

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795

**EX PARTE MOTION OF THE DEBTOR FOR AN ORDER SUSPENDING
ENTRY AND SERVICE OF STANDARD NOTICE OF COMMENCEMENT**

Bestwall LLC, as debtor and debtor in possession (the "Debtor"), respectfully represents as follows:

Background

1. On the date hereof (the "Petition Date"), the Debtor commenced this reorganization case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. The Debtor is a North Carolina limited liability company. It owns real property in Mt. Holly, North Carolina and is the parent company of certain non-debtor subsidiaries that manufacture and distribute industrial plaster products. As of the Petition Date, the Debtor was a defendant in tens of thousands of asbestos-related lawsuits pending in the courts of nearly every state and certain territories of the United States.

3. The Debtor is authorized to continue to manage its property and operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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.

4. A comprehensive description of the Debtor, its history, its assets and liabilities and the events leading to the commencement of this chapter 11 case can be found in the declaration of Tyler L. Woolson (the "First Day Declaration"), which was filed contemporaneously herewith and is incorporated herein by reference. In addition to the First Day Declaration, the Debtor has filed an Informational Brief to provide additional information about its asbestos litigation, related costs and plans to address these matters in this chapter 11 case (the "Chapter 11 Case").

Jurisdiction

5. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. The Debtor seeks the entry of an order, on an *ex parte* basis, substantially in the form attached hereto as Exhibit A, suspending the entry and service of the standard Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors automatically entered in chapter 11 cases filed in this jurisdiction (the "Standard Notice"), pursuant to sections 105(a) and 342 of the Bankruptcy Code, Rules 2002(m) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9013-1(f) of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina (the "Local Bankruptcy Rules"). The Debtor seeks this relief in connection with, and in support of, its pending requests for (a) approval of an alternative form and manner of notice of commencement of the Chapter 11 Case and (b) appointment of Donlin, Recano & Company, Inc. ("DRC") as

claims and noticing agent in this case, which were filed contemporaneously herewith and for which the Debtor is seeking an expedited hearing.

Argument

7. Section 105(a) of the Bankruptcy Code provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Pursuant to Bankruptcy Rule 2002(m), the "court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." Fed. R. Bankr. P. 2002(m).

8. Concurrently herewith, the Debtor has filed the *Motion of the Debtor for an Order: (I) Authorizing It to File a List of the Top Law Firms With Asbestos Cases Against the Debtor in Lieu of the List of 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Asbestos Claimants; and (III) Approving the Form and Manner of Notice of Commencement of This Case* (the "Notice Procedures Motion").

9. As set forth in the Notice Procedures Motion, the Debtor has also filed contemporaneously herewith the *Application of the Debtor for an Order Authorizing the Retention and Employment of Donlin, Recano and Company, Inc. as Claims, Noticing and Ballot Agent* (the "Claims Agent Motion"), seeking authority to employ DRC as, among other things, claims and noticing agent in the Chapter 11 Case. One of DRC's responsibilities as claims and noticing agent, if appointed and with the Court's consent, will be to serve a notice (the "Case Commencement Notice") of the commencement of the Chapter 11 Case and the initial meeting of creditors under section 341(a) of the Bankruptcy Code (the "Section 341 Meeting"), substantially in the form attached as Exhibit A to the Notice Procedures Motion along with such

changes as are agreed upon by the Bankruptcy Administrator, in lieu of the Standard Notice. If the Notice Procedures Motion is granted, there will be no need for service of the Standard Notice.

10. Suspending service of the Standard Notice at least until the Court has had the opportunity to consider the relief requested in the Notice Procedures Motion and the Claims Agent Motion also will help avoid confusion that may result from the docketing and service of multiple case commencement notices. Without such *ex parte* relief as requested herein, however, the Standard Notice may be docketed and served prior to a hearing on the Notice Procedures Motion.

11. For these reasons, the Debtor respectfully requests that an order be entered on an *ex parte* basis suspending entry and service of the Standard Notice pending an order of the Court with respect to the Notice Procedures Motion and the Claims Agent Motion, pursuant to which, if approved, the Debtor, through DRC, will serve the Case Commencement Notice in the form and manner set forth therein. Similar relief has been granted in the District. See In re Oldco, LLC, No. 17-30140 (Bankr. W.D.N.Y. Jan. 30, 2017) (suspending entry of the standard notice of commencement and section 341 meeting pending a hearing to consider service of a custom notice); In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 3, 2016) (same).

Notice

12. Pursuant to Local Bankruptcy Rule 9013-1(f), the Debtor seeks approval of this Motion on an *ex parte* basis. Nevertheless, the Debtor has served a copy of this Motion on: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) the top law firms representing asbestos claimants against the Debtor, as

identified in the Debtor's chapter 11 petition; and (c) counsel to the Debtor's non-debtor affiliate, Georgia-Pacific LLC, a Delaware limited liability company. The Debtor submits that, in light of the *ex parte* nature of the relief requested, no other or further notice need be provided.

No Prior Request

13. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with this chapter 11 case.

WHEREFORE, the Debtor respectfully requests that the Court: (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein; and (b) grant such other and further relief to the Debtor as the Court may deem just and proper.

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Dated: November 2, 2017
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

Garland S. Cassada (NC Bar No. 12352)
David M. Schilli (NC Bar No. 17989)
Andrew W.J. Tarr (NC Bar No. 31827)
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000
E-mail: gcassada@robinsonbradshaw.com
dschilli@robinsonbradshaw.com
atarr@robinsonbradshaw.com

Gregory M. Gordon (TX Bar No. 08435300)
Daniel B. Prieto (TX Bar No. 24048744)
JONES DAY
2727 North Harwood Street, Suite 500
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
dbprieto@jonesday.com
(Admissions *pro hac vice* pending)

Jeffrey B. Ellman (GA Bar No. 141828)
Brad B. Erens (IL Bar No. 06206864)
JONES DAY
1420 Peachtree Street, N.E., Suite 800
Atlanta, Georgia 30309
Telephone: (404) 581-3939
Facsimile: (404) 581-8330
E-mail: jbellman@jonesday.com
bberens@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR
AND DEBTOR IN POSSESSION

Exhibit A

Proposed Order

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

In re

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795

**EX PARTE ORDER SUSPENDING ENTRY
AND SERVICE OF STANDARD NOTICE OF COMMENCEMENT**

This matter coming before the Court on the *Ex Parte Motion of the Debtor for an Order Suspending Entry and Service of Standard Notice of Commencement* (the "Motion"),² filed by the debtor and debtor in possession in the above-captioned case (the "Debtor"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to

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 shall have the meanings given to them in the Motion.

28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (d) notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the *ex parte* relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Clerk of this Court shall suspend entry and service of the Standard Notice pending further order of this Court to permit consideration of the Notice Procedures Motion and the Claims Agent Motion, which, if approved, will obviate the need for such notice and service by the Clerk.
3. Pursuant to Rule 9013-1(f) of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina, any party shall be entitled to request a hearing or request that the Court reconsider entry of this Order by filing a motion for reconsideration within 14 days of service of this Order.
4. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, enforcement or interpretation 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