

**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

Ref. Docket Nos. 17 and 290

Objection Deadline: December 4, 2009 at 4:00 p.m. (ET)

**SECOND NOTICE OF FILING OF AFFIDAVIT IN CONNECTION WITH THE
ORDER PURSUANT TO SECTIONS 105(a), 363, AND 554 OF THE BANKRUPTCY
CODE APPROVING (A) PROCEDURES FOR THE SALE OF CERTAIN *DE MINIMIS*
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES WITHOUT
FURTHER COURT APPROVAL, (B) PAYMENT OF MARKET RATE BROKERS'
AND AUCTIONEERS' COMMISSIONS IN CONNECTION WITH THE SALES, AND
(C) ABANDONMENT OR DONATION OF CERTAIN PROPERTY**

PLEASE TAKE NOTICE that on June 16, 2009, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the Debtors' Motion for Interim and Final Orders Pursuant to Sections 105(a), 363, and 554 of the Bankruptcy Code Approving (A) Procedures for the Sale of Certain *De Minimis* Assets Free and Clear of Liens, Claims, and Encumbrances Without Further Court Approval, (B) Payment of Market Rate Brokers' and Auctioneers' Commissions in Connection With the Sales, and (C) Abandonment or Donation of Certain Property [Docket No. 17] (the "De Minimis Asset Sale Motion").² Pursuant to the De Minimis Asset Sale Motion, the Debtors requested the Court to enter an order authorizing and approving the Debtors to, among other things, engage Brokers and Auctioneers in connection with the Debtors' sale of certain miscellaneous assets and, subject to the terms and conditions of the De Minimis Asset Sale Order (as defined below), to pay and honor market rate commissions due to Brokers and Auctioneers and reasonable expenses incurred by such Brokers and Auctioneers in connection with such asset sales.

PLEASE TAKE FURTHER NOTICE that on July 22, 2009, the Court entered the Order Pursuant to Sections 105(a), 363, and 554 of the Bankruptcy Code Approving (A) Procedures for the Sale of Certain *De Minimis* Assets Free and Clear of Liens, Claims, and

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the De Minimis Asset Sale Motion or the De Minimis Asset Sale Order (as defined below), as appropriate.

Auctioneers' Commissions in Connection With the Sales, and (C) Abandonment or Donation of Certain Property [Docket No. 290] (the "De Minimis Asset Sale Order"), which provides that within forty-five (45) days of (i) entry of such order or (ii) the inception of the entity's employment, whichever occurs later, each Broker or Auctioneer engaged by the Debtors pursuant thereto shall file with the Court an affidavit substantially in the form attached thereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that pursuant to the De Minimis Asset Sale Order, the Debtors hereby file this notice of filing of the affidavit (the "Affidavit") of Skipperliner Industries Inc. ("Skipperliner"), a copy of which is attached hereto as Exhibit 1. The Affidavit has been served on the Office of the United States Trustee for the District of Delaware, counsel to the Official Committee of Unsecured Creditors and counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the chapter 11 plan filed by the Debtors in these chapter 11 cases) (together with the Debtors, each a "Notice Party," and collectively, the "Notice Parties").

PLEASE TAKE FURTHER NOTICE that pursuant to the De Minimis Asset Sale Order, the Notice Parties shall have until **December 4, 2009 at 4:00 p.m. (ET)** (the "Objection Deadline") to object to the retention of Skipperliner. Any objecting Notice Party shall file such objection with the Court and serve such objection upon the Notice Parties and Skipperliner on or before the Objection Deadline.

Dated: Wilmington, Delaware
November 24, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
Saeed M. Muzumdar (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Aaron G. York (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT 1

Affidavit

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket Nos. 17 and 290

VERIFIED STATEMENTS OF CONNECTIONS

I, David Weinberger, declare under penalty of perjury:

1. I am the Vice President of Design for Skipperliner Industries Inc., located at 127 Marina Drive, La Crosse, WI , 54603. (the "*Firm*").
2. Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") have requested that the Firm provide Boat Brokerage to the Debtors, and the Firm has consented to provide such services.
3. The Firm may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys or accountants that

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would be adverse to the Debtors or their estates. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

- (a) is not a creditor, an equity security holder, or an insider of any of the Debtors;
- (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtors; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

4. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties-in-interest in the Debtors' chapter 11 cases.

5. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

6. The Debtors owe the Firm \$[0.00] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtors will be deemed waived if the Firm's employment is authorized.

7. As of June 16, 2009, which was the date on which the Debtors commenced these chapter 11 cases, the Firm was party to an engagement or services agreement with the Debtors. **[A copy of such agreement is attached as *Exhibit A* to this Declaration].**

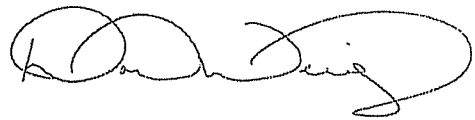
8. As of June 16, 2009, the Firm was not party to an agreement for indemnification with certain of the Debtors.

9. The Firm is not a law firm and has not received payments from the Debtors during the year prior to the Debtors' bankruptcy filings:

10. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 11-4, 2009



[DECLARANT]

**BROKERAGE AGREEMENT
SKIPPERLINER INDUSTRIES, INC.**

127 Marina Drive
La Crosse, WI 54603

1. I/We, BMC, (hereinafter referred to as the "Owner") hereby appoint Skipperliner Industries, Inc. of Wisconsin (hereinafter referred to as "Broker") as Central Agent for purposes of facilitating the sale of the Vessel "PRIORITIES" which is a Length: 59' Year 2001, Manufacturer: SKIPPERLINER Model: _____ (hereinafter referred to as the "Vessel"), and therefore grants Broker the exclusive right to facilitate the sale of the Vessel. The Owner shall offer the Vessel for sale at a gross asking price of TWO-HUNDRED-NINETY-NINE THOUSAND NINE-HUNDRED DOLLARS (U.S. \$299,900.00). Broker agrees to submit any and all offers of any type to Owner for consideration. The Owner agrees to sell the Vessel to a customer of Broker, or to a customer of a sub-listed broker, who is ready, willing, and able to purchase the Vessel at this price, or at any other price and terms the Owner may accept.
2. The Owner agrees that the Broker is providing a valuable service of a kind which is for the use and benefit of both the Owner and the Vessel by distributing listing information to the brokerage industry, advertising the Vessel for sale and exposing it to the buying public, and providing consultation with regard to the marketability of the Vessel. Therefore, Broker is authorized to and shall distribute information describing the Vessel to its clients and to other brokers it judges qualified to facilitate a sale. It will be the responsibility of the Owner to supply Broker with all pertinent information regarding the Vessel, including pictures and plans and all detailed information, and also to keep Broker informed about any changes in location, price or specifications of the Vessel. It will also be the responsibility of the Owner to remove all personal belongings prior to closing.
3. Upon the sale, trade or exchange of the Vessel, or if it is otherwise transferred or conveyed during the term of this Agreement by the Owner, or by anyone acting on behalf of the Owner, the Owner agrees to pay Broker a fee of ten percent (10%) of the gross sale price. Any sub-listing broker involved in the sale shall receive his fee from Broker. The sale, trade or exchange of a majority of the stock or equitable interest of a corporation, limited partnership or other entity holding title to the Vessel by Owner shall be construed as a sale for the purpose hereof. The minimum commission of not less than \$1,200 shall be paid to Skipperliner Industries, Inc. should the gross selling price be less than \$10,000.
4. It is specifically understood and agreed that Broker does not assume and is not delegated care, custody or control of the Vessel. Broker has no authority to sell the Vessel and is acting in the sole capacity of the Owner's agent. It is further agreed that the procuring of such docking and/or mooring space for the Vessel by Broker for the purpose of making the Vessel available for inspection by potential purchasers is not to be deemed as an assumption of the custody or control of the Vessel by Broker. The possession, custody and control of the Vessel shall at all times remain as the Owner designates for the safety, security and protection of the Vessel at whatever location the Vessel is moored or stored for the purposes of being available for inspection by potential purchasers, and Broker shall not be deemed responsible for the security, safety or protection of the Vessel during this period of time, and shall not be responsible for any damage or loss to the Vessel. Permission is hereby given to Broker for its employees and

BMC

sub-listed brokers to board and show the Vessel, by appointment, or as otherwise agreed. The Owner shall keep the Vessel fully insured (including personal liability) for inspection, sea trial and marine survey purposes. The Owner, at the time of Sea Trial, will pilot the vessel himself or provide a licensed Captain or agent.

5. This Agreement shall remain in effect until the Vessel is sold unless canceled by either party by giving the other party thirty (30) days prior written notice of cancellation. This Agreement shall remain in effect for a minimum of one hundred twenty days (120). Upon cancellation or expiration, this Agreement will convert to an open listing.

6. Broker will advertise the Vessel as it deems advisable. If special advertising is requested by the Owner, Broker will assist in the preparation of such ads and make its contract advertising rates available to Owner.

7. Owner further agrees to pay the same fee of ten percent (10%) should he at any time within one (1) year after termination of this Agreement sell, trade, exchange or otherwise transfer or convey the Vessel in any manner to any party to whom the Broker or one of its sub-listed brokers has provided information concerning, or has shown the Vessel during the term of this Agreement, unless traded in towards purchase of a new vessel at Skipperliner Industries, Inc. The minimum Commission to Skipperliner Industries, Inc. shall be no less than \$1,200.

8. Should the Vessel be donated during the term of this Agreement or within one (1) year thereafter, the Owner agrees that the donation will be handled by the Broker without charge to the Owner and the commission payable in connection therewith shall be paid by the Donee.

9. Broker shall endeavor and use its best efforts according to the standard of the industry to procure a purchaser for the Vessel, and Owner agrees to refer immediately to Broker all inquiries or offers received from other brokers or parties interested in purchasing the Vessel during the term of this Agreement. Broker will be entitled to the commission described herein if the Vessel is sold by the Owner or by any other broker to a purchaser referred by the Owner.

10. In the event that the Owner enters into a contract to sell the Vessel and pursuant to that contract Owner retains liquidated damages on account of buyer's breach of that contract, then those liquidated damages shall be applied first to pay all expenses incurred by Broker in providing its services as the agent of the Owner (including, but not by way of limitation, surveys and haul outs), and then the remainder shall be divided equally between Owner and Broker, provided, however, that Broker's share shall in no event exceed the commission set forth in this Agreement.

11. By this Agreement, Owner and Broker intend to establish an agency relationship. Nothing in this Agreement shall be construed as creating a consignment arrangement between Owner and Broker.

12. This Agreement shall be governed by Wisconsin law, both as to interpretation and performance. The parties shall resolve dispute arising from this Agreement through arbitration in La Crosse, WI, in accordance with the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and binding. The prevailing party in any proceeding

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shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party as part of the arbitration award.

13. This Agreement is binding on Broker and Owner, their heirs, executors, successors, administrators and assigns.

14. Special Clauses: N/A

DATE: 4/15/09

OWNER: BMHC, Brian Gable

[Signature]

DATE: 4/15/09

BROKER: Skipperliner Industries, Inc.

By: [Signature]

OWNER INFORMATION

NAME: BMHC

ADDRESS: 720 Park Blvd, Suite 200, Boise ID 83712

PHONE: 208-331-4313 FAX: 208-331-4498

VESSEL LOCATION: PAGE, AZ

GROSS ASKING PRICE: \$299,900

LOCK #: _____

SPECIAL SHOWING INSTRUCTIONS: _____

RECOMMENDATIONS:

- Remove all items from the vessel that are not included in the sale of same or provide Broker with a list of exclusions.
- Remove all perishables from refrigerators, freezers, or bait chest.
(Should there be a loss of power for any reason, this will help prevent damage or loss.)

Acknowledged [Signature]
(please initial)