

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

In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION., <u>et al.</u> , ¹)	Case No. 09-12074 (KJC)
)	(Jointly Administered)
)	
Debtors.)	Related to Docket Nos. 597 & 664

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

Weis Builders, Inc. ("Weis"), by and through its undersigned counsel, respectfully submits this Reply (the "Reply") to the Debtors' Objection [D. I. 664] (the "Objection") to Weis Builders, Inc.'s Motion for Order Granting Modification of the Automatic Stay (the "Motion")² [D.I. 597]. In support of this Reply, Weis respectfully states as follows:

REPLY

1. The Objection incorrectly asserts that Weis is attempting to circumvent the deadline for filing proofs of claim (the "Claims Bar Date")³. This argument is a red herring. Rather, Weis seeks to modify the automatic stay to permit the State Court Action to proceed and to allow Weis to satisfy any judgment it may obtain against the Debtors from the proceeds of insurance policies under which Weis is named as an Additional Insured, or in the alternative, for an order affirming that the automatic stay applies exclusively to claims against the Debtors and is not effective against claims by and between Weis and the remaining non-debtor third-party defendants.

¹ The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

² All capitalized terms used and not defined herein shall have the meaning ascribed to them in the Motion.

³ Weis has filed a Motion to Enlarge the Claims Bar Date which is being filed concurrently herewith to address this issue separately.

2. Debtors' counsel in both the State Court Action and this Bankruptcy Court case have informed Weis's counsel that Weis may not proceed in the State Court Action against any defendants without violating the automatic stay and facing the threat of sanctions. Furthermore, the court in the State Court Action has suspended litigation until this Court addresses Weis's Motion. As stated in the Motion, this hold places a substantial hardship on Weis's ability to investigate and prosecute its third-party claims against the Debtors and the other non-debtor third-party defendants.

3. The Debtors contend that lifting the stay would seriously prejudice the Debtors and the successful progression of the bankruptcy proceedings. Obj. at ¶ 2. This assertion is incorrect because, as previously stated in the Motion, Weis seeks to recover on any judgment it obtains against the Debtors solely from available insurance coverage, which case law clearly holds is not property of the bankruptcy estate. *See Motion at* ¶ 30.

4. Upon information and belief, the Debtors provided proof of insurance coverage to Weis before and during construction of the Project. As is standard in the industry, Weis required insurance coverage to be in place for its protection. Proof of coverage contained in three insurance certificates provide for insurance coverage beyond the claim for damages filed in the State Court Action by Weis, as alleged in the Second and Third Amended Third-Party Complaints. The November 6, 2006 Marsh Risk and Insurance Services Certificate of Insurance identifies the general liability policy (XSL62170250A), Deductible, \$1.9 Million per occurrence of \$100,000 self-insured retention aggregate limit per project, and a general aggregate subject to a policy maximum of \$25,000,000. Weis is identified as an Additional Insured, providing coverage to Weis for property damage caused by the Debtors' acts or omissions. A true and correct copy of the November 6, 2006 Marsh Risk and Insurance Services Certificate of Insurance is attached hereto as **Exhibit A**. Additionally, there is also a

policy for excess liability in the amount of \$25 Million, with a \$1 Million self insured retention. The November 30, 2005 Marsh Risk and Insurance Services Certificate of Insurance identifies a general liability policy (HDOGN8072889), Deductible, \$2 Million per occur [occurrence]. Weis is identified as an Additional Insured, providing coverage to Weis for property damage caused by the Debtors' acts or omissions. A true and correct copy of the November 30, 2005 Marsh Risk and Insurance Services Certificate of Insurance is attached hereto as **Exhibit B**. Additionally, there is also a policy for excess liability in the amount of \$10 Million, with a \$2 Million self insured retention. The November 22, 2004 Marsh Risk and Insurance Services Certificate of Insurance identifies the general liability policy (GL5346010), Deductible, \$1 Million per occur [occurrence], with \$1 Million in coverage. Weis is identified as an Additional Insured, providing coverage to Weis for property damage caused by the Debtors' acts or omissions. A true and correct copy of the November 22, 2004 Marsh Risk and Insurance Services Certificate of Insurance is attached hereto as **Exhibit C**. Additionally, there is also a policy for excess liability in the amount of \$25 Million, with a \$1 Million dollar self insured retention. Weis should be permitted to pursue its claim in the State Court Action and collect payment from the insurance coverage provided to it in the event of the Debtors' acts or omissions.

5. Furthermore, the Debtors contend that they were not a party to the State Court Action until March 4, 2009. Obj. at ¶ 20. Both the Baumann and Diamond Declarations submitted in opposition to the Motion incorrectly assert that the Debtors were not joined as a party in the State Court Action until only a few months before the Petition Date. However, lead counsel to Weis in the State Court Action, Burch & Cracchiolo, P.A. ("B&C"), received an email on September 12, 2008 from Maureen E. Thomas, Esq., an attorney employed by the Debtors, with an email address of mthomas@bmhc.com, copying Len Baumann, with an email address of

lbaumann@bmhc.com, stating, "We have been served with the 3rd party complaint in this matter and are trying to confirm which carrier to tender to. I have attached the matrix you sent me before. We only framed the balconies on the 2 story buildings. Can you tell me which of the building on the attached matrix are the 2 story ones? Thanks." (the "Thomas Email"). A true and correct copy of the Thomas Email is attached hereto as **Exhibit D**.

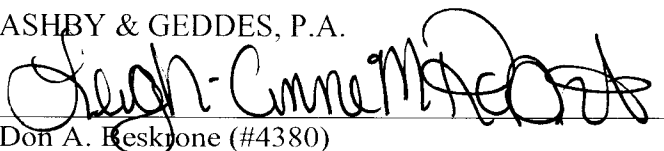
6. The Debtors argue that Weis is attempting to start a complex litigation "from scratch." Obj. at ¶ 26. The Thomas Email, however, clearly indicates that the Debtors were served in September 2008, approximately ten months before the Debtors filed for bankruptcy.

7. Finally, case law has made it clear that the automatic stay only provides protection to the debtor and not to non-debtor third-party defendants. *See Motion at ¶ 44*. If the Court does not lift the automatic stay, the Court should enter an order determining that Weis is not precluded from proceeding against the non-debtor third party defendants in the State Court Action.

8. For the reasons set forth herein and in the Motion, the Court should grant the proposed Order attached to the Motion: (i) modifying the automatic stay to allow the State Court Action to proceed to judgment and to enable Weis to satisfy its claims, in the State Court Action solely from the Debtors' existing insurance coverage; or, in the alternative, (ii) ordering that the automatic stay applies exclusively to claims against the Debtors and is not effective against claims by and between Weis and the remaining non-debtor third-party defendants; and (iii) granting Weis such other and further relief as the Court deems just and appropriate.

Dated: October 30, 2009

ASHBY & GEDDES, P.A.



Don A. Beskrone (#4380)

Leigh-Anne M. Raport (#5055)

500 Delaware Avenue, 8th Floor

P.O. Box 1150

Wilmington, Delaware 19899

Tel: (302) 654-1888

Attorneys for Weis Builders, Inc.

EXHIBIT A

MARSH		CERTIFICATE OF INSURANCE		CERTIFICATE NUMBER SEA-000922486-14	
PRODUCER MARSH RISK & INSURANCE SERVICES P. O. BOX 193880 SAN FRANCISCO, CA 94119-3880 CALIFORNIA LICENSE NO. 0437153 Attn: Priscilla Tom 415-743-7658			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.		
INSURED Building Materials Holding Corporation; BMC West Corporation; SelectBuild Construction, Inc. A-1 Building Components, LLC 3500 Fairlane Farms Road, Suite 4 Wellington, FL 33414 <i>BMC</i>			COMPANIES AFFORDING COVERAGE COMPANY A ACE AMERICAN INSURANCE COMPANY COMPANY B COMPANY C COMPANY D		
COVERAGE THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTOR'S PROT	XSL62170250A DED: \$1.9MM PER OCC XS OF \$100,000 SIR AGG LIMIT PER PROJECT GEN AGG SUBJECT TO POLICY MAXIMUM OF \$25,000,000	11/11/06	11/11/07	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,900,000 EACH OCCURRENCE \$ 1,900,000 FIRE DAMAGE (Any one fire) \$ N/A MED EXP (Any one person) \$ N/A
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> DEDUCTIBLE: <input checked="" type="checkbox"/> \$1MM PER ACCIDENT	ISAH08012970 AUTO PHYSICAL DAMAGE-- OWNED & HIRED VEHICLES: SELF-INSURED	11/11/06	11/11/07	COMBINED SINGLE LIMIT \$ 3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: \$ EACH ACCIDENT \$ AGGREGATE \$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	XOOG2378970A	11/11/06	11/11/07	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 SELF-INSURED RET. \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	WLRC44466016 (AOS incl. FL) DEDUCTIBLE: \$2,000,000 PER ACCIDENT	11/11/06	11/11/07	<input checked="" type="checkbox"/> WC STATUS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE-POLICY LIMIT \$ 1,000,000 EL DISEASE-EACH EMPLOYEE \$ 1,000,000
A	GENERAL LIABILITY: SELF-INSURED RETENTION:	XSL62170250A	11/11/06	11/11/07	SELF-INSURED RETENTION: \$100,000
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602 Weis Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are included as Additional Insureds on the General Liability Policy but only with respect to liability arising out of Named Insured's operations (labor, materials and trusses). Forms CC1E15 and CC1E15 attached.					
CERTIFICATE HOLDER Weis Builders, Inc. 7645 Lyndale Avenue South Minneapolis, MN 55423 NOV 18 2006			CANCELLATION SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE. MARSH USA INC. BY: Gloria N. Brumfield <i>Gloria N. Brumfield</i>		
			VALID AS OF: 11/06/06		

212

POLICY NUMBER: XLS62170250A

Named Insured: Building Materials Holding Corporation, BMC West Corporation,
SelectBuild Construction, Inc., et.al.

**EXCESS COMMERCIAL
GENERAL LIABILITY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

**EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Weis Builders, Inc. Rainbow Vision Santa Fe, LLC 7645 Lyndale Avenue South Minneapolis, MN 55423	Re: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract #D45602 Liability arising out of Named Insured's operations (labor, materials and trusses)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CC1E15

EXHIBIT B

NOV. 30. 2005 2:32PM MARSH USA

NO. 0496 P. 2/5

MARSH**CERTIFICATE OF INSURANCE**CERTIFICATE NUMBER
SEA-000922486-02

PRODUCER

MARSH RISK & INSURANCE SERVICES
P.O. BOX 183880
SAN FRANCISCO, CA 94119-3880
CALIFORNIA LICENSE NO. 0437153

Attn: Priscilla Tom 415.743.7658

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGECOMPANY
A ACE AMERICAN INSURANCE COMPANYCOMPANY
BCOMPANY
CCOMPANY
D

INSURED

Building Materials Holding Corp.,
BMC West Corporation,
A11 Building Components, LLC
3600 Fairlane Farms Road, Suite 4
Westlinton, FL 3341474404
045602

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTORS PROT <input checked="" type="checkbox"/> Agg Limit Per Location/Project <input checked="" type="checkbox"/> Deductible: \$2 mil per occur.	HDOGI8072889	11/11/05	11/11/06	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 2,000,000 EACH OCCURRENCE \$ 2,000,000 FIRE DAMAGE (Any one fire) \$ N/A MED EXP (Any one person) \$ N/A
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Deductible: <input checked="" type="checkbox"/> \$100. per occur.	ISAH08012799	11/11/05	11/11/06	COMBINED SINGLE LIMIT \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY \$ EACH ACCIDENT \$ AGGREGATE \$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM OTHER THAN UMBRELLA FORM	XOOG22912422	11/11/05	11/11/06	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNER/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL OTHER: <input type="checkbox"/> EXCL	WLRC43964379	11/11/05	11/11/06	SELF INSURED RET. \$ 2,000,000 <input checked="" type="checkbox"/> WORKERS COMPENSATION LIMITS EL EACH ACCIDENT \$ 1,000,000 EL DISEASE-POLICY LIMIT \$ 1,000,000 EL DISEASE-EACH EMPLOYEE \$ 1,000,000
	Auto Physical Damage- Owned and Hired Vehicles	SELF INSURED	11/11/06	11/11/06	

DESCRIPTION OF OPERATION/LOCATION/VEHICLE/SPECIAL ITEMS

Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602
Wela Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are included as Additional Insureds on the General Liability Policy but only with respect to liability arising out of Named Insured's operations (labor, materials and trusses). Forms CG 2010 0704 and CG 2037 0704 attached. Insurance hereunder is primary and non-contributory with respect to any insurance maintained by or available to Wela Builders Inc. (Contractor) and Rainbow Vision.Wela Builders, Inc.
7445 Lyndale Avenue South
Minneapolis, MN 55423

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

BY: Gloria N. Brumfield

Gloria N. Brumfield

VALID AS OF: 11/30/05

NOV. 30. 2005 2:33PM MARSH USA

NO. 0496 P. 3/5

ADDITIONAL INFORMATION

PRODUCER

MARSH RISK & INSURANCE SERVICES
P.O. BOX 188880
SAN FRANCISCO, CA 94119-3880
CALIFORNIA LICENSE NO. 0437153
Attn: Priscilla Tom 415.743.7658

COMPANIES AFFORDING COVERAGE

COMPANY
E

COMPANY
F

COMPANY
G

COMPANY
H

INSURED

Building Materials Holding Corp.;
BMC West Corporation;
A-1 Building Components, LLC
300 Fairlane Farms Road, Suite 4
Wellington, FL 33414

TEXT

CONTINUED FROM DESCRIPTION SECTION:

Santa Fe LLC (Owner).

CANCELS

Wells Fargo Bank, Inc.
745 Lyndale Avenue South
Minneapolis, MN 55423

MARSH USA INC. BY

Gloria N. Brumfield

Gloria N. Brumfield

Commercial General Liability Forms 07/01/04

POLICY NUMBER: HDOGI8072889

Named Insured: Building Materials Holding Corp., BMC West Corp., et al

COMMERCIAL GENERAL
LIABILITY

CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Wells Builders Inc. (Contractor) and Rainbow Vision Santa Fe LLC (Owner) 7645 Lyndale Avenue South Minneapolis, MN 55423	Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602 Liability arising out of Named Insured's operations: (labor, materials and trusses).
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 07 04

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Commercial General Liability Forms 07/01/04

POLICY NUMBER: HDOG18072889

Named Insured: Building Materials Holding Corp., BMC West Corp., et al

COMMERCIAL GENERAL
LIABILITY

CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Wells Builders Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) 7445 Lyndale Avenue South Minneapolis, MN 55423	Project: Rainbow Vision Santa Fe-500 Rodeo Road, Santa Fe, NM 55707; Contract No. D45602 Liability arising out of Named Insured's operations (labor, materials and trussing).
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

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EXHIBIT C

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PRODUCER		INSURED		COMPANIES AFFORDING COVERAGE	
MARSH RISK & INSURANCE SERVICES P. O. BOX 186680 SAN FRANCISCO, CA 94118-3680 CALIFORNIA LICENSE NO. 0437153 Attn: Priscilla Tom 415.743.7668		Building Materials Holding Corp. BMC Construction, Inc. BMC Construction, L.P., aka: BMC Construction ATTN: Terry Johnson 808 Hensley Lane Wylie, TX 75088		COMPANY A NATIONAL UNION FIRE INS CO OF PA COMPANY B INSURANCE CO OF THE STATE OF PA COMPANY C COMPANY D	
<p>THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	GL8846010	11/11/04	11/11/15	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMER AGG \$ 2,000,000 PERSONAL & ADV INURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (ANY AMT) \$ 100,000 MED EXP (ANY AMT) \$ 5,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT <input checked="" type="checkbox"/> Agg Limit Per Project <input checked="" type="checkbox"/> Deductible: \$1 mil. per occurr.				
A	AUTOMOBILE LIABILITY	CA8281878 (AOB) CA8281878 (TX)	11/11/04	11/11/15	COMMER SINGLE LIMIT \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Deductible: <input checked="" type="checkbox"/> \$1 MIL. each occ.				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY \$ EACH ACCIDENT \$ AGGREGATE \$
A	EXCESS LIABILITY	BE2860837	11/11/04	11/11/15	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 SELF INSURED RET. \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	WC7185000 (CA) WC7185001 (NV, TX, VA) WC7185002 (AZ, FL)	11/11/04	11/11/15	<input checked="" type="checkbox"/> WORKERS COMP <input checked="" type="checkbox"/> EMPLOYERS LIABILITY <input type="checkbox"/> SICKNESS-POLICY LIMIT \$ 1,000,000 <input type="checkbox"/> SICKNESS-EACH EMPLOYEE \$ 1,000,000
B	THE PROPRIETOR PARTNER/EXECUTIVE OFFICERS ARE				
B	OTHER	SELF INSURED	11/11/04	11/11/15	
	Auto Physical Damage—Owned & Hired Vehicles				
<p>DESCRIPTION OF OPERATIONS: (SEE ENCL. SPECIAL ITEMS) Project: Rainbow/Vision Santa Fe - 500 Redon Road, Santa Fe, NM 85707; Contract/Job No.: 0458212 Wells Builders, Inc. (Contractor) and Rainbow Vision Santa Fe, LLC (Owner) are named as Additional Insureds (except Workers' Compensation) but only with respect to liability arising out of named insured's operations (labor, materials, and business). Forms CG 2010 0704 and CG 2037 0704 attached. Insurance hereunder is primary and non-contributory.</p>					
Wells Builders, Inc. 7845 Lyndale Avenue South Minneapolis, MN 55423		SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL REQUEST TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE. MARSH USA INC. c/o Gloria N. Brumfield			
		VALID AS OF 11/22/04			

2/3

Commercial General Liability Forms 07/01/04

POLICY NUMBER: GL6948010

Named Insured: Building Materials Holding Corp., BMC Construction, et al

**COMMERCIAL GENERAL
LIABILITY**

CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Weis Builders, Inc. (Contractor) 7645 Lyndale Avenue South Minneapolis, MN 55423 Rainbow Vision Santa Fe, LLC (Owner)	RE: RainbowVision Santa Fe – Santa Fe, NM
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section II – Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 07 04

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Commercial General Liability Forms 07/01/04

POLICY NUMBER: GL8946010

Named Insured: Building Materials Holding Corp., BMC Construction, et al

COMMERCIAL GENERAL
LIABILITY

CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Weis Builders, Inc. (Contractor) 7645 Lyndale Avenue South Minneapolis, MN 55423	RE: RainbowVision Santa Fe – Santa Fe, NM
Rainbow Vision Santa Fe, LLC (Owner)	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

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EXHIBIT D

LRaport

From: Maureen Thomas [mthomas@bmhc.com]

Sent: Friday, September 12, 2008 9:13 PM

To: Tonya MacBeth

Cc: Len Baumann

Subject: FW: Rainbow Vision - BBD Construction

Attachments: Rainbow Vision Summons.pdf; Weiss Certificates of Occupancy.pdf

Hi: We have been served with the 3rd party complaint in this matter and are trying to confirm which carrier to tender to. I have attached the matrix you sent me before. We only framed the balconies on the 2 story buildings. Can you tell me which of the building on the attached matrix are the 2 story ones?
Thanks.

Maureen E. Thomas, Esq.

mthomas@bmhc.com

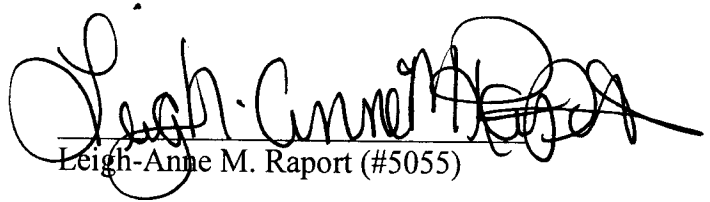
248 698-0965 direct

248 505-2962 cell

832 550-4383 efax

CERTIFICATE OF SERVICE

I, Leigh-Anne M. Raport, hereby certify that on October 30, 2009, I caused one copy of the foregoing document to be served upon the parties on the attached service list in the manner indicated.


Leigh-Anne M. Raport (#5055)

BMHC 2002 Service List
Case No. 09-12074
Avery Labels 5162

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