

The United States Bankruptcy Court

For the District of Delaware

Chapter 11

Case No. 09-12074 (KJC)

In re: BUILDING MATERIAL HOLDING CORPORATION, et al., Debtors

RESPONSE TO NOTICE OF DEBTORS' FIRST OMNIBUS (NON-SUBSTANTIVE) OBJECTION TO CLAIMS  
PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULE S 3003 AND 3007 AND  
LOCAL RULE 3007-1

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CLAIMANT: KENNETH J. PINEDA

CLAIM NUMBER: 2501

REQUESTING REFUND OF PAYROLL DEDUCTION CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN.

In response to the objection, I Kenneth J Pineda, a former employee of BMC West Corporation, request that the Disputed Claim should not be disallowed or modified for the following reason stated below:

The amount being requested, \$729.18 was money that was deducted from my wages as a payroll deduction (see enclosed photocopy of paystub reflecting the deduction) for an elected contribution to an employee benefit plan, CoreSource. This was to be used for medical expenses for myself and for my dependants. Upon taking my leave from BMC West in April 2008, claims for this plan were to be made within the calendar year, with an extension for claims until June 2009 for the 2008 calendar year.

In March 2009 I attempted to file a claim with CoreSource, only to be advised that BMC was no longer a participating member with CoreSource. I inquired about the available monies in my account and was told that all information had been returned to BMC and that I would have to inquire with them and request reimbursement of the remaining balance of \$729.18. Since that time and until I received the first Bankruptcy Notice from the Court earlier this year, I have attempted to (with no success) make contact with someone at BMC West, both the Pueblo, Colorado office, where I was employed and also the Colorado Springs, Colorado office.

Since I needed to file this response, I again contacted CoreSource, explained my situation and asked that I be sent documentation showing that the remaining funds in my account had been returned to BMC. The representative I spoke with explained to me that she did not think there was such a document available but she would discuss with her manager and see if they could assist me with my request. Upon receiving a phone call from the CoreSource manager, she explained to me that CoreSource only acted as a third-party for BMC with this benefit plan. CoreSource only received the payroll deduction monies when a request for payment was received from BMC. She told me that BMC always kept the money for the plan in a bank account set up to handle this plan and that CoreSource paid the claims out of the BMC bank account. They only administered as a third party, never actually received money.

When I left my position at BMC West, I feel that the remaining balance in my CoreSource account, which, referring to the original documentation I submitted with my claim to this court is titled: BMHC Flexible Spending Account should have been returned to me at that time. I feel that personnel in the payroll department failed to completely review my payroll information and did not complete the process when preparing my final paycheck. I attempted to resolve this matter, but was unable to make contact with anyone at BMC and therefore should be reimbursed, through this court, the total amount of my claim of \$729.18.

The address for Response is the same as presented in the Disputed Claim and the name, address and telephone number of the person possessing ultimate authority to reconcile, settle or otherwise resolve the Disputed Claim or Response is as follows:

KENNETH J. PINEDA

227 EAST 6<sup>TH</sup> STREET

WALSENBURG, CO 81089

719-989-7471

CO. FILE DEPT. CLOCK NUMBER 170  
538 025250 806000 425 0001350025 1

BMHC

BMC WEST CORPORATION  
P.O. BOX 70006  
BOISE, ID 83707-0106

## Earnings Statement



Period Ending: 03/23/2008  
Pay Date: 03/28/2008

Taxable Marital Status: Married  
Exemptions/Allowances:  
Federal: 0  
CO: 0

KENNETH J PINEDA  
227 E 6TH ST  
WALSENBURG, CO 81089

Social Security Number: XXX-XX-3260

Earnings	rate	hours	this period	year to date
Regular	12.5000	40.00	500.00	5,649.77
Overtime	18.7500	6.52	122.25	217.50
Holiday/Float				300.00
Sick Leave				200.00
Vacation				300.00
<b>Gross Pay</b>			<b>\$622.25</b>	<b>6,667.27</b>

Deductions	Statutory	
Federal Income Tax	-43.26	381.47
Social Security Tax	-34.76	367.53
Medicare Tax	-8.13	85.95
CO State Income Tax	-19.00	182.00
<b>Other</b>		
Dental	-10.50*	126.00
Fs Dep Care	-27.09*	325.08
Fs Medical	-18.75*	225.00
Vision	-5.28*	63.36
401K Deferral	-18.67*	200.03
<b>Net Pay</b>		<b>\$436.81</b>

Other Benefits and Information	this period	total to date
Pre-Tax Ins Ded	61.62	739.44
401K Elig Wages	622.25	
401K Match-Er	9.33	100.02
Vac This Period		1.54
Vac Ytd Taken		24.00
Ytd Ot Hours		11.60
Ytd Reg Hours		451.98
Vacation Balnce		-14.60

\* Excluded from federal taxable wages

Your federal taxable wages this period are \$541.96