



FILED & JUDGMENT ENTERED
Steven T. Salata

October 30 2018

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

Laura T Beyer

Laura T. Beyer
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**ORDER (I) ESTABLISHING BAR DATES AND
RELATED PROCEDURES FOR FILING PROOFS OF CLAIM
OTHER THAN WITH RESPECT TO ASBESTOS PERSONAL INJURY
CLAIMS AND (II) APPROVING FORM AND MANNER OF NOTICE THEREOF**

This matter coming before the Court on the *Motion of the Debtor for an Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than With Respect to Asbestos Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 615] (the "Motion");² the official committee of asbestos claimants in the above-captioned case (the "Asbestos Committee") having filed the *Limited Objection by*

¹ The last four digits of the Debtor's taxpayer identification number are 5815. The Debtor's address is 100 Peachtree Street, N.W., Atlanta, Georgia 30303.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

the Official Committee of Asbestos Claimants to Debtor's Motion for an Order Establishing Bar Dates and Related Procedures for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof [Docket No. 622] (the "Limited Objection"); the Debtor having filed the *Reply in Support of Motion of the Debtor for an Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than With Respect to Asbestos Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 624] (the "Reply"); the Court having reviewed the Motion, the Limited Objection and the Reply and having heard the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iv) notice of the Motion and the Hearing was sufficient under the circumstances and no further notice is necessary and (v) the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and after due deliberation, the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Limited Objection is RESOLVED on the terms set forth herein.
3. As used herein, (a) the term "claim" has the meaning given to it in section 101(5) of the Bankruptcy Code, (b) the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code, (c) the term "governmental unit" has the meaning given to it in section 101(27) of the Bankruptcy Code and (d) the term "affiliate" has the meaning given to it in section 101(2) of the Bankruptcy Code.

4. As used herein, the term "Asbestos Claim" means any claim (as defined in section 101(5) of the Bankruptcy Code) for costs or damages, including with respect to bodily injury, death, sickness, disease, emotional distress, fear of cancer, medical monitoring or other personal injuries (whether physical, emotional or otherwise), for which the Debtor is alleged to be liable, directly or indirectly, arising out of or relating to the presence of or exposure to asbestos or asbestos-containing products, including, without limitation: (a) any products previously manufactured, sold and/or distributed by any predecessors to the Debtor; or (b) any materials present at any premises owned, leased, occupied or operated by any entity for whose products, acts, omissions, business or operations the Debtor has, or is alleged to have, liability. Asbestos Claims include all such claims, whether: (a) in tort, contract, warranty, restitution, conspiracy, contribution, indemnity, guarantee, subrogation or any other theory of law, equity or admiralty; (b) seeking compensatory, special, economic, non-economic, punitive, exemplary, administrative or any other costs or damages; or (c) seeking any legal, equitable or other relief of any kind whatsoever. Asbestos Claims also include any such claims that have been resolved or are subject to resolution pursuant to any agreement, or any such claims that are based on a judgment or verdict. Asbestos Claims do not include (a) any claim of an insurer with respect to amounts allegedly due under any insurance policies, including policies that might have provided coverage for Asbestos Claims, or (b) any claim by any present or former employee of a predecessor or affiliate (as defined in section 101(2) of the Bankruptcy Code) of the Debtor for benefits under a policy of workers' compensation insurance or for benefits under any state or federal workers' compensation statute or other statute providing compensation to an employee from an employer.

5. Except as otherwise provided in this Order, all entities (including, without limitation, individuals, partnerships, corporations, trusts and governmental units) that wish to assert a claim against the Debtor that arose or is deemed to have arisen prior to the Petition Date, including claims arising under section 503(b)(9) of the Bankruptcy Code, but *excluding* any Asbestos Claims, must file a proof of claim in accordance with the procedures described herein so that such proof of claim is actually *received* by the Debtor's claims and noticing agent Donlin, Recano & Company, Inc. ("Donlin Recano") on or before 5:00 p.m., prevailing Eastern Time, on the date selected by the Debtor (the "General Bar Date"), which shall be a business day that is at least 70 calendar days after the entry on the docket of the Chapter 11 Case of an order denying all relief in the Motion to Dismiss (the "Dismissal Denial Order").³ The General Bar Date shall be identified in the Bar Date Notice and the Publication Notice.

6. The forms of the Bar Date Notice, the Proof of Claim Form and the Publication Notice attached to the Motion as Exhibit A, Exhibit B and Exhibit C, respectively, as updated to reflect the General Bar Date, and the manner of providing notice of the bar dates established by this Order (collectively, the "Bar Dates"), are approved in all respects pursuant to Bankruptcy Rules 2002(a)(7) and 2002(l). The form and manner of notice of the Bar Dates approved herein (a) are reasonable and adequate and (b) fulfill the notice and other due process requirements of the Bankruptcy Code, the Bankruptcy Rules and applicable law. As such, the Debtor is authorized to serve the Bar Date Notice Package and publish the

³ As used herein, "Motion to Dismiss" means the *Motion of the Official Committee of Asbestos Claimants to (I) Dismiss the Debtor's Chapter 11 Case for Cause as a Bad Faith Filing Pursuant to 11 U.S.C. § 1112(b), or Alternatively, (II) Transfer Venue in the Interest of Justice and for the Convenience of the Parties Pursuant to 28 U.S.C. § 1412* [Docket No. 495], filed by the Asbestos Committee on August 15, 2018. The relief sought in the Motion to Dismiss is either the dismissal of the Chapter 11 Case or, alternatively, the transfer of the Chapter 11 Case to another venue.

Publication Notice, each as updated to reflect the General Bar Date, in the manner described herein.

7. As soon as practicable after entry of the Dismissal Denial Order, but in any event no later than five business days thereafter, the Debtor, through Donlin Recano, shall provide actual notice of the Bar Dates by mailing the Bar Date Notice and the Proof of Claim Form (together, the "Bar Date Notice Package"), as updated to reflect the General Bar Date, by first class United States mail, postage prepaid to: (a) all holders of claims listed on the Schedules, excluding holders of Asbestos Claims; (b) all counterparties to executory contracts and unexpired leases listed in the Schedules; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; (e) the taxing and other regulatory entities for the jurisdictions in which the Debtor owns property; (f) the Office of the United States Attorney for the Western District of North Carolina; (g) all entities that have requested notices pursuant to Bankruptcy Rule 2002 in the Chapter 11 Case as of the date of entry of this Bar Date Order; (h) the Debtor's equity holder; (i) all other entities listed on the Debtor's matrix of creditors, except holders of Asbestos Claims; and (j) counsel to any of the foregoing, if known. The Debtor, through Donlin Recano, also will mail the Bar Date Notice Package to the Bankruptcy Administrator, the members of the Asbestos Committee and the Future Claimants' Representative, and the respective counsel to the foregoing.

8. In the event that: (a) one or more Bar Date Notice Packages are returned by the post office, necessitating a mailing to a new address; (b) certain parties acting on behalf of parties in interest decline to forward the Bar Date Notice Packages to such parties in interest and instead return their names and addresses to Donlin Recano for direct mailing; or (c) additional potential holders of General Claims become known to the Debtor, the Debtor may make

supplemental mailings of the Bar Date Notice Package up to and including the date that is 23 days in advance of the applicable Bar Date, with any such supplemental mailings being deemed timely.

9. As part of the Bar Date Package, the Debtor shall mail a Proof of Claim Form to the parties receiving the Bar Date Notice. For holders of potential General Claims listed in the Schedules, the Proof of Claim Form mailed to such entities shall state, along with the claimant's name, whether the Debtor has scheduled the creditor's General Claim in the Schedules and, if so, whether the claimant's General Claim is listed as: (a) disputed, contingent or unliquidated; and (b) secured, unsecured or priority. If a General Claim is listed in the Schedules, the dollar amount of the claim (as listed in the Schedules) also will be identified on the Proof of Claim Form. In the event of any conflict between the claim information included in the Proof of Claim Form and the information provided in the Schedules, the Schedules shall control.

10. Except as otherwise provided herein, the following entities must file a proof of claim in the Chapter 11 Case on or before the General Bar Date:

- (a) any entity (i) whose prepetition General Claim against the Debtor is not listed in the Debtor's Schedules or is listed as disputed, contingent or unliquidated and (ii) that desires to participate in the Chapter 11 Case or share in any distribution in the Chapter 11 Case; and
- (b) any entity that (i) believes that its prepetition General Claim is improperly classified in the Schedules or is listed in an incorrect amount and (ii) desires to have its prepetition General Claim allowed in a classification or amount different from the classification or amount identified in the Schedules.

11. The following entities shall not be required to file proofs of claim in the Chapter 11 Case on or before the General Bar Date:

- (a) any entity holding or asserting an Asbestos Claim, as defined herein;
- (b) any entity that already has properly filed a proof of claim against the Debtor in accordance with (i) the procedures described herein or (ii) Rule 3001-1 of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina;
- (c) any entity (i) whose General Claim against the Debtor is not listed as disputed, contingent or unliquidated in the Schedules and (ii) that agrees with the nature, classification and amount of its General Claim as identified in the Schedules;
- (d) any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court;
- (e) any entity holding or asserting a claim allowable under Bankruptcy Code sections 503(b) and 507(a)(2) as an administrative expense of the Chapter 11 Case (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code); and
- (f) any of the Debtor's non-debtor affiliates who may have a claim against the Debtor.

12. All administrative claims under section 503(b) of the Bankruptcy Code, *other than* claims under section 503(b)(9) of the Bankruptcy Code, must be made by separate requests for payment in accordance with section 503(a) of the Bankruptcy Code and shall not be deemed proper if made by proof of claim. Notwithstanding the foregoing, the filing of a proof of claim form as provided herein shall be deemed to satisfy the procedural requirements for the assertion of any administrative priority claim under section 503(b)(9) of the Bankruptcy Code.

13. Any entity asserting claims arising from or relating to the Debtor's rejection of an executory contract or unexpired lease pursuant to an order of this Court that is entered prior to confirmation of a plan of reorganization in the Chapter 11 Case is required to file a proof of claim, as provided herein, so that it is received by Donlin Recano on or before the later of: (a) the General Bar Date; and (b) 5:00 p.m., prevailing Eastern Time, on the date that is 30 days after the effective date of rejection of such executory contract or unexpired lease (the "Rejection Bar Date").

14. The Debtor retains the right to (a) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to nature, amount, priority, liability, classification or otherwise; (b) subsequently designate any claim as disputed, contingent or unliquidated; and (c) otherwise amend, modify or supplement the Schedules. If the Debtor amends or modifies the Schedules to reduce the undisputed, noncontingent and liquidated amount or to change the nature or classification of any General Claim against the Debtor, the affected claimant may file a timely proof of claim or amend any previously filed proof of claim in respect of the amended scheduled claim on or before the later of (a) the General Bar Date or (b) 30 days after the date that notice of the applicable amendment to the Schedules is served on the affected claimant (the "Amended Schedule Bar Date"). By contrast, if (a) the amendment to the Schedules improves the amount or treatment of a previously scheduled or filed General Claim and (b) the affected claimant previously was served with a notice of the Bar Dates, the affected claimant may not file additional claims or amend a related previously filed proof of claim by the Amended Schedule Bar Date. If the Debtor amends or modifies its Schedules with respect to any claim that the Debtor states has been satisfied, such paid creditor shall not be required to file a proof of claim with respect to the satisfied claim. Notwithstanding

the foregoing, nothing contained herein precludes the Debtor from objecting to any claim, whether scheduled or filed, on any grounds.

15. Entities holding a direct or indirect ownership interest in the Debtor need not file a proof of interest on or before the General Bar Date.

16. Unless the Court orders otherwise, pursuant to sections 105(a) and 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim in the Chapter 11 Case pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Bar Date Order with respect to a particular claim against the Debtor, but that fails to do so by the applicable Bar Date, shall be forever barred, estopped and enjoined from:

(a) asserting any such claim against the Debtor or its estate or property that (i) is in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature or classification than any such claim identified in the Schedules on behalf of such entity (any such claim under this subsection (a), an "Unscheduled Claim"); or (b) voting on, or receiving distributions under, any chapter 11 plan in the Chapter 11 Case in respect of an Unscheduled Claim.

17. For any proof of claim to be validly and properly filed, a claimant must deliver a completed, signed original of the Proof of Claim Form (or an Official Form No. 410), together with any accompanying documentation required by Bankruptcy Rules 3001(c) and 3001(d), to Donlin Recano at (a) Donlin, Recano & Company, Inc., Re: Bestwall LLC, 6201 15th Avenue, Brooklyn, New York 11219 if by hand delivery or courier service or (b) Donlin, Recano & Company, Inc., Re: Bestwall LLC, P.O. Box 199043 Blythebourne Station, Brooklyn, New York 11219 if by mail, so as to be received no later than 5:00 p.m., prevailing Eastern Time, on the applicable Bar Date. Alternatively, entities may file proofs of

claim and the required accompanying documentation electronically using the interface available on Donlin Recano's website at <https://www.donlinrecano.com/Clients/bw/FileClaim> by 5:00 p.m., prevailing Eastern Time, on the applicable Bar Date. ***Proofs of claim submitted by facsimile or e-mail shall not be accepted.*** Proofs of claim shall be deemed filed when actually received by Donlin Recano.

18. All filed proofs of claim must: (a) be written in English; (b) be denominated in lawful currency of the United States, based upon the exchange rate in effect as of 7:00 a.m. (prevailing Eastern Time) on the Petition Date; (c) conform substantially with the Proof of Claim Form; (d) set forth with specificity the legal and factual bases for the alleged claim; (e) include supporting documentation (or, if such documentation is voluminous, a summary of such documentation), including a copy of any written document that forms the basis of the General Claim or evidences that an alleged security interest has been perfected, or an explanation as to why such documentation is not available; and (f) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. Any proof of claim asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code also must: (a) include the value of the goods delivered to and received by the Debtor in the 20 days prior to the Petition Date; and (b) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted.

19. If a creditor wishes to receive acknowledgement of Donlin Recano's receipt of a proof of claim, the creditor also must submit to Donlin Recano by the applicable Bar Date and concurrently with its original proof of claim (a) a copy of the original proof of claim and (b) a self-addressed, stamped return envelope. Claimants who submit proofs of claim

through Donlin Recano's website interface will receive an email confirmation of such submission.

20. Pursuant to Bankruptcy Rule 2002(l), the Debtor shall cause notice of the Bar Dates in substantially the form of the Publication Notice, as updated to reflect the General Bar Date, to be published once within ten business days of the entry of the Dismissal Denial Order, or as soon as practicable thereafter, in each of the Publications. Publication of such notice in the Publications in accordance herewith is hereby approved and shall be deemed good, adequate and sufficient publication notice of the Bar Dates.

21. If all relief requested in the Motion to Dismiss is not denied in full, meaning that either the Chapter 11 Case is dismissed or transferred to a new venue, then the Debtor will neither serve nor publish any notice of the Bar Dates; *provided, however*, that in the case of a change of venue, the Debtor may establish Bar Dates with the permission of the court to which the Chapter 11 Case is transferred.

22. The Debtor and Donlin Recano are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order.

23. The entry of this Order is without prejudice to the right of the Debtor to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Dates established herein (including holders of Asbestos Claims) must file proofs of claim or interest.

24. The entry of this Order also is without prejudice to any arguments of the ACC in connection with its prosecution of the Motion to Dismiss. The entry of this Order will not be cited by the Debtor or any other party in any oral or written argument opposing

the Motion to Dismiss. The entry of this Order will not be considered by the Court in connection with its ruling on the relief sought in the Motion to Dismiss.

25. The Court shall retain jurisdiction over all matters arising out of or related to the implementation, interpretation or enforcement of this Order.

This Order has been signed electronically.
The Judge's signature and Court's seal
appear at the top of the Order.

United States Bankruptcy Court