential.	As noted above, the Debtors have added language to Article I of the Disclosure Statement specifying that the Prepetition Lenders are requiring that if a class 6 class votes to reject the Plan, then the rejecting class will receive no distribution and that this is appropriate given that the Liquidation Analysis shows that General Unsecured Claims would receive no distribution in a chapter 7 liquidation. Unfortunately, only the Prepetition Lenders are the true stakeholders in these cases and any funds they contribute to General Unsecured Claims is a gift on their part. The Debtors have also added language to the Plan and Disclosure Statement providing that WFB as agent for the Prepetition Lenders can elect, prior to the Confirmation Hearing, to not reduce the consideration to rejecting classes.
In addition, the Disclosure Statement’s Feasibility Analysis provides misleading information because it is based almost entirely on projections, with absolutely no reference to the Debtors’ historical performance. See	As explained in the notes to the Feasibility Analysis, revenue is forecast to grow from \$693 million to \$1,830 million over the forecast period due to an anticipated recovery in single family home construction from

<p>Disclosure Statement § XVII.B.2 at p. 90. This information is critical because the Debtors seek to solicit acceptances based on a proposed 55.2% distribution, the vast majority of which will allegedly come from future Cash Flow . . . . (¶ 21)</p>	<p>current historically low levels. Management's expectation for such a recovery is supported by its view that 2009 housing starts have fallen to roughly 30% of a more normalized run rate (calculated as an average of the last 15 years excluding the top three years in each market). Thus, the projections do have reference to historical performance as influenced by anticipated events.</p>
<p>It is also inappropriate to presume that the average creditor will even read a Feasibility Analysis contained solely in one of numerous exhibits, moreover, understand it. Because this information is absolutely critical to the proposed distribution (upon which creditors are being asked to vote), the feasibility should be clearly described within the Disclosure Statement itself. (¶ 22)</p>	<p>Distributions to General Unsecured Claims are no longer dependent on Company performance. Nonetheless, the Debtors have added the following to Article I of the October 6 Disclosure Statement: "The Feasibility Analysis and Projections indicate that the Reorganized Debtors will have sufficient cash flow to service and pay their debt obligations and to fund their operations. Under the Plan, the Reorganized Debtors will emerge from chapter 11 with approximately \$131 million of net debt ("Net Debt"), which is reduced to approximately \$62 million by December 2012 (end of projection period). The Reorganized Debtors will have approximately \$125 million of unrestricted balance sheet cash (excluding another \$9 million in restricted balance sheet cash) at December 2012. Accordingly, the Debtors believe that the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code."</p> <p>In the most current version of the Disclosure Statement, the Debtors have further revised the above paragraph to update the numbers and provide even more clarity.</p>
<p>The Disclosure Statement (at p. 29) recites that the Debtors owe prepetition payment-in-kind interest of approximately \$6 million under the Prepetition Term Loan, but does not explain how this interest operates or how it will be satisfied. (¶ 24(a))</p>	<p>With respect to payment-in-kind interest, section IV.A. of the Disclosure Statement states: "In addition, the Debtors . . . owe prepetition payment-in-kind interest of approximately \$6 million under the Prepetition Term Loan, which constitutes additional debt, which arose when the Company was unable to pay interest currently prepetition." This payment-in-kind interest is part of the prepetition Funded Lender Claims.</p>

<p>Under the heading “Trade Credit/Expense Accrual” in the earlier Disclosure Statement, the Debtors estimate that they owe approximately \$31 million to their unsecured trade creditors. At the Debtors’ request, however, the Court has approved payments to critical vendors, who are presumably included within this amount. The amended Disclosure Statement does not explain who much of this \$31 million is covered by the critical vendor order, and instead contains a bracket where that amount will purportedly be entered in the future. There is no way for the creditors to ascertain what the aggregate principal unpaid trade debt will ultimately consist of. (§ 24(b)).</p>	<p>Section IV.B., related to Trade Credit/Expense Accrual, of the October 6 Disclosure Statement reads as follows: “The Debtors also receive unsecured credit from most vendors and suppliers, though the Debtors do have two trade suppliers whose rights to payment are secured by Prepetition Letters of Credit. The Debtors estimate that, as of the Petition Date, they owe approximately \$10 to \$13 million to their unsecured trade creditors that will not be paid during the Chapter 11 Cases pursuant to Bankruptcy Court orders.”</p> <p>In the most current version of the Disclosure Statement, the Debtors have updated the amount unsecured trade creditors’ claims to approximately \$9 million.</p>
<p>Further, in several different filings with the Court, the aggregate amount of the Debtors’ pre-petition secured debt has changed. The precise amount and a breakdown of each component should be clearly set forth in the Disclosure Statement. (§ 25)</p>	<p>The October 6 Disclosure Statement contains a footnote 5, in Article I.B.3 that states that the prepetition Funded Lender Claims “consist of approximately \$269 million under the Prepetition Term Loan, \$16 million under the Prepetition Revolving Credit Facility, accrued interest of \$11 million, and long-term swap liability of \$6 million.”</p> <p>In the most current version of the Disclosure Statement, this language is now in footnote 6.</p>
<p>The Disclosure Statement describes a Supplemental Employee Retirement Plan (“SERP”) maintained by the Debtors, pursuant to which the Debtors have apparently accrued obligations of \$21 million. See Disclosure Statement § IV.B. at p. 30. It does not explain, however, the details of the SERP or how the Debtors intend to address it. The Disclosure Statement also notes that the SERP is funded by life insurance policies, held by BMHC in a rabbi trust, with a cash surrender value of approximately \$16 million. Id. The Disclosure Statement states that it is the Debtors’ belief that such funds are available to “pay all BMHC creditors,” but notably fails to state whether the proceeds of such policies will in fact be surrendered and made available to</p>	<p>The Debtors have revised section IV.B. of the October 6 Disclosure Statement, related to “SERP Claims/Other Deferred Compensation Claims/Executive Bonus,” to explain that the Debtors intend to use commercially reasonable efforts to liquidate the Life Insurance Policies for cash in an amount in excess of the cash surrender value of the policies. This excess amount is called the “Life Insurance Policies Residual.” Under the Plan, the applicable portion of the Life Insurance Policies Residual is a supplement to the Unsecured Cash Fund for the benefit of Holders of Allowed General Unsecured Claims whose classes have voted to accept the Plan. The applicable portion is, in effect, the percentage of the Life Insurance Policies Residual that corresponds to the ratio</p>

<p>general unsecured creditors. Indeed, the Disclosure Statement is noticeably silent on this issue. In view of the amounts at issue, answers to these questions are essential to an understanding of the Plan that will permit creditors to vote intelligently. (§ 26).</p>	<p>of aggregate Allowed General Unsecured Claims in Classes that vote to accept the Plan divided by the aggregate Allowed General Unsecured Claims in all General Unsecured Claim Classes.</p> <p>In the current version of the Disclosure Statement, the Debtors have added additional clarifying language to these paragraphs in response to the Committee's comments provided on October 13, 2009.</p>
<p>In addition, the Disclosure Statement refers generally to two class actions proceedings that are pending against the Debtors, but fails to describe the potential exposure of these actions and the effect that they might have on the proposed 55% distribution to unsecured creditors. The Disclosure Statement should contain more detail describing these actions, their posture, the Debtors' efforts at resolving them, the likelihood of success on the merits and the resulting potential claims against the estates, including, but not limited to, whether such claim could be entitled to priority. The discussion of pending litigation appears to be out of date, and the throwaway paragraph at the end captioned "Other Litigation" does not describe what the "other litigation" is, or how much is at issue. See Disclosure Statement § IV.C.2. p. 32. Again, the information provided is inadequate to permit an informed vote. (§ 27)</p>	<p>Section IV.C.1.b. of the Disclosure Statement now states that the Acevedo class action has been settled and such settlement was approved by the Court by order dated September 18, 2009. Section IV.C.1.a. of the October 6 Disclosure Statement states that the Alvarado action seeks to be certified as a class action, but no motion to certify was filed. Further, that section describes how Alvarado has filed a motion in the Bankruptcy Court requesting authority to file a class proof of claim and that the Debtors, the Committee and WFB have objected to such motion. The Debtors have deleted the "Other Litigation" section from the Disclosure Statement.</p> <p>The most current version of the Disclosure Statement states that the Court entered an order on October 13, 2009 denying the Alvarado request to file a class proof of claim.</p>
<p>The Disclosure Statement asserts that Avoidance Actions are expressly reserved and "Avoidance Actions are expressly preserved and shall vest in the applicable Reorganized Debtor on the Effective Date." See Disclosure Statement § VIII.C.4. at p. 63. Even if this treatment were appropriate—and the Committee does not believe it is—much more is needed in this description. The Debtors should describe the Avoidance Actions with specificity, including a discussion of the amounts at issue and the likelihood of success if such Avoidance Actions are pursued. (§ 28)</p>	<p>To preserve their business relationships, the Debtors do not intend to pursue Avoidance Actions.</p> <p>The most current version of the Disclosure Statement specifies: "For business reasons, at this time the Debtors do not believe it would be prudent to pursue such avoidance actions as the target of such actions would necessarily include the Debtors' trade vendors and/or customers."</p>

<p>The Liquidation Analysis lists a \$7 million priority tax liability with a reference to a note (a). Yet, note (a) explains the security interests of the “Pre-Petition Secured Lender Claim” rather than a priority tax liability. (§ 29)</p>	<p>The Liquidation Analysis attached as Exhibit E has been corrected. The footnote with respect to Priority Tax Claims now reads: “Priority tax claim of the IRS related to the audit of the 2005 to 2008 taxable years is senior to BMHC Parent General Unsecured Claims and Pre-Petition Secured Lender Claims at the BMHC Parent level. Also includes State/Local accrued tax expense.”</p>
<p>With a Plan that proposes to pay general unsecured creditors largely on the basis of the Debtors’ future success, it is essential that those creditors know the identity of the individuals on whom they will be compelled to rely before they vote “yes” or “no” on the Plan. Including that information only in a Plan Supplement, which may or may not be available before the date by which ballots are due, is entirely insufficient.</p>	<p>Payment to General Unsecured Claims is no longer dependent on success of the enterprise. Nonetheless, the Plan Supplement shall be filed no later than 10 days prior to the Voting Deadline.</p>

**G. Objection of the Official Committee of Unsecured Creditors to the Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended October 1, 2009 (Docket No. 692) (the “October 5 Objection”)**

<b>Objection</b>	<b>Response</b>
<p>The Committee’s October 5 Objection primarily objected “because the Committee and the unsecured creditor body have not been provided with ample time to review the materially different Second Amended Disclosure Statement and Plan and the myriad exhibits that accompany them.” (§ 2)</p>	<p>The Committee’s October 5 Objection was essentially resolved by the Court by continuing the Disclosure Statement hearing to October 22, 2009</p>

**H. Maricopa County's Objection to Disclosure Statement with Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code Amended July 27, 2009 (Docket No. 746)**

Objection	Response
<p>"Maricopa County objects to the approval of the Disclosure Statement to the extent that it fails to provide for the accrual of interest from the Petition Date at the statutory rate of 16% per annum in accordance with 11 U.S.C. § 511 and A.R.S. § 42-18053. In addition, the Disclosure Statement does not specify whether Secured Tax Claimants fall under the Classification of 'Other Secured Claims.' Consequently, it is unclear as to whether the Debtors are attempting to classify Maricopa County's secured tax claims as priority tax claims."</p>	<p>Section 4.4.2 of the Plan, and related Disclosure Statement provisions, specify that "Other Secured Claims" include "a secured tax claim." Further, section 4.4.2 of the Plan specifies: "Allowed Secured Tax Claims may be treated in accordance with the terms set forth in section 1129(a)(9) of the Bankruptcy Code and any interest required to be paid on Allowed secured tax claims will be paid in accordance with section 511 of the Bankruptcy Code."</p>