

**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
)
	) Objection Deadline: November 12, 2009 at 4:00 p.m. (ET)
	) Hearing Date: November 19, 2009 at 11:00 a.m. (ET)

DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105 AND 362 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, AUTHORIZING THE DEBTORS TO IMPLEMENT OMNIBUS PROCEDURES FOR MODIFYING THE AUTOMATIC STAY AS IT RELATES TO CERTAIN PREPETITION LITIGATION

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), submit this motion (the "*Motion*") pursuant to sections 105 and 362 of title 11 of the United States Code (the "*Bankruptcy Code*") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") for entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to implement omnibus procedures for modifying the automatic stay as it relates to certain prepetition litigation. 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.

2. The statutory bases for the relief requested herein are sections 105 and 362 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. 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*").

4. 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.

5. 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.

6. 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

7. The Debtors, as defendants, are parties to numerous prepetition litigation in various states which the Debtors believe the continuation of, in certain circumstances, may benefit the bankruptcy estates. The prepetition litigation falls into the following three categories as further described below:

- a) **Interpleader Actions:** Certain of the Debtors' customers are required, in some instances, to file a bond with the state or the owner of a project as security. In the event the customer fails to pay Debtors, Debtors contact the bond issuer in an attempt to collect on the bond. If the claims against the bond exceed the bond amount, the bond issuer typically files an interpleader action in which Debtors are named as a Defendant with

other parties to determine the parties relative rights with respect to the bond. The action seeks no monetary relief from Debtors, and in fact, provides Debtors with an opportunity to quickly collect funds that they may be owed.

b) **Foreclosure Actions:** In the event that a customer fails to pay Debtors for goods or services provided during a construction project, the Debtors may file a lien on the real property to secure payment. Other parties who also provided goods and services may also file liens with respect to the property. In addition, a construction lender may also file a Deed of Trust or Mortgage. The first party to file an action to foreclose on the property as the result of their lien is required to join the other lien holders and the lender in the suit. In many cases in which the Debtors are the first to initiate foreclosure actions, the lender may also file an equitable cross claim against the Debtors claiming the Lender's Deed or Trust or Mortgage has priority. In other instances, the lender or another lien holder may initiate the foreclosure action first and Debtor are typically named as a defendant. In either scenario, the determination of which party is first in priority is in the best interest of the Debtors' estates as there is a potential recovery for the estates as a result of these actions.

c) **Construction Defect Actions:** In many of the states where Debtors operate, it is not uncommon for a large group of homeowners who live in the same community to file suit against their homebuilder alleging numerous construction defects in their homes. In these cases, the builder usually files a third party complaint against all of the subcontractors and suppliers who worked on the homes. Accordingly, the Debtors are currently a party to a number of these construction defect lawsuits as third party defendants. These claims are typically covered by insurance, and in some instances, certain of the Debtors' insurance carriers have expressed an interest in waiving deductibles which may be due in order to facilitate the quick adjudication the litigation. Moreover, certain builders have informed the Debtors that they may be willing to limit their recovery to the available insurance proceeds as a condition to agreeing to lift the automatic stay.

RELIEF REQUESTED

8. By this Motion, the Debtors request authority to adopt and implement Automatic Stay Relief Procedures (as described below) for the expedited notice and modification of the automatic stay as it relates to the Interpleader Actions, Foreclosure Actions and Construction Defect Actions (collectively, the "Litigation").

9. Specifically, the Debtors seek authorization to reach agreements with various counterparties to the Litigation in accordance with the procedures set forth below (the “Automatic Stay Relief Procedures”):

- a) The Debtors may enter into agreements to modify the automatic stay with respect to the Litigation. The Debtors shall file notice of the proposed stipulation modifying the automatic stay (the “Stipulation Notice”) and serve same on (i) the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility; and (iv) all parties entitled to notice under Del. Bankr. LR 2002-1(b) (collectively, the “Notice Parties”);
- b) The content of the Stipulation Notice shall include, (i) a copy of the proposed stipulation and (ii) a brief summary of the underlying cause of action;²
- c) Objections must be filed with the Bankruptcy Court and served upon counsel to the Debtors and the Notice Parties so as to be received by 4:00 p.m. (ET) on or before the fifteenth day after service of the Stipulation Notice (the “Objection Deadline”);
- d) If no objection to the proposed stipulation is filed and served on or before the Objection Deadline, the stipulation shall be approved upon entry of an order under certification of counsel;
- e) If an objection is received from one or more of the Notice Parties, before the Objection Deadline the Debtors will not proceed with the proposed stipulation unless: (i) the objection is withdrawn or otherwise resolved; or (ii) the Court approves the stipulation by separate order entered after the notice and a hearing at a time mutually agreed upon by the parties which shall be no earlier than ten (10) days after the filing of the objection;
- f) With respect to a proposed agreement and stipulation reached and approved pursuant to the Automatic Stay Relief Procedures, such stipulation shall be binding upon the parties to the stipulation.

² The Debtors shall also provide copies of the complaint, answers or responsive pleadings to the Notice Parties upon request.

BASIS FOR RELIEF REQUESTED

10. Section 105(a) of the Bankruptcy Code states, in pertinent part, that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

11. Pursuant to section 362(a) of the Bankruptcy Code, the filing of a bankruptcy petition operates as a stay with respect to “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case.” 11 U.S.C. § 362(a)(1).

12. Bankruptcy Rule 9019(b) provides, in pertinent part, that “[a]fter a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee [or debtor in possession] to settle controversies within such class or classes without further hearing or notice.” The court is given wide discretion under Bankruptcy Rule 9019 to establish classes of controversies and to authorize settlements without further notice or hearing. Bankruptcy Rule 9019(b) was adopted to simplify the procedures associated with settlements in large scale bankruptcies in order to allow debtors in possession to avoid the burden of filing separate motions to settle certain classes of claims as ordinarily required by Bankruptcy Rule 9019(a). The 1983 Advisory Committee Notes to the Rule indicate that Bankruptcy Rule 9019(b) “permits the court to deal efficiently with a case in which there may be a large number of settlements.”

13. As set forth above, the continuation of the Interpleader Actions and Foreclosure Actions could potentially generate a recovery for the estates. Therefore, lifting the automatic stay to allow these proceedings to continue could provide an economic benefit to the

Debtors, their creditors and other parties in interests. Additionally, in many Construction Defect Actions, the plaintiffs may be willing to limit their recovery to insurance proceeds and the insurers may be willing to waive certain deductibles. In such cases, modifying the automatic stay to permit the action to go forward would permit the liquidation of various claims at a reduced cost to the estates.

14. The Automatic Stay Relief Procedures are reasonable and in the best interests of the Debtors, their creditors and estates. The proposed Automatic Stay Relief Procedures will permit the Debtors to efficiently settle issues concerning relief from the automatic stay as it relates to the Litigation. Moreover, the Automatic Stay Relief Procedures will further the Debtors' efforts to maximize the value of their estates by reducing the administrative costs associated with drafting, filing and prosecuting separate motions for relief from the automatic stay with respect to the Litigation. The proposed Notice Period will still provide interested parties sufficient notice to respond to and assess the reasonableness of the proposed stipulation. Accordingly, implementing the Automatic Stay Relief Procedures minimizes costs and promotes judicial economy, while also promoting the fair and efficient compromise and settlement of automatic stay issues related to the Litigation.

15. For the foregoing reasons, the Debtors believe that the ability to quickly settle automatic stay issues in accordance with the Automatic Stay Relief Procedures is in the best interests of the Debtors and their estates. Accordingly, the Debtors respectfully request that the Court enter an order approving the Automatic Stay Relief Procedures pursuant to sections 362 and 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

NOTICE

16. 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); and (d) 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.

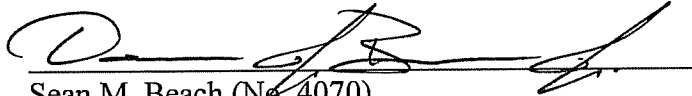
NO PRIOR REQUEST

17. 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 enter an order, in substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
November 3, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
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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, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
	)	Objection Deadline: November 12, 2009 at 4:00 p.m. (ET)
	)	Hearing Date: November 19, 2009 at 11:00 a.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; (C) Counsel to the Official Committee of Unsecured Creditors; and (D) 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, Pursuant to Sections 105 and 362 of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing the Debtors to Implement Omnibus Procedures For Modifying the Automatic Stay as it Relates to Certain Prepetition Litigation** (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections to the Motion shall 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 **November 12, 2009 at 4:00 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 A HEARING TO CONSIDER THE MOTION SHALL BE HELD ON November 19, 2009 AT 11:00 a.m. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT

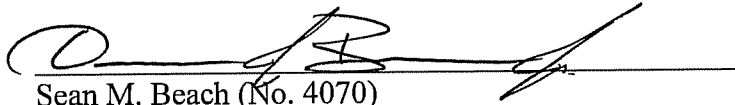
¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C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

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 Motion without further notice or a hearing.

Dated: Wilmington, Delaware
November 3, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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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: BUILDING MATERIALS HOLDING CORPORATION, et al.,¹ <p style="text-align: right;">Debtors.</p>))))))))))	Chapter 11 Case No. 09-12074 (KJC) Jointly Administered Ref. Docket No.: _____
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ORDER, PURSUANT TO SECTIONS 105 AND 362 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, AUTHORIZING THE DEBTORS TO IMPLEMENT OMNIBUS PROCEDURES FOR MODIFYING THE AUTOMATIC STAY AS IT RELATES TO CERTAIN PREPETITION LITIGATION

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 authorizing the Debtors to implement omnibus procedures for modifying the automatic stay as it relates to certain prepetition litigation; 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 the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted

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.

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.
2. The Debtors are authorized to adopt and implement the Automatic Stay Relief

Procedures as set forth below:

- a) The Debtors may enter into agreements to modify the automatic stay with respect to the Litigation. The Debtors shall file notice of the proposed stipulation modifying the automatic stay (the "Stipulation Notice") and serve same on (i) the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility; and (iv) all parties entitled to notice under Del. Bankr. LR 2002-1(b) (collectively, the "Notice Parties");
- b) The content of the Stipulation Notice shall include, (i) a copy of the proposed stipulation and (ii) a brief summary of the underlying cause of action;
- c) Objections must be filed with the Bankruptcy Court and served upon counsel to the Debtors and the Notice Parties so as to be received by 4:00 p.m. (ET) on or before the fifteenth day after service of the Stipulation Notice (the "Objection Deadline");
- d) If no objection to the proposed stipulation is filed and served on or before the Objection Deadline, the stipulation shall be approved upon entry of an order under certification of counsel;
- e) If an objection is received from one or more of the Notice Parties, before the Objection Deadline the Debtors will not proceed with the proposed stipulation unless: (i) the objection is withdrawn or otherwise resolved; or (ii) the Court approves the stipulation by separate order entered after the notice and a hearing at a time mutually agreed upon by the parties which shall be no earlier than ten (10) days after the filing of the objection;
- f) With respect to a proposed agreement and stipulation reached and approved pursuant to the Automatic Stay Relief Procedures, such stipulation shall be binding upon the parties to the stipulation.

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

4. 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
November ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

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

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

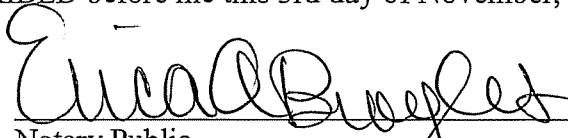
AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on November 3, 2009, she caused a copy of the **Debtors' Motion for Entry of an Order, Pursuant to Sections 105 and 362 of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing the Debtors to Implement Omnibus Procedures For Modifying the Automatic Stay as it Relates to Certain Prepetition Litigation** to be served as indicated upon the parties identified on the attached service list.


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 3rd day of November, 2009.


Notary Public
My Commission Expires: 9/6/2013

ERICA A. BROYLES
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Sept. 6, 2013

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.

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