

AN ISSUE ALERT ON WAGE FRAUD IN THE
RESIDENTIAL CONSTRUCTION INDUSTRY

The Newest Victims of the Housing Market Crisis: The Men and Women Who Build America's Homes

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LiUNA!

Introduction

Everyday the American housing crisis brings a new headline underscoring the weaknesses and structural faults of a market that was unsustainable and which victimized millions of homeowners and their families, sending the U.S. economy tumbling toward a meltdown.

As Freddie Mac, Fannie Mae, Lehman Brothers and other major corporations fail from a seemingly bottomless disaster, the investment savings and home values of millions of Americans have been slashed. Early estimates of as many as 2 million Americans losing their homes were optimistic, as it now appears 3 million homeowners are threatened with foreclosure. In August 2008 alone, 91,000 families faced losing their homes, a record high.

As detailed in our previous reports, *A Multi-Billion Dollar Bailout for Those at Fault: Corporate Homebuilders, the Housing Crash and the Mortgage Crisis* and *The Ticking Time Bomb: Adjustable Rate Mortgages and Depreciating Home Values in New Subdivisions*,¹ significant blame for the housing market crisis lies with the largest corporate homebuilders in the U.S., who perpetuated an unsustainable market built on an illusory and sometimes fraudulent foundation.

This report examines another victim of corporate homebuilders: the workers who build America's homes. Residential construction workers are facing decimation of their livelihoods. It is also coming to light that as the laborers who built millions of houses during the housing boom, they were illegally forced to subsidize the top corporate homebuilders' profits.

Throughout this report, workers from SelectBuild, the largest residential construction contractor in the U.S., detail an insidious problem on residential construction sites which continues today: systematic abuse of federal and state wage and hour laws. SelectBuild workers who have come forward, filing a federal wage and hour class action suit independent of LIUNA, detail underpayment of five to 15 hours per week in wages. Across the residential construction industry, if underpayment was one hour per week—only a fraction of what the SelectBuild workers report—the men and women who built America's homes were underpaid \$750 million a year. In fact,



"The pay was always unfair."

Ignacio Nuñez worked for SelectBuild for 5 years. "The way we were treated and the pay was always unfair. They pressured us to finish the job but they never cared for their workers. My daily work schedule began at 7 a.m. and ended at 4:30 p.m. I worked nine hours a day. There were other days I worked 10 hours and I never received overtime pay. I remember working on Saturdays for 5 hours and the company only paying me for 2-3 hours. This is a practice SelectBuild employs with its workers. I believe it is unfair and a violation of the law."



“Hours on the check did not match...”

ALEJANDRO RIVAS, a 28-year-old proud father of three, has worked as a carpenter for SelectBuild in Las Vegas for five years. SelectBuild has sent Alejandro to work on homes for most of the nation's largest homebuilders including KB Home, Richmond American, and Lennar. Alejandro starts his work day at 7 a.m. and ends at 6 p.m. Although Alejandro generally works a total of 50-60 hours a week, he is often paid for only 40 hours. Alejandro earns an average of \$560 a week and does not receive medical benefits. Recently Alejandro decided to ask his employer to follow the law. “I refused to sign my pay slips because I did not agree with what they [SelectBuild] wanted to pay me. The number of hours on the check did not match the total number of overtime hours I worked. I remember on one occasion complaining to my foreman because my hours were paid incorrectly. One week I worked 24 hours and received a \$365 paycheck, and another week I worked the same amount of hours and only received a \$135 payment. I contacted my superintendent, and told him it was not fair. Then my supervisor warned me that if I kept speaking up I was going to be fired.”

that would equate to 2.2 percent of profits for the top homebuilders during the housing boom having been built on wage fraud.

Workers throughout residential construction have reported abuse similar to those at SelectBuild, which averaged 10,000 construction workers during the residential boom years.

The workers who built America's homes are the newest victims to come to light in the housing market crisis.

Who is SelectBuild?

Any home built in recent years is likely built in part by or with materials from Building Materials Holding Corporation (BMHC). Operating through its primary division, SelectBuild provides framing, plumbing, concrete, and other construction services to high-production single-family corporate homebuilders. Its second division, BMC West, distributes building materials and manufactures millwork, trusses and other components. BMHC is a Fortune 1000 company with more than \$2.3 billion in revenue in 2007, down from a high of \$3.2 billion in 2006. The SelectBuild division employed about 13,000 employees and earned \$1.1 billion in revenues in 2007, making it the largest residential contractor in the United States.²

Operating in 14 different major building markets, SelectBuild is concentrated in Arizona, California, and Las Vegas where it does more than 80 percent of its work and has a commanding market share in each city.³ SelectBuild does work for 19 of the 25 largest corporate homebuilders in the country, including Richmond American, Shea Homes, KB Home and Lennar.⁴

SelectBuild workers are regularly cheated of their wages. These practices by SelectBuild led a number of its workers to reach out to the Laborers International Union of North America (LIUNA). With the workers' assistance, LIUNA began conducting a broad-based investigation into SelectBuild's compliance with state and federal wage and hour laws focusing on California, Nevada and Arizona—states which are among those where unsustainable housing market practices were most prevalent and where SelectBuild's business is concentrated.

The investigation to date has disclosed pervasive wage and hour violations throughout the three-state area: failure to pay overtime, falsification of payroll records and the denial of rest and meal breaks, among other violations. Many SelectBuild employees interviewed report being required to sign blank timecards understating their hours, or to sign blank timecards that are filled in later by a foreman or superintendant. It also appears that foremen and superintendants do not record actual work time in order to ensure that reported hours do not exceed budgeted hours.

SelectBuild's potential liability, including statutory penalties, liquidated damages and interest are substantial. The investigation



"We are the ghosts that build the homes."

EDUARDO ACEVEDO NAVA, 35, is a proud husband and father of a 4 year old girl and a new baby set to arrive in October. Acevedo worked at SelectBuild for 9 months. "SelectBuild always paid piece rate and not by the hour. If I worked 60 hours a week, the pay slips stated I only worked 40 hours. I started my work day at 6 a.m. and ended at 6 p.m. and I also worked on Saturdays without pay. The amount of money reflected on the paycheck was never correct and I signed the pay slip because I needed to pay my bills and put food on the table. We don't exist for this company. We are the ghosts that build the homes."

continues at SelectBuild and precise figures have not yet been determined.

What violations are most prevalent?

SelectBuild's employees report multiple violations of federal and state wage and hour laws. Among the most common violations reported by SelectBuild workers are:

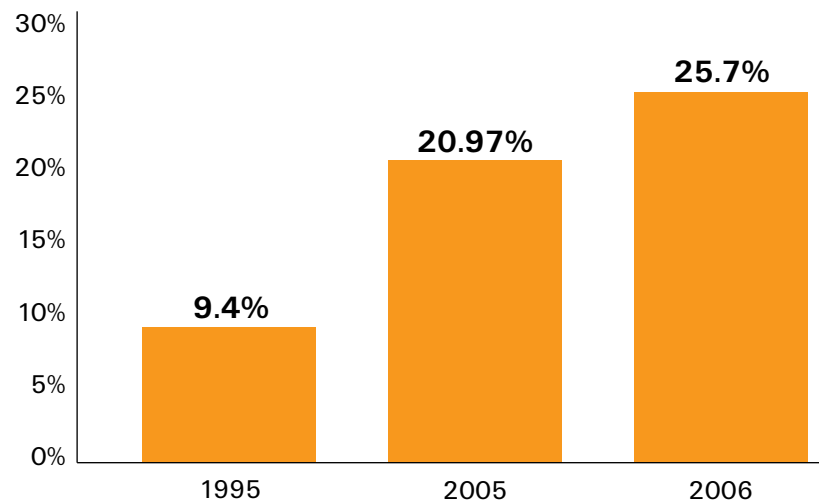
- Full or partial non-payment of wages
- Failure to pay overtime at all, or to pay the amount mandated by law
- Requiring "off-the-clock" work (e.g., requiring workers to begin work before their recorded start time for the day)
- Uncompensated travel time between jobsites or while waiting for supplies

Many employees report their uncompensated time was between 10-20 hours weekly, the equivalent of a part-time job. Just as millions of homeowners now facing foreclosure are seeing the American Dream destroyed, hundreds of thousands of workers who built their homes have been undermined as well.

The "Wal-Martization" of Homebuilding

Why did an industry flush with money facilitate the widespread erosion of working conditions to the point of leaving workers unpaid? The answer may lie in the changing nature of homebuilding itself. In 1971 it was estimated that there were 100,000 firms building homes and few of them built more than two or three houses a year.⁵ Today, a few corporate giants are driving the industrialization of residential construction. During the housing boom of the past few

Market Share of Top 10 Homebuilders



years, the combined revenues of the top 10 homebuilders soared from \$21.6 billion in 1998, to \$92.9 billion in 2005. That revenue was accompanied by growing power in the market. The top 10 builders increased their share of the overall new-home market from 9.4 percent in 1998 to 20.97 percent in 2005, and to 25.70 percent in 2006. The market downturn temporarily stalled that trend only slightly in 2007.⁶

The structure of the residential construction industry directly and indirectly impacts labor conditions at subcontractors. The largest corporate homebuilders are builders in name only, typically acting as developers who subcontract specific services such as framing, roofing, foundation, and the installation of all home components. Corporate homebuilders generally open up a competitive fixed-bid process for each of these services. But in order to maximize profits, corporate homebuilders typically demand ever-lower bids—a “Wal-Martization” of the residential construction industry. Often after an initial round, they return to bidders to demand further price concessions until it becomes nearly impossible for subcontractors to complete work without cutting wages, benefits, safety and other core labor-related areas.

Everyone along the elaborate residential construction chain is subject to the dictates of corporate homebuilders. As the industry has struggled, builders have become more aggressive with service providers. This relationship has revealed itself in recent events as homebuilders have engaged in what *Big Builder Magazine* calls “a suicide squeeze,” playing “hardball in their new push for concessions.”⁷

Even \$12-billion-dollar residential parts supplier Masco is not immune, stating, “There are certain customers who have been more aggressive about their demands and their threats...there are some who behave as partners and some who behave as bullies.”⁸

With materials costs increasing, builders have sought to squeeze other costs from the construction contractors who supply labor. For instance, Lennar Homes asked for price reductions in all of its markets, telling contractors to cut their prices by as much as 20 percent and resubmit invoices for work for which they had not yet been paid. The letters stated Lennar could cancel current contracts, halt scheduled work starts or send jobs out to be rebid and subcontractors had a choice of either cutting their invoice prices or being shut out of bidding on Lennar projects. In some cases the work had already commenced or been completed.⁹ If a contractor did not respond, Lennar “will construe this as your decision not to participate in reducing your invoices. In doing so, this letter will serve as notice of cancellation for future contract(s) and bidding opportunities.”¹⁰



“They used to play with the numbers.”

JUAN PAREDES, 30, worked more than 9 years for SelectBuild. “When I first started working with them [SelectBuild predecessor KBI] we used to get paid overtime after 40 hours. When SelectBuild took over we were told the payroll process was going to change and that we could either take or leave it. Many weeks I worked 16-20 overtime hours and did not get paid for the overtime. They used to play with the numbers. Everyone was afraid to speak up. I remember in one instance a co-worker did speak up at a meeting and the following day he was fired. To this day they [SelectBuild] are still breaking the law by not paying people overtime.”



“I worked five days a week and they only paid me for three.”

PABLO NUÑEZ, 37, worked more than three years for SelectBuild. *“When I joined SelectBuild, I worked as a carpenter and began my work day at 7 a.m. and ended at 5:30 p.m. On Fridays we used to leave early around 2 p.m. And on Saturdays we also had to work so we worked more than 50 hours a week. We never got paid overtime. They [SelectBuild] altered the hours and pay rate information on the pay slips. If I worked 10 overtime hours, they will only put five hours. There were times I worked five days a week and they only paid me for three days. And when I worked several overtime hours, the check reflected a different hourly rate. I want justice, and everything to be done correctly because we are struggling and SelectBuild continues taking advantage of us.”*

“It’s almost like asking your employees after they’ve done the work... to take a pay cut...It’s kind of an unjust tactic to ask for retroactive concessions,” the California Professional Association of Specialty Contractors, Orange County/Inland Empire alleges, adding that Lennar’s tactics amount to “extortion” and that “this demand cuts deeply into the trades already slim profits and threatens local jobs and small businesses.”

According to one construction subcontractor, Lennar’s request for a price cut “[was] for [ongoing] work that we had already been lowest bidder on [and it also came on the heels] of Lennar already [having] demanded a 5-percent decrease from the previous phase, so this is the second time they’ve come to the well.” Ultimately, that “contractor gave Lennar what it wanted.” In fact most have had to submit to the squeeze, according to Lennar. They stated that, “the overwhelming majority of our subcontractors have agreed to reduce prices for future work. Many have even reduced prices for current or already completed work.”

Many other builders unilaterally used similar pressure. K. Hovnanian applied a 10-percent discount to their materials prices without even first securing a nod from suppliers to do so. “Beginning July 1, [K. Hovnanian division] Cambridge will discount all new purchase orders by 10 percent. When we see an upward trend, the discount will be removed from purchase orders going forward. The amount of the discount restored will be proportionate to the volume of sales recognized during this six-month period.”

Beazer’s Indianapolis division stated, “If you are unable to reduce your pricing by 5 percent, we will be seeking alternative bids from new subcontractors or assigning your work to other vendors who have partnered with us to reduce costs...Failure to partner with us will result in the loss of some or your entire work load with Beazer Homes.” TOUSA’s Texas-based Trophy Homes, asked for 10 percent off and then offered its supply management team to “identify cost reduction opportunities to help mitigate the adverse effects this price concession may have on your business.”

Problem Cuts Across Industry

The illegal pay practices in residential construction underscore failings in an industry that has impacted the entire U.S. economy.

Despite the current crisis, residential construction will continue to play a major role in our economy. It remains a core U.S. industry and one of the largest employers in the U.S. Its more than 1-million person workforce is expected to grow on average by 10 percent through the year 2016.

A conservative estimate of the wage and hour problem nationally is \$750 million a year, based on 1 million employees working one overtime hour per week at a \$10 per hour. This estimate does not include 2.3 million additional residential construction workers employed by specialty contractors, such as those who do roofing, site preparation, plumbing, flooring and masonry.

In 2006, the top 10 homebuilders built 25 percent of all homes built in the U.S. Using the conservative estimate of \$750 million in unpaid wages yearly, the top 10 homebuilders could be responsible for one-quarter of this total—\$187.5 million, or 2.2 percent of the total 2006 profits of these builders.

A sampling of wage and hour cases settled with the U.S. Department of Labor skims the surface of the problem.

Settlement Year	Company	Settlement	No. Workers	Avg/Worker
2007	Westcor	\$554,580	932	\$595
2007	DE Painting	\$111,253	142	\$783
2006	Pacific Stucco	\$435,000	675	\$645
2005	Executive Plumbing	\$900,000	1035	\$869
2005	Package by Package, Inc	\$107,300	35	\$3,065
2008	Woodman Insulation	\$187,500	309	\$606
2008	Gannaway Builders	\$127,106	33	\$3,851
2007	United Drywall Inc	\$102,598	18	\$5,699
2007	Texas Quality Painting Inc	\$250,000	192	\$1,302
2007	Desert Plastering	\$1,147,921	1060	\$1,082

Source: U.S. Department of Labor Wage and Hour Division Press Releases, 2005-2008, <http://www.dol.gov/esa/whd/>

Conclusion

The workers who build America's homes are the newest victims of the housing crisis.

Just as it becomes clearer daily that our economy cannot withstand a major industry built on unsustainable practices, our country should not accept an industry with a key operational strategy built on fraud.

While SelectBuild and other subcontractors are directly responsible for paying workers, corporate homebuilders such as KB Home, Lennar, Richmond American and Shea Homes are ultimately responsible for practices in the homebuilding industry and must be held accountable for the practices of those who build their houses.

The abuse of workers by contractors is a direct reflection on the homebuilder and they must not turn a blind eye to these illegal practices. Homebuilders have a duty to make sure the contractors they hire are complying with federal and state wage and hour laws, federal labor law, federal Occupational Health and Safety Standards, and other laws that protect workers—not just because it is the law and a fundamental American belief, but because the liability incurred by employers is potentially another tremor shaking the stability of the entire market.

Endnotes

¹<http://www.liuna.org/tabid/63/default.aspx>

²Building Materials Holding Corporation, 2007 Annual Report and 10-K, March 11, 2008.

³Based on information from various quarterly analyst calls including 2005 Q3 Analyst Call, October 25, 2005.

⁴Building Materials Holding Corporation, 2007 Annual Report and 10-K, March 11, 2008.

⁵More Than 100,000 Firms Estimated to Be in Residential Construction," *Washington Post*, May 23, 1970, D22

⁶"Builder 100 Over The Years," <http://www.builderonline.com/housing-data/builder-100-over-the-years.aspx?page=4> ; <http://www.builderonline.com/business/painful-year.aspx>

⁷<http://www.bigbuilderonline.com/industry-news-print.asp?sectionID=385&articleID=369160>

⁸<http://www.bigbuilderonline.com/industry-news-print.asp?sectionID=0&articleID=369160>

⁹Builder tells subs to cut prices mid-contract, Mar 1, 2007, http://contractormag.com/news/cm_newsarticle_1102/

¹⁰http://contractormag.com/news/cm_newsarticle_1102/

¹¹http://contractormag.com/news/cm_newsarticle_1102/

¹²Lennar seeks cuts from subcontractors, January 25, 2007, *The Orange County Register*, http://www.ocregister.com/ocregister/money/housing/article_1554350.php

¹³Builder tells subs to cut prices mid-contract, Mar 1, 2007, http://contractormag.com/news/cm_newsarticle_1102/

¹⁴Builder Bullies, Monday, 9 Apr 2007, <http://www.cnn.com/id/18023112>

¹⁵<http://www.bigbuilderonline.com/industry-news-print.asp?sectionID=385&articleID=369160>

¹⁶<http://www.bigbuilderonline.com/industry-news.asp?sectionID=385&articleID=369160>

¹⁷Bureau of Labor Statistics Career Guide to Industries: Construction. <http://www.bls.gov/oco/cg/cgs003.htm>. Accessed September 15, 2008.

¹⁸Math: 1,000,000 workers x 1 hour per week x 50 weeks per year x \$15 an hour = \$750,000,000. Bureau of Labor Statistics Quarterly Census of Employment and Wages 2006. <http://data.bls.gov/cgi-bin/dsrv>. Data extracted on September 18, 2008. (owner = private; type of data = all employees; size = all establishment sizes)

¹⁹2006 SEC 10K filings for D. R. Horton, Lennar Corp., Pulte Homes, Centex Corp., KB Home, Hovnanian Enterprises, Beazer Homes USA, The Ryland Group, NVR, and M.D.C. Holdings. 2006 Pre-Tax Earnings.

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