

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹ Debtors.)) Chapter 11)) Case No. 09-12074 (KJC))) 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)
---	---

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 107(b) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9018 FOR AUTHORIZATION TO
FILE CERTAIN INSURANCE AGREEMENTS, RELATED TO 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, UNDER SEAL**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this motion (the "***Motion***"), pursuant to section 107(b) of title 11 of the United States Code (the "***Bankruptcy Code***") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), for entry of an order, substantially in the form annexed hereto as ***Exhibit A***, authorizing the Debtors to file, under seal, certain Insurance Agreements (as defined and more fully described below) by and between the Debtors and ACE American Insurance Company ("***ACE***") that are related to the Debtors' *Motion for Entry of an Order (I) Authorizing Assumption of Insurance Program; (II) Authorizing the*

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.

Debtors to Enter into Insurance Agreements; and (III) Granting Related Relief (the "**Insurance Motion**"). In support of this Motion, the Debtors respectfully represent:

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.

RELEVANT BACKGROUND

6. As set forth more fully in the Insurance Motion, under the laws of the various states in which the Debtors operate, the Debtors are required to maintain workers' compensation, general liability, and automobile liability insurance. The Debtors' current insurance program with ACE (the "**Ace Insurance Program**"), which is the Debtors' primary insurance program, expires on November 11, 2009. The Debtors have been actively negotiating with ACE for the past several weeks for extended coverage and the parties were able to finalize

the terms of new workers' compensation and automobile liability policies and an extension of the Debtors' general liability policies yesterday, October 27, 2009.

7. Concurrently with the filing of this Motion, the Debtors filed the Insurance Motion, whereby the Debtors request authority to assume the ACE Insurance Program and to enter into the Insurance Agreements. Because the Insurance Agreements are contracts with sensitive and confidential commercial terms, including, among other things, premium amounts and policy terms and limits, the Debtors seek this Court's authority to file the Insurance Agreements under seal, as described more fully below.

RELIEF REQUESTED

8. By this Motion, the Debtors respectfully request this Court to enter an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing the Debtors to file the Insurance Agreements under seal, and directing that the Insurance Agreements shall remain under seal, confidential and not made available to anyone, except for the Court, the U.S. Trustee, counsel to the Creditors' Committee, and counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Amended Plan), or others at the discretion of the Debtors or upon further order of this Court.

BASIS FOR RELIEF

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides in part that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

10. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides that "[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information. . . ." Fed. R. Bankr. P. 9018. Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware additionally provides, in relevant part, that "[a]ny party who seeks to file documents under seal must file a motion to that effect." Del. Bankr. L.R. 9018-1(b).

11. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate "good cause." *See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, "the court is required to protect a requesting party and has no discretion to deny the application." *In re Orion Pictures Corp.*, 21 F.3d at 27. Courts are required to provide such protections "generally where open inspection may be used as a vehicle for improper purposes." *Id.*

12. The Debtors submit that good cause exists for the Court to grant the relief requested herein. The Insurance Agreements contain confidential commercial information with respect to, among other things, premium amounts and policy terms and limits for the Insurance

Agreements. This non-public information is sensitive to the Debtors and, if disclosed, could have a negative impact on the Debtors' business operations and encourage active litigation. Accordingly, the Debtors submit that approval of this Motion is necessary and appropriate and in the best interests of the Debtors, their estates, and creditors.

13. To ensure that key constituencies in these cases receive adequate disclosure, the Debtors will provide copies of the Insurance Agreements to the U.S. Trustee, the Creditors' Committee, and Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan), and their legal and financial advisors, all on a confidential basis. The Debtors submit that such disclosure will provide sufficient safeguards to ensure that the relief requested in this Motion will not adversely affect the interests of parties to these Chapter 11 Cases.

NOTICE

14. 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.

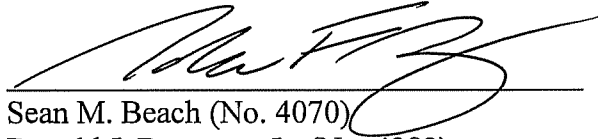
NO PRIOR REQUEST

15. 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



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: 302.571.6600
Facsimile: 302.571.1253

---- and ----

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

Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Ave, Suite 1100
Dallas, TX 75201-6911
Telephone: 214.698.3100
Facsimile: 214.571.2900

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, *et al.*,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 an Order Pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 for Authorization to File Certain Insurance Agreements, Related to 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, Under Seal** (the “Seal Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors have filed a motion (the “Motion to Shorten”) requesting that objections to the Seal 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 SEAL MOTION BE HELD ON OCTOBER 30, 2009 AT 2:30 P.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES

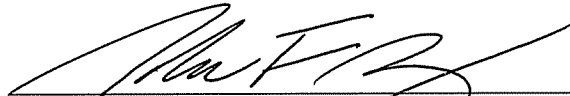
¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C 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.

BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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

Dated: Wilmington, Delaware
October 28, 2009

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 Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
Sae M. Muzumdar (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A

Proposed Order

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
)	
)	Ref. Docket No. _____

**ORDER AUTHORIZING THE DEBTORS TO FILE CERTAIN
INSURANCE AGREEMENTS, RELATED TO 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, UNDER SEAL**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), for entry of an order pursuant to section 107(b) of title 11 of the United States Code (the "***Bankruptcy Code***") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") authorizing the Debtors to file, under seal, certain Insurance Agreements² by and between the Debtors and ACE American Insurance Company ("***ACE***") that are related to the 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*

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Relief, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court; 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. Pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Insurance Agreements shall be filed under seal and shall remain under seal, confidential and not made available to anyone, except for (i) the Court, (ii) the U.S. Trustee, (iii) counsel to the Creditors' Committee, (iv) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan), or (v) others at the direction of the Debtors or upon further order of this Court.
3. 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