

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

) Chapter 11

BUILDING MATERIALS HOLDING CORPORATION, *et al.*,¹

) Case No. 09-12074 (KJC)

) Jointly Administered

Debtors.

)

) Requested Objection Deadline: October 30, 2009 at 12:00 p.m. (ET)

) Requested Hearing Date: October 30, 2009 at 2:30 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
ASSUMPTION OF INSURANCE PROGRAM; (II) AUTHORIZING THE
DEBTORS TO ENTER INTO INSURANCE AGREEMENTS; AND
(III) GRANTING RELATED RELIEF**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this motion (the "***Motion***") pursuant to sections 363, 364 and 365 of title 11 of the United States Code (the "***Bankruptcy Code***") for entry of an order, substantially in the form annexed hereto as ***Exhibit A***: (i) authorizing the assumption of the ACE Insurance Program (as defined herein); (ii) authorizing the Debtors to enter into the Insurance Agreements (as defined herein); and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent:

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

BACKGROUND

2. 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*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On July 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors' Committee*").

3. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

4. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels.

Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- **SelectBuild.** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the Debtors filed a proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed several amended versions of the Plan and Disclosure Statement since that time. The Court approved the Disclosure Statement by order entered on October 22, 2009. To implement their restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing (the "**DIP Financing**"), which the Court approved on a final basis on July 1, 2009.

THE INSURANCE AGREEMENTS WITH ACE

6. Prior to the Petition Date, ACE American Insurance Company (together with its affiliates, "**ACE**")² issued certain insurance policies to the Debtors, and ACE and the Debtors entered into certain agreements related thereto including, but not limited to, certain claims servicing agreements with ESIS (collectively, the "**ACE Insurance Program**") which are set to expire on November 11, 2009. After the Petition Date, the Debtors commenced negotiations with ACE regarding the provision of certain insurance coverage beyond November 11, 2009, and, on or about October 27, 2009, the Debtors and ACE agreed, subject to certain

² ESIS, Inc. ("ESIS"), an affiliate of ACE USA, serves as a third party administrator for certain of the insurance policies under the ACE Insurance Program. References in the Motion to ACE shall include ESIS.

conditions being satisfied, (i) to enter into a letter agreement (the "**Letter Agreement**") extending the Debtors' existing general liability insurance policies until February 11, 2010 and (ii) to the terms of new insurance policies and agreements that will be issued to the Debtors to provide automobile liability and workers' compensation coverage for the period from November 11, 2009 through February 11, 2010 (collectively with the Letter Agreement and the casualty program proposal related thereto, the "**Insurance Agreements**").³

7. Pursuant to the ACE Insurance Program and the Insurance Agreements, the Debtors are obligated to, among other things, pay insurance premiums, deductibles and related charges, and expenses to ACE. The Debtors' obligations are payable over an extended period of time and are subject to future audits and adjustments. The aggregate estimated premium payable to ACE with respect to the Insurance Agreements is \$592,363. The Debtors ultimately will owe additional amounts in the form of deductibles and other obligations in connection with claims payments made by ACE.

8. As security for the Debtors' obligations under the ACE Insurance Program, the Debtors provided ACE with letters of credit prior to the Petition Date in the amount of \$71,638,000 (the "**Prepetition Letters of Credit**") and a paid loss deposit fund (the "**PLDF**", and together with the Prepetition Letters of Credit, the "**Existing Collateral**"). The Debtors' obligations under the Letter Agreement will continue to be secured by the Existing Collateral. In connection with entering into new automobile liability and workers' compensation policies, the Debtors have agreed to provide ACE with a letter or letters of credit (collectively, the "**New**

³ The Debtors are filing a copy of the Insurance Agreements concurrently herewith; however, because they contain sensitive and competitive information, including policy limits and terms, the Debtors are seeking, by separate motion, to file the Insurance Agreements under seal.

LOCs", and together with the Prepetition Letters of Credit, the "*Letters of Credit*") in the aggregate amount of approximately \$3,128,000 and an additional \$85,000 for the PLDF (together with the New LOCs, the "*New Collateral*").

9. The Insurance Agreements require that the Debtors obtain an order that contains the protections afforded to ACE in such Insurance Agreements by, among other things, (i) authorizing the Debtors to enter into the Insurance Agreements, (ii) authorizing the Debtors to assume the ACE Insurance Program, (iii) providing that ACE may draw upon the Letters of Credit and apply the proceeds to the Debtors' obligations under the Insurance Agreements, (iv) authorizing the Debtors to enter into additional renewals or extensions of the insurance policies and to provide additional letters of credit in connection therewith without further order of this Court, (v) providing that ACE shall have an allowed administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code for all payment and reimbursement obligations of the Debtors under the ACE Insurance Program and Insurance Agreements, (vi) providing that ACE shall have a superpriority lien pursuant to 364(d) in the Existing Collateral and New Collateral and the proceeds thereof, and all such collateral and proceeds shall be free and clear of any other liens and claims, and (vii) providing that the ACE Insurance Program, Insurance Agreements and the order shall not be altered by any plan of reorganization or other order of this Court. ACE has conditioned the provision of the Insurance Agreements on the proposed order being entered no later than October 30, 2009 and becoming final by no later than November 11, 2009.

BASIS FOR RELIEF REQUESTED

I. The Debtors Should Be Authorized to Enter Into the Insurance Agreements and to Assume the ACE Insurance Program Pursuant to Sections 363(b) and 365 of the Bankruptcy Code

10. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Uses of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a "sound business purpose" for the use. *See In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him...a good business reason to grant such an application."); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions."); *In re Delaware Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991).

11. Once the debtor articulates a business justification for a particular form of relief, courts review the debtor's request under the "business judgment rule." *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) when there is a legitimate business justification). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated*

Resources. Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); see also *In re Helm*, 335 B.R. 528, 539 (Bankr. S.D.N.Y. 2006) ("The business judgment rule requires the Court to determine whether a reasonable business person would make a similar decision under similar circumstances.") (quoting *In re Vencor, Inc.*, Case No. 99-3199, 2003 WL 21026737 at *3 (Bankr. D. Del. Apr. 30, 2003)).

12. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). The purpose of section 365(a) is to allow a trustee to maximize the value of the debtor's estate by assuming executory contracts that benefit the estate and rejecting those that do not. See, e.g., *In re Fleming Cos., Inc.*, 499 F.3d 300, 304 (3d Cir. 2007) (noting that section 365(a) allows "the trustee to maximize the value of the debtor's estate by assuming executory contracts . . . that benefit the estate and rejecting those that do not."); *In re Sandman Assocs.*, 251 B.R. 473, 480 (W.D. Va. 2000) ("The authority granted by section 365 allows the trustee or debtor in possession to pick and choose among contracts, assuming those that are favorable, and rejecting those that are not.").

13. Similar to the test for approving transactions under section 363 of the Bankruptcy Code, a debtor's decision to assume or reject an unexpired lease or executory contract is subject to court review under the "business judgment" standard, which is satisfied when a debtor shows that assumption would be beneficial to its estate and reflects a reasonable exercise of business judgment. See, e.g., *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing the business judgment test as the "traditional" test); *Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989) (same); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) ("In determining whether a debtor may be permitted to reject an

executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered.") (internal citations omitted); *In re III Enters., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment—a standard which [the courts] have concluded many times is not difficult to meet."). Accordingly, courts approve the assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor's decision to assume or reject "is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985).

14. The Debtors have determined that assumption of the ACE Insurance Program and entry into the Insurance Agreements is in the best interests of the Debtors and their estates. The Debtors have engaged in lengthy, good-faith discussions and negotiations with ACE and believe that they have negotiated fair and reasonable terms for the provision of insurance under the Insurance Agreements.

15. Under the laws of various states in which the Debtors operate, the Debtors are required to maintain workers' compensation insurance as well as general liability and automobile liability insurance. The Debtors' postpetition financing facility also requires that the Debtors maintain appropriate insurance. Further, the Insurance Agreements are conditioned upon the Debtors obtaining an order authorizing, among other things, the Debtors to assume the ACE Insurance Program and to enter into the Insurance Agreements. Failure to adhere to this

requirement would result in ACE terminating the Insurance Agreements. Without insurance coverage, the Debtors cannot operate.

16. Therefore, the Debtors believe that assumption of the ACE Insurance Program and entry into the Insurance Agreements are essential to protect the Debtors' businesses and to preserve the value of the Debtors' estates. The Debtors do not believe that there are any existing defaults under the ACE Insurance Program, but to the extent that there are amounts due, the Debtors intend to pay such amounts pursuant to the terms of the ACE Insurance Program in the ordinary course regardless of whether such claims arise prepetition, postpetition, or before or after assumption of the ACE Insurance Program.

17. Courts in this District have granted relief in chapter 11 cases similar to the relief requested by this Motion. *See, e.g., In re GWLS Holdings, Inc.*, Case No. 08-12430 (PJW) (Bankr. D. Del. Dec. 23, 2008); *In re Mervyn's Holdings, LLC*, Case No. 08-11586 (KG) (Bankr. D. Del. Sept. 24, 2008); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. June 6, 2008).

**II. ACE Should Be Granted A Superpriority
Security Interest In and Lien On the Collateral
Provided By the Debtors to ACE**

18. Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of postpetition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, "authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the trustee is unable to obtain such credit otherwise;
and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be

granted."

11 U.S.C. § 364(d)(1).

The Insurance Agreements require that ACE be granted a superpriority security interest in and lien on the Existing Collateral and the New Collateral and the proceeds thereof pursuant to section 364(d)(1) of the Bankruptcy Code⁴ as additional security for the Debtors' obligations under the ACE Insurance Program and the Insurance Agreements.⁵

19. The Debtors have concluded that they are unable to obtain necessary insurance coverage without providing the Existing Collateral and the New Collateral as security for their obligations. Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan) has consented to entry of the requested order confirming ACE's superpriority.⁶ To the extent that they have an interest that would be impaired by the requested relief, the Debtors' DIP lenders and prepetition secured lenders are adequately protected because the insurance being purchased is necessary to protect the assets of the Debtors' estate—which serve as the collateral for those lenders. Accordingly, the Debtors respectfully submit that the requirements of section 364(d)(1) have been met and ACE should be granted a

⁴ The PLDF is not subject to the lien that was granted by this Court in connection with the DIP Financing. See *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Prepetition Lenders, and (IV) Modifying the Automatic Stay* [Docket No. 132] (the "**Final DIP Order**") at ¶ 5.

⁵ The Insurance Agreements also require the Debtors to issue additional Letters of Credit in favor of ACE to secure the Debtors' obligations thereunder. The Debtors have the authority to issue such letters of credit pursuant to the Final DIP Order.

⁶ Such consent was necessary pursuant to the Debtors' DIP Credit Agreement (as defined in the Final DIP Order). See section 8.20 of the DIP Credit Agreement.

superpriority security interest in and lien on the Existing Collateral and the New Collateral and the proceeds thereof.

REQUEST FOR WAIVER OF STAY

20. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." As set forth above, ACE requires a final, non-appealable order authorizing the Debtors to assume the ACE Insurance Program and authorizing the Debtors to enter into the Insurance Agreements to be entered prior to November 11, 2009. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

21. The Debtors will provide notice of the filing of this Motion to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (d) ACE; and (e) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

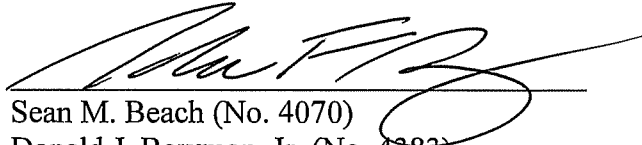
NO PRIOR REQUEST

22. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
October 28, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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---- and ----

GIBSON, DUNN & CRUTCHER LLP
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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

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

In re:)	
)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Requested Objection Deadline: October 30, 2009 at 12:00 p.m. (ET)
)	Requested Hearing Date: October 30, 2009 at 2:30 p.m. (ET)

NOTICE OF MOTION

TO: (A) The Office of the United States Trustee for the District of Delaware; (B) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Plan); (C) Counsel to the Official Committee of Unsecured Creditors; (D) Counsel to ACE; and (E) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the attached **Debtors' Motion for Entry of an Order (I) Authorizing Assumption of Insurance Program; (II) Authorizing the Debtors to Enter Into Insurance Agreements; and (III) Granting Related Relief** (the "Insurance Motion").

PLEASE TAKE FURTHER NOTICE that the Debtors have filed a motion (the "Motion to Shorten") requesting that objections to the Insurance Motion be filed with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **October 30, 2009 at 12:00 p.m. (ET)** (the "Objection Deadline"). You must also serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

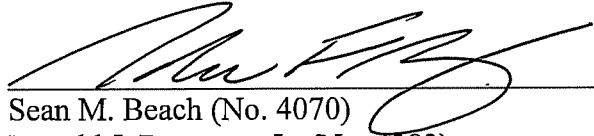
PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS HAVE FURTHER REQUESTED THAT A HEARING TO CONSIDER THE INSURANCE MOTION BE HELD ON OCTOBER 30, 2009 AT 2:30 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Insurance Motion without further notice or a hearing.

Dated: Wilmington, Delaware
October 28, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A

Proposed Order

IN RE:

Debtors.

Case No. 09-12074 (KJC)

Jointly Administered

Ref. Docket No. _____

068301.1001

reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. The ACE Insurance Program is hereby assumed pursuant to section 365 of the Bankruptcy Code.
3. To the extent that ACE and the Debtors become aware of any prepetition undisputed defaults in connection with the ACE Insurance Program, the Debtors promptly will cure any such defaults.
4. Upon the consent of Wells Fargo Bank as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan) ACE shall have a superpriority security interest in and lien on the Debtors' right, title and interest, if any, in the Existing Collateral and the New Collateral provided by the Debtors to ACE and the proceeds thereof pursuant to section 364(d)(1) of the Bankruptcy Code. Notwithstanding anything contained in this Court's *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Prepetition Lenders, and (IV) Modifying the Automatic Stay* [Docket No. 132] (the "**Final DIP Order**") or the DIP Credit Agreement (as defined in the Final DIP Order) to the contrary, the Debtors' Motion seeking authority to grant and this Court's granting of such superpriority security interests shall not be an Event of Default under the DIP Credit Agreement (as defined in the Final DIP Order).

5. The Existing Collateral and the New Collateral provided to ACE and the proceeds thereof shall be free and clear of all security interests and liens except those granted in favor of ACE.

6. The Debtors are authorized to enter into the Insurance Agreements, to execute and deliver all related documents and agreements or amendments thereto, and to perform their obligations hereunder and thereunder, including the payment of all amounts due thereunder and the provision of the New Collateral to ACE as security for all of the Debtors' obligations in connection with the Insurance Agreements in the ordinary course of business, without notice, a hearing, or further order of the Court.

7. The Debtors are authorized to agree to amendments and/or future renewals or extensions of the ACE Insurance Program and the Insurance Agreements including, without limitation, to execute related agreements and to provide additional letters of credit and other collateral or security therefor, without further order of the Court.

8. ACE shall have an allowed administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code to be paid in the ordinary course for all claims arising under or related to the ACE Insurance Program or the Insurance Agreements including, but not limited to, payment and reimbursement obligations of the Debtors under the ACE Insurance Program or the Insurance Agreements. ACE shall not be required to file proofs of claim, cure claims, objections to cure claims, or an application, motion, or request for allowance and payment of an administrative claim in any of the Debtors' cases and any order of this Court establishing a bar date for the filing of prepetition, cure, or administrative claims shall not apply to any claims ACE may assert in respect of the ACE Insurance Program or the Insurance Agreements.

9. ACE shall have the right to draw against any or all Letters of Credit and other collateral or security provided, at any time, by the Debtors, hold the proceeds thereof as security for the Debtors' obligations and/or apply such proceeds to the Debtors' obligations, in such order as ACE may determine, cancel the Insurance Agreements, and take other actions, all to the extent permitted under applicable non-bankruptcy law and the ACE Insurance Program and the Insurance Agreements (including the right to require arbitration), without further order of this Court. The automatic stay, to the extent applicable, is deemed lifted pursuant to section 362(d) of the Bankruptcy Code for these purposes.

10. Except as set forth in the Insurance Agreements, (i) the Existing Collateral shall secure any and all obligations of the Debtors arising under the ACE Insurance Program and the Letter Agreement and (ii) the New Collateral shall secure any and all obligations of the Debtors arising under the Insurance Agreements other than the Letter Agreement.

11. ACE's and the Debtors' respective rights under the ACE Insurance Program and the Insurance Agreements, including the right to require arbitration, are hereby preserved and are not waived.

12. This Order shall be immediately enforceable by the Debtors and ACE upon entry hereof and the ten day stay set forth in the Federal Rule of Bankruptcy Procedure 6004(h) shall be, and hereby is, waived.

13. Neither the ACE Insurance Program nor the Insurance Agreements shall be altered by any plan of reorganization or other order of this Court.

14. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.

15. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
October __, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge