

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

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>BUILDING MATERIALS HOLDING</b>	)	<b>Case N. 09-12074 (KJC)</b>
<b>CORPORATION, <i>et al.</i>,</b>	)	
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	
	)	<b>Hearing Date: November 19, 2009 at 11:00a.m. (ET)</b>

**RESPONSE OF CLAIMANT RESINART, INC. TO DEBTORS' FIRST OMNIBUS  
OBJECTION TO CLAIMS;  
AFFIDAVIT OF RHENDA FOSTER**

Resinart, Inc. ("Resinart") submits its response to Debtors' First Omnibus Objection to Claims. Resinart has an Allowed Claim of \$12,290.92 against BMC West Corporation. Its Proof of Claim filed September 15, 2009 against BMHC Corporation is duplicative of that claim. Either the Allowed Claim shown on page 805 of Debtors' Schedules or the claim set forth in the late filed Proof of Claim (modified to \$12,290.92) must be allowed.

1. Resinart's Late Claim Was Unnecessary As Debtor's Schedule F Admits a Claim against BMC West Corporation in Substantially the Same Amount.

Resinart, Inc. filed a proof of claim on September 15, 2009 claiming the sum of \$12,318.05 against Building Materials Holding Corporation ("BHMC"). Resinart was

not required to file a proof of claim at all. Resinart was listed on Schedule F for BMC West Corporation as a general unsecured creditor in the amount of \$12,290.92 and was not marked as contingent, unliquidated or disputed. A copy of Sheet 805 of the Debtor's Amended Schedules is attached hereto.

Resinart filed its Proof of Claim (i) because it did not understand that a Proof of Claim was unnecessary, and (ii) because it mistakenly thought its claim was against BHMC rather than BMC West Corporation. Resinart does not assert that it has two separate claims. Resinart agrees that the scheduled liability of \$12,290.92 against BMC West Corporation is correct and that Resinart does not have any different or additional claim against BHMC. Resinart wishes to preserve the scheduled claim against BMC West Corporation. Resinart notes that its claim, even though scheduled on the BMC West Corporation Schedule F, is not shown on Exhibit B to the Proposed Order as duplicative.

Resinart should not be faulted for not understanding or finding its scheduled claim. Schedule F runs hundreds of pages and is separated into 7 separate entities. That Resinart failed to note that its claim was properly scheduled on page 805 was inadvertent. The Proof of Claim filed against BMHC, if denied, must not have the effect of denying the admitted claim against BMC West Corporation. Further, if Resinart marked a priority box, that was also inadvertent and in error. Resinart makes no claim of priority.

2. Even if a Claim Were Required, Resinart's Late Claim Should be Allowed.

However, even if a Proof of Claim had been required and even if the Proof of Claim had named BMC West Corporation as the debtor, the late filing should be allowed. Under *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 389 (1993), four factors should be considered to determine whether or not late filings are excusable: (1) whether allowing the late claim will prejudice the debtor; (2) the length of the delay in filing the claim and the resulting potential impact on the judicial proceedings; (3) the reason for the delay, including whether the delay was within the reasonable control of the creditor filing the claim; and (4) whether the creditor that filed the claim acted in good faith.

Allowing the Resinart claim cannot prejudice the Debtor as Resinart was a scheduled general unsecured creditor to which the Debtor had no objection. The amount of the scheduled claim (\$12,290.92) does not materially differ from the amount set forth on the Proof of Claim (\$12,318.05). Resinart agrees with the scheduled number of \$12,290.92. If a creditor unnecessarily files a claim after the bar date there can be no prejudice to a Debtor who admits in its schedules that the debt is correct.

The notice of bar date was dated July 23, 2009. The bar date was August 31, 2009. The Proof of Claim was filed on September 15, 2009. This is a delay of 15 days, not a considerable period. The establishment of a bar date only 38 days after the date of notice is a very short period of time, considerably shorter than the normal 90 days after first meeting of creditors. The delay in filing the claim has no impact whatsoever on the judicial proceedings. The disclosure statement was not approved until October 22, 2009

and the Plan of Reorganization has not yet been submitted to a vote.

As stated in the Affidavit of Rhenda Foster filed herewith, Resinart never received the notice of the bar date. Although such notice was dated on July 23, 2009, Resinart never received it. When Foster became concerned about the Debtor's obligation to Resinart, she made inquiry of Garden City, the Claims Administrator. She was directed to the website where she learned for the first time on September 14, 2009, that a bar date had been established. (It is quite possible that service of a notice of bar date was not even made on Resinart as an admitted claim.) Not understanding that no filing of a Proof of Claim was required, Foster immediately prepared the Proof of Claim and transmitted it by overnight delivery to the Court.

Resinart acted in good faith. The amount of its claim does not differ from that admitted in Schedule F. Resinart further agrees that allowance of the claim against BMC West Corporation would satisfy the Proof of Claim which was filed.

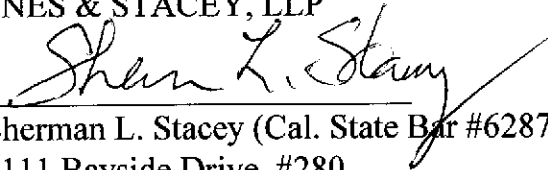
The Objection to Claim filed by the debtor indicates that the Resinart claimed a priority. This claim of priority was made without understanding the circumstances necessary for a priority and Resinart withdraws the claim of priority and agrees that Resinart is a general unsecured creditor.

### 3. Conclusion

A claim against either BMHC Corporation or BMC West Corporation, but not both, in the amount of 12,290.92 should be allowed.

GAINES & STACEY, LLP

By

  
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AFFIDAVIT OF RHENDA FOSTER

STATE OF CALIFORNIA

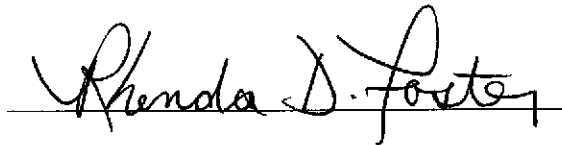
COUNTY OF ORANGE

The undersigned being duly sworn hereby affirms:

1. I am the Secretary/Treasurer of Resinart, Inc., a creditor in the BMHC Corporation bankruptcy. I have personal knowledge of the facts stated herein and could and would testify thereto under oath.
2. After I received notice of the bankruptcy filing, on June 22, 2009, I made telephone inquiries of The Garden City Group Inc. as to the process by which Resinart could file a claim. I was told that a claims packet would be transmitted to me.
3. I never received a claims packet nor did I receive notice of the Court's entry of an order establishing August 31, 2009 as a bar date.
4. I never saw Schedule F for BMC West Corporation which showed a debt of \$12,290.92 which was not marked as contingent, unliquidated or disputed.
5. On September 14, 2009, I telephoned Garden City Group Inc. to again inquire about making a claim. I was advised that the claims bar date was August 31, 2009. I was not advised that Resinart did not need to make a claim as its debt was scheduled without objection.

because I did not understand what facts were necessary for a priority. I withdraw any claim of priority.

7. The Resinart Proof of Claim was filed on September 15, 2009, only 15 days after the bar date.
8. The amount of the Resinart claim on the Proof of Claim form was \$12,318.05, substantially the same as the admitted and scheduled claim on page 805 of the Debtor's schedules of \$12,290.92. Resinart accepts this lesser scheduled sum. Resinart does not assert that it has two claims. There is only one claim and as the treatment of the BMHC Corporation and the BMC West Corporation claims in the proposed plan is identical, Resinart should be allowed its claim.
9. At all times I acted in good faith in seeking to preserve the claim of Resinart. I acted promptly upon learning of the bar date.

A handwritten signature in black ink, reading "Rhenda D. Foster", written over a horizontal line.

Rhenda Foster

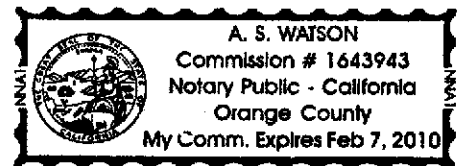
State of California  
County of Orange

On November 10<sup>th</sup>, 2009 before me, A.S. Watson, Notary Public, personally appeared Rhenda Foster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature A.S. Watson (Seal)





In re **BMC West Corporation**Case No. **09-12075**

Debtor

**AMENDED**  
**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
			DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.			<b>TRADE DEBT</b>				
<b>RESERVE ACCOUNT</b> <b>P.O. BOX 856056</b> <b>LOUISVILLE, KY 40285-6056</b>		-		X	X	X	<b>Unknown</b>
Account No.			<b>TRADE DEBT</b>				
<b>RESINART CORPORATION</b> <b>1621 PLACENTIA AVENUE</b> <b>COSTA MESA, CA 92627</b>		-					<b>12,290.92</b>
Account No.			<b>TRADE DEBT</b>				
<b>RESPOND SYSTEMS</b> <b>124 E LYNDAL AVE</b> <b>HELENA, MT 59601</b>		-		X	X	X	<b>Unknown</b>
Account No.			<b>TRADE DEBT</b>				
<b>RESUN LEASING, INC.</b> <b>BANK OF AMERICA LOCKBOX</b> <b>CHICAGO, IL 60693</b>		-					<b>1,379.24</b>
Account No.			<b>TRADE DEBT</b>				
<b>REXBURG FLORAL</b> <b>175 N CENTER</b> <b>REXBURG, ID 83440</b>		-		X	X	X	<b>Unknown</b>
Sheet no. <b>805</b> of <b>1080</b> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							<b>13,670.16</b>

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 1111 Bayside Drive, #150, Corona del Mar, CA 92625.

On November 10, 2009, I served the foregoing document described as **RESPONSE OF CLAIMANT RESINART, INC. TO DEBTORS' FIRST OMNIBUS OBJECTION TO CLAIMS; AFFIDAVIT OF RHENDA FOSTER** on the parties in this action by placing a true copy thereof enclosed in sealed envelopes and faxed, addressed as follows:

Dean M. Beach  
Donald J. Bowman, Jr.  
Robert F. Poppiti, Jr.  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
P.O. Box 391  
Wilmington, Delaware 19899-0391  
Fax: 302-571-1253

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal  
Matthew K. Kelsey  
Saeed M. Muzumdar  
200 Park Avenue, 47<sup>th</sup> Floor  
New York, New York 10166-0193  
Fax: 212-351-4035

Aaron G. Yourk  
Jeremy L. Graves  
2100 McKinney Avenue, Suite 100  
Dallas, Texas 75201-6911  
Fax: 214-571-2900

Each envelope was then, on August 3, 2009, sealed and deposited in the United States Mail Corona del Mar, California.

Executed on November 10, 2009, at Corona del Mar, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
Ashley Watson