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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

US BANKRUPTCY COURT  
DISTRICT OF DELAWARE  
2009 NOV 12 PM 12:08  
FILED

In re:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
	)	Case No. 09-12074
CORPORATION, et al.,	)	
	)	Jointly Administered

**CREDITOR LUKE GILLIAM'S RESPONSE TO DEBTORS' FIRST OMNIBUS  
OBJECTION TO CLAIMS PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY  
CODE, BANKRUPTCY RULES 3003 AND 3007 AND LOCAL RULE 3007-1**

COMES NOW Creditor LUKE GILLIAM, by and through his attorneys, KREITLEIN LAW GROUP, LTD., hereby responds to Debtors' First Omnibus Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 as follows:

**I. Factual and Procedural Background**

1. On June 15, 2009 Creditor LUKE GILLIAM (hereinafter "Mr. Gilliam"), filed a Complaint pursuant to the doctrine of *respondeant superior* against Debtor BMC WEST CORPORATION in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe. See, Demand letter to BMC WEST CORPORATION counsel attached hereto as Exhibit "1" and Complaint attached hereto as Exhibit "2".

2. The Complaint prayed for general and special damages arising from personal injuries sustained while working on a construction site when BMC WEST CORPORATION's employee carelessly and negligently lifted trusses in such as manner as to strike Plaintiff propelling him from the truck. See, Exhibit "2".

1           3.       On June 16, 2009, Debtor BMC WEST CORPORATION (hereinafter Debtor) filed a  
2 Chapter 11 petition with this Court, Case Number 09-12075, which was then consolidated into the above  
3 captioned matter.

4           4.       Debtor's resident agent was served a copy of the Summons and Complaint on June 19,  
5 2009. See, copy of Summons and Affidavit of Service attached hereto as Exhibit "3".

6           5.       Pursuant to applicable rule of Nevada Civil Procedure, when no Answer to the Complaint  
7 was filed a Default was entered by the District Court and a Notice of Entry of Clerk's Default was served  
8 on Debtor by U.S. Mail on August 10, 2009.

9           6.       Debtor did not respond or notify Mr. Gilliam of any pending Bankruptcy until two days  
10 after the Entry of the Clerk's Default, on August 12, 2009, when Debtor's representative Mareen  
11 Thomas phoned Mr. Gilliam's counsel and later e-mailed a copy of the Chapter 11 petition. See, E-mail  
12 dated August 12, 2009 from Mareen Thomas of BMC WEST CORPORATION attached hereto as  
13 Exhibit "4".

14           7.       In the August 12, 2009, e-mail Debtor's representative apologizes for prior lack of  
15 notification of the Bankruptcy and for the first time mentions the Bar Date of August 31, 2009 and that  
16 the noticing agency, Garden City Group, will mail a proof of claim. See, Exhibit 4.

17           8.       A proof of claim was eventually sent by Debtor representative Mareen Thomas on August  
18 27, 2009, only three days before the filing deadline. See, E-mail dated August 27, 2009 from Mareen  
19 Thomas of BMC WEST CORPORATION attached hereto as Exhibit "5".

20           9.       Due to this inadequate notice and the time required to obtain attorney registration, the  
21 proof of claim was unable to be electronically filed on August 31, 2009, despite good faith effort to file  
22 the proof of claim on that date through the Court's electronic filing system.

23           10.      When the electronic filing effort failed, the Proof of Claim was mailed and post marked  
24 August 31, 2009.

25           11.      The Proof of Claim was received by Garden City Group and filed with this Court on  
26 September 2, 2009.

27           12.      On October 20, 2009, Debtors filed First Omnibus Objection to Claims alleging Mr.  
28 Gilliam's claim should be expunged due to late filing.

1 **II. Argument**

2 13. An extension of time for filing of a Proof of Claim may be granted upon a showing of  
3 excusable neglect under the Federal Rules of Bankruptcy Procedure. See, Federal Rules of Bankruptcy  
4 Procedure 3003(c)(3) and 9006(b)(1). In a grant of certiorari to determine the meaning of excusable  
5 neglect the Supreme Court recognized that “excusable neglect may extend to inadvertent delays . . . and  
6 is not limited strictly to omission cause by circumstances beyond the control of the movant.” Pioneer  
7 Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 391 (1993). The Court affirmed the use  
8 of four factors to determine excusable neglect including 1) danger of prejudice to the debtor, 2) length  
9 of the delay and potential impact on the judicial proceedings, 3) the reason for the delay including  
10 whether it was in the reasonable control of the movant and 4) whether the movant acted in good faith.  
11 Id.

12 14. In Pioneer Inv. Servs., the Court found a 20 day delay in filing a proof of claim due to the  
13 attorney’s “upheaval in his law practice” was excusable neglect. Applying the above factors the Court  
14 found excusable neglect because the petitioner would not be prejudiced by the delay and that the 20 day  
15 delay had no adverse impact on the Courts administration. Id. at 395. Even though the reason for the  
16 delay was not outside the movant’s control, the movant acted in good faith. The Court also considered  
17 that the Notice to the movant was “outside the ordinary course” because the bar date was  
18 inconspicuously placed in the Notice to Creditors. The Court gave little weight to the movant’s law firm  
19 circumstances but found the lack of prejudice to the debtor or to judicial efficiency, as well as, the good  
20 faith of the movant weighed heavily in favor of permitting the tardy claim. The Court also noted the  
21 “unusual form of notice” also was a circumstance to consider because excusable neglect is based on  
22 equity and the particular circumstances of the case. Id.

23 15. Here Mr. Gilliam had only a two day delay in filing a proof of claim due a difficulty in  
24 electronic filing compared to a twenty day delay in Pioneer Inv. Servs. Id. Applying the first factor,  
25 excusable neglect may be found where the petitioner would not be prejudiced because the length of the  
26 delay was minimal. In regards to the second factor, there will be no adverse impact on the Court’s  
27 administration because as of the date of this response, Debtors have not confirmed a plan and are still  
28 in the process of bringing claim objections.

1           16. The third factor, the reason for the delay, may be the most important where the delay was  
2 outside the movant's control because the Mr. Gilliam did not receive, and still to date has not received,  
3 formal notice of the Bankruptcy. The only constructive notice received was on August 12, 2009, when  
4 Debtor's representative Mareen Thomas phoned Mr. Gilliam's counsel and later e-mailed a copy of the  
5 Chapter 11 petition and apologized for prior lack of notification of the Bankruptcy. See, Exhibit 4.  
6 While the e-mail mentions the Bar Date of August 31, 2009, Debtor did not send a proof of claim, nor  
7 any notification of the pending Bankruptcy. It is still unclear whether Debtor has amended its claim to  
8 include Mr. Gilliam's Claim in the Bankruptcy. Even if this "unusual form of notice" could be  
9 considered effective, Local Rule 1009-01 allows twenty days from a later notice to file the proof of claim  
10 or 30 days from amendment of the claim by Debtor. Accordingly the reasons for the delay, including  
11 the inadequate and late notice, are factors in support of a finding of excusable neglect.

12           17. The final factor, that the Mr. Gilliam acted in good faith, weighs in favor of allowing the  
13 claim. Even with Notice that could be considered "outside the ordinary course" of the Bankruptcy Rules,  
14 once Mr. Gilliam had notice, a good faith effort was made to file the proof of claim electronically on  
15 August 31, 2009. Due to the time required to obtain attorney registration, the proof of claim was unable  
16 to be filed on that date. When the electronic filing effort failed, the Proof of Claim was mailed, post  
17 marked August 31, 2009 and filed with this Court on September 2, 2009. Mr. Gilliam's good faith effort  
18 weighs in favor of permitting the late filed claim.

19 **III. Conclusion**

20           The lack of prejudice to the debtor or to judicial efficiency due to a minimal delay of only two  
21 days supports allowing Mr. Gilliam's claim. Additionally, despite inadequate notice, Mr. Gilliam acted  
22 in good faith to file his claim. These factors should weighed heavily in favor of permitting the tardy  
23 claim. The Court may also consider equity and the particular circumstances of the case. Id. The interests  
24 of equity support allowing a personal injury claim where the late filing was only to due to inadvertent  
25 delay of two days due to excusable neglect. Accordingly, Mr. Gilliam respectfully requests the Court  
26 to overrule Debtor's Objection to his claim and grant any other relief as just and proper.

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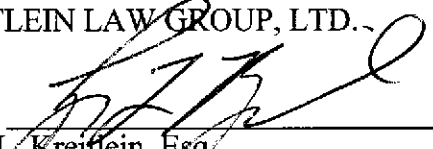
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**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 11<sup>th</sup> Day of November, 2009.

KREITLEIN LAW GROUP, LTD.

By:   
Philip L. Kreitlein, Esq.  
Nevada State Bar No. 005394  
KREITLEIN LAW GROUP, LTD.  
470 E. Plumb Lane, Suite 310  
Reno, Nevada 89502  
(775) 786-2222  
Attorney for Plaintiff:  
*LUKE GILLIAM*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Kreitlein Law Group, Ltd. and that on the 11<sup>th</sup> day of November, 2009, I caused the foregoing document to be served on all parties to this action by:

- placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.
- facsimile (fax)
- personal delivery
- Overnight Delivery via Fed Ex.
- Legal Express Messenger Service

fully address as follows:

YOUNG, CONAWAY, STARGATT &  
TAYLOR, LLP  
Sean 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  
Willmington, DE 19899-0391

Aaron G. York  
Jeremy L. Graves  
2100 McKinney Avenue, Suite 1100  
Dallas, Texas 75201-6911

OFFICE OF THE U.S. TRUSTEE  
844 King Street, Suite 2207  
Lockbox 35  
Willmington, DE 19801

GIBSON, DUNN & CRUTCHER, LLP  
Michael A. Rosenthal  
Matthew K. Kelsey  
Sae M. Muzumdar  
200 Park Avenue, 47<sup>th</sup> Floor  
New York, NY 10166-0193

GARDEN CITY GROUP, INC  
Attn: Building Materials Holding Corp.  
5151 Blazer Parkway, Suite A  
Dublin, OH 43017



**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. Pages</b>
EXHIBIT #1	Correspondence dated May 28, 2009	3
EXHIBIT #2	Complaint filed June 15, 2009	4
EXHIBIT #3	Summons and Affidavit of Service filed June 29, 2009	3
EXHIBIT #4	E-mail from Mareen Thomas of BMHC dated August 12, 2009	1
EXHIBIT #5	E-mail from Mareen Thomas of BMHC dated August 27, 2009	1

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**EXHIBIT 1**

**EXHIBIT 1**



KREITLEIN LAW GROUP, LTD

reply to:  
Philip L. Kreitlein, Esq.  
philip@klgnevada.com

470 E. PLUMB LANE, SUITE 310  
RENO, NEVADA 89502  
TEL: (775) 786-2222  
FAX: (775) 786-2478

May 28, 2009

Via Electronic Mailing and U.S. Mail  
street@bmhc.com

Paul S. Street, Esq., General Counsel  
BMHC  
720 Park Blvd., Ste. 200  
Boise, ID 83712

**Re:      Date of Loss:            June 19, 2007**  
**Our Client:                Luke Gilliam**  
**Your Insured:            BMC West Building Materials**

Dear Mr. Street:

Please allow this correspondence to serve as notice that this firm has been retained to represent Mr. Luke Gilliam relating to injuries sustained during an accident that occurred on June 19, 2007, involving a BMC West truck and employee.

Based upon the fact that Mr. Gilliam has completed treatment for his injuries, this transmission shall constitute a demand for settlement. As a result, this correspondence may not be used for any purposes whatsoever at time of trial.

Being transmitted herewith are the following documents:

1.      Emergency Medical Reporting, dated June 19, 2007;
2.      Medical Records and billing relating to Mr. Gilliam's treatment, including those obtained from:
  - a.      Renown Regional Medical Center
  - b.      Reno Diagnostic Center
  - c.      Ted Young, Ph.D., Neuropsychologist
  - d.      William Trimmer, M.D.
  - e.      Renown Health

- f. Kevin O'Loughlin, M.D., O Plastic Surgery
- g. Orthopaedic Surgical Associates
- h. Silver State Spinecare
- i. Reno Neurological Associates
- j. Reno Radiological Associates
- k. Sierra Plastic Surgery
- l. CVS Pharmacy
- m. Regional Emergency Medical Services Authority
- n. Northern Nevada Medical Center
- o. Reno Sport and Spine;

The following is a summary of the claim:

1. Incident

On June 19, 2007, Mr. Gilliam was working as a framer on a custom home being constructed by his employer, Dream Creations, Inc. Dream Creations, Inc. had ordered the roof trusses for the project from BMC West. At or about 4:00 P.M., the trusses arrived at the jobsite. At the request of the BMC West driver, Mr. Gilliam climbed aboard the flatbed to aid in the off loading of the trusses. After attaching the cabling to the trusses, Mr. Gilliam stepped to the rear of the truck. Without paying attention to Mr. Gilliam's location, the BMC West driver negligently lifted the trusses in such a manner so as to cause the rear portion of the trusses to swing around thereby striking Mr. Gilliam from behind and propelling him ten (10) to twelve (12) feet from the bed of the truck. Mr. Gilliam landed on his head and face on the concrete and gravel surface below. Mr. Gilliam was knocked unconscious, and suffered serious injuries.

2. Liability

Liability is clearly not an issue in this case. While assisting in the removal trusses, your operator negligently swung the truss boom arm striking Mr. Gilliam, knocking him from the truck and onto the ground below.

3. Damages

After regaining consciousness, Mr. Gilliam was transported from the scene via ambulance in full spinal precautions. He was initially diagnosed with bilateral distal radial fractures, facial fractures, closed head injury, multiple facial lacerations, a partially detached lower lip, and multiple contusions.

Mr. Gilliam received medical treatment from the listed providers, and was forced to receive dozens of treatments over the course of several months, including plastic surgery. Follow up evaluations by his

Paul S. Street, Esq.

May 28, 2009

Page 3

physicians and neuropsychologist indicate Mr. Gilliam suffers from reduced function in both of his arms, persistent memory loss, restlessness, reduced spatial awareness, vertigo, and a loss of symbolic cognitive processing.

Mr. Gilliam is a young man with a young family who continues to suffer severe pain, and changes in his personality. Changes in affect have been noted and complained of by his family members, most notably his wife. Further, Mr. Gilliam continues to encounter difficulty in the conduct of routine daily activities, and all improvement has ceased. Mr. Gilliam has been designated as permanently partially disabled as a result of this incident. Mr. Gilliam incurred medical expenses totaling \$50,473.56.

4. Demand

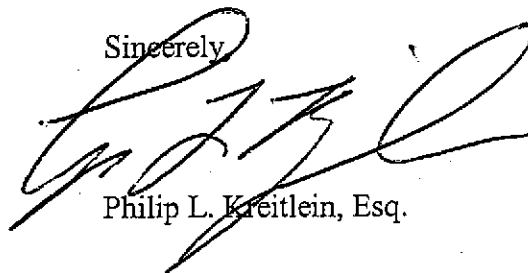
As a result of the foregoing, demand is hereby made for the sum of \$250,000.00 as full and final settlement of Mr. Gilliam's claims against BMCH, Inc. This offer is made solely for purposes of settlement and will remain open for a period not to exceed fourteen (14) days.

5. Status of Litigation

Nevada's statute of limitations period for claims arising out of negligence is two (2) years. Because the deadline to file suit is fast approaching, be advised that a Complaint will be filed with the Second Judicial District Court immediately. Despite this fact, Mr. Gilliam would like to explore settlement options in hopes of avoiding protracted litigation.

Upon your review of the materials being provided, please contact the undersigned to discuss the possibility of settlement.

Sincerely



Philip L. Kreitlein, Esq.

PLK/bjc

Enclosures

cc: File No: 1296.00

Client

**EXHIBIT 2**

**EXHIBIT 2**

FILED

09 JUN 15 PM 4:30

HOWARD W. CONYERS

BY Y. Lloyd  
DEPUTY

1 \$1425  
Philip L. Kreitlein, Esq.  
2 Nevada State Bar No. 005394  
KREITLEIN LAW GROUP, LTD.  
3 470 E. Plumb Lane, Suite 310  
Reno, Nevada 89502  
4 (775) 786-2222  
Attorney for Plaintiff:  
5 LUKE GILLIAM

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE

9 \* \* \*

10 LUKE GILLIAM,

11 Plaintiff,

Case No.: CV09 01852

12 vs.

Dept. No.: 3

13 BMC WEST CORPORATION,  
a Delaware corporation; JOHN  
14 DOE, individually; ROES 1-10; and  
A - Z CORPORATIONS, inclusive,

15 Defendants.  
16 \_\_\_\_\_/

17 **COMPLAINT**  
18 **(Arbitration Exemption Requested: Claim Exceeds \$50,000.00)**

19 Plaintiff LUKE GILLIAM, by and through his attorneys, KREITLEIN LAW GROUP, LTD.,  
20 hereby alleges as follows:

21 1. Plaintiff LUKE GILLIAM (hereinafter "Plaintiff"), is and was, at all times relevant  
22 hereto, a resident of Washoe County, Nevada.

23 2. Plaintiff is informed and believes and thereupon alleges that Defendant BMC WEST  
24 CORPORATION (hereinafter "BMC WEST"), is a Delaware corporation which at times relevant to this  
25 action operated its business as a supplier of building and construction materials from offices located  
26 within Washoe County, Nevada.

27 ...

28 ...

1           3.       Plaintiff is informed and believes and thereupon alleges that Defendant sued herein as  
2 "JOHN DOE" was at times relevant to this action a resident of Washoe County, Nevada and worked as  
3 an employee to BMC WEST. When Defendant JOHN DOE's true identity is made known, Plaintiff  
4 prays leave to amend this Complaint to substitute Defendant JOHN DOE's true identity in the proper  
5 place.

6           4.       The true names, capacities, or involvement, whether individual, corporate, governmental  
7 or associate, of the defendants named herein as ROES 1 - 10 and CORPORATIONS A - Z are unknown  
8 to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff prays leave to amend  
9 this Complaint to show their true names and capacities when the same have been finally determined.

10          5.       Plaintiff is informed and believes, and upon such information and belief alleges that each  
11 of the defendants named herein as ROES 1 - 10 and CORPORATIONS A - Z are negligently or  
12 otherwise legally responsible in some manner for the events and happenings herein referred to, and  
13 negligently or otherwise caused injury and damages proximately thereby to Plaintiff, as is hereinafter  
14 alleged. Each of said Defendants is the agent of the other and at all times pertinent hereto was acting  
15 within the scope of said agency. Each of said Defendants is a joint venturer with one or more of the  
16 other Defendants and was acting in furtherance of the joint venture.

17          6.       The claims being asserted by Plaintiff herein have a probable jury verdict which exceeds  
18 \$50,000.00 and therefore this action should be exempted from Nevada's Mandatory Arbitration  
19 Program.

20          7.       On or about June 19, 2007, Plaintiff was working as a construction worker on a custom  
21 home being constructed by his employer, Dream Creations, Inc.

22          8.       On or about June 19, 2007, Defendant JOHN DOE, an employee of BMC WEST, arrived  
23 at the aforementioned construction site to deliver trusses necessary for the construction of the project.

24          9.       At the specific request of Defendant JOHN DOE, Plaintiff climbed aboard the BMC  
25 WEST flatbed truck to attach the necessary cabling to the trusses required for off loading.

26          10.       Once the necessary cabling was attached to the trusses, Plaintiff positioned himself on  
27 the rear of the flatbed truck in such a manner so as to avoid potential harm while the trusses were being  
28 off loaded.

1           11.     While removing the trusses from the BMC WEST flatbed truck, Defendant JOHN DOE  
2 carelessly and negligently lifted the trusses in such as manner as to strike Plaintiff propelling him from  
3 the truck and onto the ground below.

4           12.     That at all times pertinent hereto, Defendant JOHN DOE was acting within the course  
5 and scope of his employment with BMC WEST and therefore, BMC WEST is liable to Plaintiff for his  
6 injuries pursuant to the doctrine of *respondeant superior*.

7           13.     That as a direct and proximate result of the carelessness and negligence of Defendants  
8 JOHN DOE and BMC WEST as aforesaid, Plaintiff has suffered severe and permanent personal injuries  
9 and emotional distress all to his general damage in a just and reasonable amount in excess of TEN  
10 THOUSAND and 00/100 (\$10,000.00) DOLLARS.

11           14.     That as a further direct and proximate result of the carelessness and negligence of  
12 Defendants JOHN DOE and BMC WEST and each of them as aforesaid, Plaintiff has incurred physician  
13 and related medical expenses and will continue to incur such expenses into the future in an amount  
14 presently not ascertained. Additionally, Plaintiff was unable to attend to his usual occupation and, as  
15 a result, has lost income in an amount presently not ascertained. Plaintiff prays leave to prove such  
16 amounts at the trial of this matter.

17           15.     That as a further direct and proximate result of the carelessness and negligence of  
18 Defendants JOHN DOE and BMC WEST, Plaintiff has been required to retain the services of an  
19 attorney to prosecute this action and is entitled to reasonable attorney's fees and costs of suit.

20           **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them, as follows:

21           1.     For general damages in a just and reasonable amount in excess of TEN THOUSAND and  
22 00/100 (\$10,000.00) DOLLARS;

23           2.     For special damages for medical expenses, health care expenses, and lost income in an  
24 amount in excess of TEN THOUSAND and 00/100 (\$10,000.00) DOLLARS;

25           3.     For reasonable attorney's fees and costs of suit; and

26           4.     For such other and further relief as the Court deems just and proper under these  
27 circumstances.

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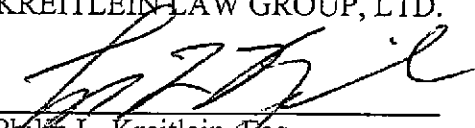
AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 12<sup>th</sup> Day of June, 2009.

KREITLEIN LAW GROUP, LTD.

By:

  
Philip L. Kreitlein, Esq.  
Nevada Bar No. 005394  
470 E. Plumb Lane, Suite 310  
Reno, NV 89502  
(775) 786-2222  
Attorney for Plaintiff:  
*LUKE GILLIAM*



**EXHIBIT 3**

**EXHIBIT 3**

1 Code 4085

FILED

2009 JUN 29 PM 12:38

HOWARD CONYERS

BY DEPUTY OF NEVADA

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

7 \* \* \*

8 LUKE GILLIAM,

9 Plaintiff,

Case No.: CV09 01852

10 vs.

Dept. No.: 3

11 BMC WEST CORPORATION,  
12 a Delaware corporation; JOHN  
DOE, individually; ROES 1-10; and  
13 A - Z CORPORATIONS, inclusive,

TO: BMC WEST CORPORATION

14 Defendants.

15 SUMMONS

16 **TO THE DEFENDANTS: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST**  
17 **YOU WITHOUT BEING HEARD UNLESS YOU RESPOND IN WRITING, WITHIN 20 DAYS.**  
**READ THE INFORMATION BELOW VERY CAREFULLY.**

18 A civil complaint has been filed by the plaintiff against you for the relief as set forth in that document (see complaint). When  
19 service is by publication, add a brief settlement of the object of the action. See Rules of Civil Procedures, Rule 4(b). The  
object of this action is: Negligence

- 20 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons,  
21 exclusive of the day of service.
  - 22 a. File with the Clerk of Court, whose address is shown below, a formal written answer to the complaint,  
along with the appropriate filing fees, in accordance with the rules of the Court; and;
  - 23 b. Serve a copy of your answer upon the attorney or plaintiff who name and address is shown below.
- 24 2. Unless you respond, a default will be entered upon application of the plaintiff and this Court may enter a judgment  
against you for the relief demanded in the complaint.

25 DATED this 18 day of June, 2009.

26 Issued on behalf of plaintiff's attorney

HAROLD W. CONYERS, CLERK OF THE COURT

27 Name: PHILIP L. KREITLEIN, ESQ.  
28 Address: 470 E. Plumb Lane, Ste. 310  
Reno, Nevada 89502  
Phone Number: (775) 786-2222

By: [Signature]  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

**AFFIDAVIT**

1  
2 IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF NEVADA,  
3 WASHOE COUNTY

4 LUKE GILLIAM	Plaintiff,	Case No.: CV0901852
5 vs.		
6 BMC WEST CORPORATION	Defendant	Dept. No.:3

7  
8  
9 WADE MORLAN, being first duly sworn, deposes and says: That affiant is a citizen of  
10 the United States, over 18 years of age, an employee of Reno/Carson Messenger Service, Inc.  
11 #322 and not a party to, nor interested in the within action. Affiant received the documents on  
12 the 17th day of June, 2009.

13 On 19th day of June, 2009, at 4:03PM affiant personally served a copy of the:  
14 SUMMONS; COMPLAINT;

15 On **CYNDY WOODGATE**, pursuant to NRS 14.020 as a person of suitable age and discretion,  
16 of the office of THE PRENTICE- HALL CORPORATION SYSTEM, NEVADA, INC., resident  
17 agent for **BMC WEST CORPORATION, A DELAWARE CORPORATION**, at the address  
18 of:

19 **502 E JOHN STREET,**  
20 **CARSON CITY, NV 89706**

21 Affiant does hereby affirm under penalty of perjury that the assertions of this affidavit are  
22 true.

23  
24  
25  
  
WADE MORLAN

SIGNED and SWORN to before me on  
22nd day of June, 2009, by WADE MORLAN.

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NOTARY PUBLIC  
KREI 278068



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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_  
Summons w/attached Affidavit of Service

\_\_\_\_\_  
(Title of Document)  
filed in case number: CV09-01852

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

For the administration of a public program

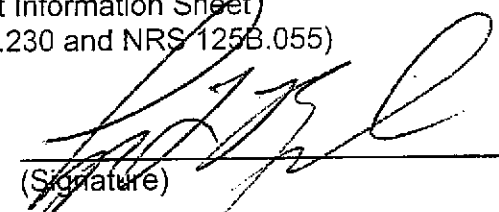
-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 6/26/09

  
\_\_\_\_\_  
(Signature)

Philip L. Kreitlein, Esq.  
\_\_\_\_\_  
(Print Name)

Luke Gilliam  
\_\_\_\_\_  
(Attorney for)

**EXHIBIT 4**

**EXHIBIT 4**

## Philip Kreitlein

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**From:** Maureen Thomas [mthomas@bmhc.com]  
**Sent:** Wednesday, August 12, 2009 8:46 AM  
**To:** Philip Kreitlein  
**Cc:** Susan Reimers  
**Subject:** Luke Gilliam vs BMC West  
**Attachments:** Voluntary Petition - BMHC [Lead Debtor].pdf; Gilliam.pdf

Mr. Kreitlein: Thank you for speaking with me this morning. Attached to this email is a copy of the Ch 11 petition filed by Building Materials Holding Corporation, the parent of BMC West. If you look on page 5 you will see that BMC West filed its own Ch 11 petition [Case No. 09-12075] but that proceeding has been consolidated under the BMHC Case No. 09-12074 (KJC). The website where you can access any other information you may need is <http://www.bmhcrestructuring.com/>

I apologize that our TPA did not advise you about the bankruptcy when the lawsuit was originally served. **Please advise if you will withdraw the entry of default and dismiss the complaint without prejudice, or if we need to engage defense counsel to file a Suggestion of Bankruptcy with the court?**

As I explained, we cannot stipulate to lift the stay where there is a financial impact to our company and in this instance there is a significant SIR on our insurance program. Thank you for your understanding.

The Garden City Group will be mailing you a Proof of Claim form. The bar date is August 31, 2009.

**Maureen E. Thomas, Esq.**  
**[mthomas@bmhc.com](mailto:mthomas@bmhc.com)**  
**248 698-0965 direct**  
**248 505-2962 cell**  
**832 550-4383 efax**

**EXHIBIT 5**

**EXHIBIT 5**

**Philip Kreitlein**

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**From:** Maureen Thomas [mthomas@bmhc.com]  
**Sent:** Thursday, August 27, 2009 3:56 PM  
**To:** Philip Kreitlein  
**Subject:** FW: Luke Gilliam vs BMC West  
**Attachments:** poc.pdf

Here is the proof of claim form you requested.

**Maureen E. Thomas, Esq.**  
**mthomas@bmhc.com**  
**248 698-0965 direct**  
**248 505-2962 cell**  
**832 550-4383 efax**

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**From:** Maureen Thomas  
**Sent:** Wed 8/12/2009 11:51 AM  
**To:** philip@kignevada.com  
**Cc:** Susan Reimers  
**Subject:** Luke Gilliam vs BMC West

Mr. Kreitlein: Thank you for speaking with me this morning. Attached to this email is a copy of the Ch 11 petition filed by Building Materials Holding Corporation, the parent of BMC West. If you look on page 5 you will see that BMC West filed its own Ch 11 petition [Case No. 09-12075] but that proceeding has been consolidated under the BMHC Case No. 09-12074 (KJC). The website where you can access any other information you may need is <http://www.bmhcrestructuring.com/>

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