

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

IN RE:)	Chapter 11
)	
BUILDING MATERIALS)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i>)	Jointly Administered
)	
Debtors.)	Objection Deadline: November 12, 2009 @ 4:00 p.m. (ET)
)	Hearing Date: November 19, 2009 @ 11:00 a.m. (ET)

**BRAZOS FOREST PRODUCTS L.P.'S RESPONSE TO DEBTORS'
OMNIBUS (NON-SUBSTANTIVE) OBJECTION TO CLAIMS
PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1**

Brazos Forest Products L.P. ("Brazos") hereby submits this Response to Debtors' Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502 (b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 (the "Response") and, in support thereof, Brazos respectfully shows as follows:

I. BACKGROUND

1. On June 16, 2009, each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.
2. On July 16, 2009, this Court entered an order [Docket No. 248] establishing August 31, 2009 at 4:00 p.m. as the deadline for filing proofs of claims.
3. Brazos filed a claim in amount of \$10,744.80 as an administrative expense under section 503(b)(9) for product shipped within 20 days of the bankruptcy filing [Claim No. 2567].
4. According to representations by the claims agent, The Garden City Group, Inc., Brazos did not file its proof of claim until September 9, 2009.
5. On October 20, 2009, the Debtors filed their Debtors' Omnibus (Non-Substantive) Objection to Claims Pursuant to Section 502 (b) of the Bankruptcy Code, Bankruptcy Rules

3003 and 3007 and Local Rule 3007-1 (the "Objection"), and seeks to disallow and expunge Brazos' claim in its entirety, to which Brazos submits herein this Response.

II. RESPONSE TO OBJECTION

6. Under the Federal Rules of Bankruptcy Procedure, the Court may extend the period in which a proof of claim may be filed if the late filing resulted from excusable neglect. *In re Garden Ridge Corp.*, 348 B.R. 642 (Bankr. D. Del. 2006); *see* Federal Rules of Bankruptcy Procedure 3003(c)(3) and 9006(b)(1). A finding of excusable neglect is based on equity and depends on the particular circumstances and facts of the case. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Accordingly, excusable neglect is not "limited to situations where the failure to timely file is due to circumstances beyond the control of the filer." *Id.* at 391. The Court determines excusable neglect after considering four factors: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

A. Prejudice

7. The Debtors cannot be surprised by the claim because, in fact, the Debtors had scheduled the claim for substantially the same amount and the Debtors would certainly know whether it received the product within 20 days of its bankruptcy filing, thus constituting an administrative claim. Further, the schedules do not indicate that this claim was either contingent, unliquidated, or disputed. Moreover, as of the time of filing this Response, there is no plan yet confirmed. The Debtors' reorganization will not be jeopardized by the allowance of Brazos' claim. Accordingly, the prejudice factor weighs in favor of Brazos.

B. Length of Delay and Impact on Judicial Proceedings

8. The deadline for filing proofs of claims was August 31, 2009 at 4:00 p.m. Brazos, however, according to representations by the claims agent, The Garden City Group, Inc., did not file its proof of claim until September 9, 2009. Even if true, Brazos had filed its claim within seven (7) business days. Accordingly, the length of delay is minimal. The adverse impact, if any, on the judicial proceedings will be limited because the Debtors are in the midst of bringing their claims objections, there is no plan yet confirmed, and a distribution is not expected for some time. Therefore, the length of delay and impact on judicial proceedings favors Brazos.

C. Reason for Delay

9. Brazos had relied upon its parent company to submit this claim on its behalf. The parent company of Brazos, Ballie Lumber Co., represented that it would file the claim on behalf of Brazos and Brazos relied on this representation. Afterwards, shortly before the expiration of the deadline for submitting proofs of claims, it was discovered that the parent company had not filed the claim on behalf of Brazos and, in fact, had believed that Brazos would be filing the claim. Accordingly, to minimize any further confusion and potential delay, Brazos, with a much shorter time frame, verified its claim and submitted it for filing. Unfortunately, based on the representations by the claims agent, The Garden City Group, Inc., Brazos did not file its proof of claim until September 9, 2009. Further, there was some question as to whether Brazos needed to submit a proof of administrative claim if the Debtors had already scheduled the claim on the bankruptcy schedules, albeit, as a general unsecured claim and not as an administrative claim. This confusion between the parent and subsidiary and this uncertainty regarding the scheduling of its claim caused an unintended delay in the filing of Brazos' claim.

D. Good Faith

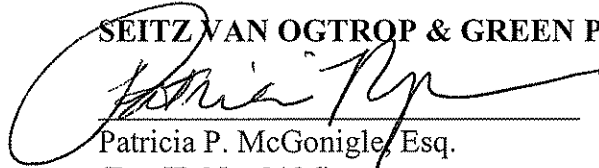
10. There is nothing to suggest that Brazos did not act in good faith. It admits that, based on the miscommunications between the parent and subsidiary, that a mistake was made and it acted promptly to get the claim submitted. Thus, this factor weighs for Brazos.

III. CONCLUSION & PRAYER

WHEREFORE, Brazos respectfully requests the Court to overrule the Debtors' Objection with respect to its administrative claim, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patricia P. McGonigle, hereby certify that a true and correct copy of the foregoing instrument has been served on this 10th day of November, 2009, via CM/ECF and U.S. Mail to the following:

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