

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

In re

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795

MOTION OF THE DEBTOR FOR AN ORDER: (I) APPROVING THE CONTINUED USE OF ITS BANK ACCOUNTS, CASH MANAGEMENT SYSTEM AND BUSINESS FORMS; (II) GRANTING A WAIVER OF THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE; AND (III) AUTHORIZING THE DEBTOR'S BANK TO CHARGE CERTAIN FEES AND OTHER AMOUNTS

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.

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.

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.

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. Pursuant to sections 345 and 363(c)(1) of the Bankruptcy Code, the Debtor hereby seeks the entry of an order, substantially in the form attached hereto as

Exhibit C:

- (a) approving the Debtor's continued use of (i) its current cash management system (including cash pooling arrangements) and its existing bank accounts (collectively, the "Bank Accounts"), as well as authorizing the Debtor to open and close bank accounts, as necessary or appropriate, and (ii) its business forms;
- (b) granting the Debtor a waiver of the requirements of section 345(b) of the Bankruptcy Code to the extent that the funds maintained in the Bank Accounts exceed the amount insured by the Federal Deposit Insurance Corporation (the "FDIC") or the Federal Savings & Loan Insurance Corporation (the "FSLIC"), as applicable; and

- (c) authorizing, but not directing, banks participating (or that may participate) in the Debtor's cash management system during the Chapter 11 Case (collectively, the "Banks") to honor certain transfers, provided that sufficient funds are available in the applicable accounts to cover such transfers, and charge Bank Fees (as defined below).

Facts Relevant to This Motion

The Debtor's Bank Accounts

7. In the ordinary course of business, the Debtor maintains three Bank Accounts at Bank of America, N.A. ("Bank of America") in Charlotte, North Carolina. Each of the Bank Accounts is insured by the FDIC. A schedule of the Bank Accounts (the "Bank Account Schedule") is attached hereto as Exhibit A and incorporated herein by reference.

The Funding Agreement

8. As further described in the First Day Declaration, the Debtor is party to a Second Amended and Restated Funding Agreement, dated as of November 1, 2017 (the "Funding Agreement"),² with its non-debtor affiliate, Georgia-Pacific LLC, a Delaware limited liability company ("New GP"). Under the Funding Agreement, the Debtor, as payee, receives cash funding from New GP, as payor.

9. The Funding Agreement is not a loan agreement. Instead, without any corresponding repayment obligation by the Debtor, it requires New GP to provide funding to pay for the costs and expenses of the Debtor incurred during the pendency of the Chapter 11 Case, including the costs of administering the case and any and all other costs and expenses of

² A copy of the Funding Agreement is attached as Annex 2 to the First Day Declaration. The summary of the Funding Agreement herein is provided for the convenience of the Court and parties in interest and is qualified in its entirety by the terms of the Funding Agreement. In the event of any inconsistency between the description herein and the Funding Agreement, the Funding Agreement shall govern in all respects.

the Debtor incurred in the normal course of its business.³ Generally, under the Funding Agreement, New GP is obligated to fund the Debtor's day-to-day costs and expenses upon request to the extent that cash distributions received by the Debtor from its subsidiaries are insufficient to pay these costs and expenses. See Funding Agreement, at 5.

10. Upon a proper funding request under the Funding Agreement, New GP wires the requested funds into a designated "Funding Account." See Funding Agreement, § 2(c).

Cash Pooling Agreement

11. GP Industrial Plasters LLC ("GP Plasters") is a wholly-owned subsidiary of the Debtor and operates an industrial plasters business directly and through its two subsidiaries, Blue Rapids Railway Company LLC ("Blue Rapids") and Industrial Plasters Canada ULC ("Plasters Canada"). The Debtor, GP Plasters and Plasters Canada are parties to a Second Amended and Restated Cash Pooling Agreement, dated as of November 1, 2017 (the "Cash Pooling Agreement"),⁴ to assist in the management of their cash. In particular, the Cash Pooling Agreement provides for the pooling of funds belonging to GP Plasters, Plasters Canada and the Debtor to maximize the efficiencies of a coordinated cash management system.⁵ These funds are maintained and managed by the Debtor.

³ In addition, and also without any corresponding repayment obligation by the Debtor, the Funding Agreement requires New GP to provide the funding for a section 524(g) asbestos trust in the amount required by a confirmed plan of reorganization for the Debtor, but only to the extent the Debtor's assets are insufficient to provide the requisite trust funding. See Funding Agreement, at 5.

⁴ A copy of the Cash Pooling Agreement is attached hereto as Exhibit B. The summary of the Cash Pooling Agreement herein is provided for the convenience of the Court and parties in interest and is qualified in its entirety by the terms of the Cash Pooling Agreement. In the event of any inconsistency between the description herein and the Cash Pooling Agreement, the Cash Pooling Agreement shall govern in all respects.

⁵ Blue Rapids operates a short line railroad associated with GP Plasters' Blue Rapids, Kansas facility, but does not otherwise have business operations or maintain cash. As such, it is not a party to the Cash Pooling Agreement.

12. Despite the transfer of GP Plasters' and Plasters Canada's cash into the Debtor's Bank Accounts in the ordinary course of business as further described below (the "Transferred Cash"), GP Plasters or Plasters Canada each continues to hold title to, is the beneficial owner of and is entitled to all of its respective Transferred Cash.⁶ See Cash Pooling Agreement, § 1.4. The Debtor maintains strict records of all of the Transferred Cash and interest earned thereon (together, the "Cash Balance") under the terms of the Cash Pooling Agreement. Id. at §§ 1.1, 1.4, Schedule I. The Cash Balance at all times remains the property of GP Plasters or Plasters Canada (as applicable) and is not property of the Debtor's chapter 11 estate.

Cash Management System

13. Consistent with the Cash Pooling Agreement and the Funding Agreement, the Debtor has established the following process to manage cash through the Bank Accounts (the "Cash Management System"):

- Concentration Account. As identified in the Bank Account Schedule, one of the Debtor's Bank Accounts serves as a concentration account (the "Concentration Account") where all incoming cash is maintained. All payments and other funds that are received by the Debtor are deposited into that account, including cash from New GP under the Funding Agreement and Transferred Cash from GP Plasters and Plasters Canada under the Cash Pooling Agreement.
 - ◆ The Concentration Account serves as the Funding Account under the Funding Agreement and, consistent with that agreement, is expected to maintain at least \$5 million of cash for the Debtor at all times.
 - ◆ All wire transfers made by the Debtor are issued from the Concentration Account.

⁶ The Transferred Cash is distinct from any actual cash distributions (i.e., dividends) from GP Plasters to the Debtor. Such cash distributions become the Debtor's cash and are not held for the benefit of GP Plasters.

- ◆ GP Plasters maintains its own concentration account at Bank of America (the "Plasters Master Account").⁷ At the end of each day, excess funds in the Plasters Master Account are swept into the Concentration Account, with all such swept cash constituting GP Plasters' Transferred Cash under the Cash Pooling Agreement. When GP Plasters needs cash from its Cash Balance, GP Plasters makes a request for such funds under Section 2.1 of the Cash Pooling Agreement and the requested cash (up to the full amount of its Cash Balance) is transferred from the Concentration Account to the Plasters Master Account. Typically, these requests for funds by GP Plasters are made electronically on an automated basis as funds are needed.
- ◆ Plasters Canada, which owns certain assets in Canada related to the plasters business, maintains cash in its own accounts at Toronto Dominion Bank (collectively, the "Canadian Accounts"). Excess cash from the Canadian Accounts from time to time is transferred by Plasters Canada by wire transfer to the Debtor to be held in the Concentration Account under the Cash Pooling Agreement. When Plasters Canada needs cash from its Cash Balance, Plasters Canada makes a request for such funds under Section 2.1 of the Cash Pooling Agreement and the requested cash (up to the full amount of its Cash Balance) is transferred from the Concentration Account to the designated Canadian Account.
- ◆ Consistent with Section 1.4 of the Cash Pooling Agreement, strict records are maintained of all of the foregoing transfers and GP Plasters' and Plasters Canada's Cash Balances in the Concentration Account.
- ◆ All amounts in the Concentration Account are held in U.S. dollars. Any amounts held in Canadian dollars by Plasters Canada are converted into U.S. dollars at the applicable currency exchange rates then in effect before being deposited into the Concentration Account.
- Disbursement Account. In addition to the Concentration Account, the Debtor maintains a Bank Account that serves as a general disbursement account (the "Disbursement Account"), as identified in the Bank Account Schedule. The Disbursement Account is managed by Pace Claims Services LLC ("Pace") and is used to pay all of the Debtor's costs and expenses, including professional fees, other than wire transfers. The Disbursement Account is maintained as a zero balance account and is funded by transfers of

⁷ GP Plasters also maintains its own depository account for incoming cash that is swept into the Plasters Master Account, and zero balance disbursement accounts that are funded from the Plasters Master Account as needed to fund any checks issued on that account. All of these accounts are maintained at Bank of America.

the Debtor's cash from the Concentration Account on an as-needed basis, with electronic instructions provided to Pace regarding the costs to be paid.

- Segregated Account. The final Bank Account is a segregated account (the "Segregated Account") funded with \$15 million that was part of the initial cash funding of the Debtor upon its formation. Funds in the Segregated Account are expected to be held to support the overall restructuring through a section 524(g) trust.

Argument

Continued Use of the Bank Accounts, Cash Management System and Business Forms Is Warranted

14. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in those transactions that make up the bulk of its day-to-day operations without incurring the excessive monitoring costs that would result from the need to provide notice of, and obtain approval for, such ordinary course activities. See, e.g., In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992); United States ex rel. Harrison v. Estate of Deutscher (In re H & S Transp. Co.), 115 B.R. 592, 599 (M.D. Tenn. 1990).

15. Within the purview of section 363(c) of the Bankruptcy Code, a debtor in possession is authorized to continue the "routine transactions" associated with its cash management system. Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996); see also Bowers v. Atlanta Motor Speedway, Inc. (In re Se. Hotel Props. Ltd. P'ship), 99 F.3d 151, 153 (4th Cir. 1996) ("[A] post-petition transfer effected by a debtor-in-possession that occurs in the ordinary course of the debtor's business is authorized under §§ 1107 and 1108...."); Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997) ("The term 'ordinary course of business' generally has been

accepted to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.") (internal citations omitted).

Bank Accounts

16. Notwithstanding section 363(c) of the Bankruptcy Code, the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina (the "Local Bankruptcy Rules") provide for the entry of operating orders by the Court in chapter 11 cases that, among other things, set forth operating guidelines for debtors in possession, which may, among other things, require the Debtor to alter its Bank Accounts. See Local Bankruptcy Rule 4002-1(d)(1) (providing for the routine entry of chapter 11 operating orders by the Court).

17. Such guidelines may include, among other things, requirements for a debtor to (a) close all bank accounts and open new debtor in possession accounts, (b) maintain separate debtor in possession accounts for cash collateral and postpetition taxes and (c) include the designation "debtor in possession," a reference to its bankruptcy case number and the type of account on its business forms, including checks. See, e.g., In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 3, 2017) (operating order noting that debtor's bank accounts "should have been closed," which was entered prior to entry of an order authorizing the debtor to maintain prepetition bank accounts and business forms); In re Garlock Sealing Techs., LLC, No. 10-31607 (JCW) (Bankr. W.D.N.C. June 8, 2010) (same); In re Hendricks Furniture Grp., LLC, No. 09-50790 (JCW) (Bankr. W.D.N.C. June 11, 2009) (same).

18. As a practical matter, it would be disruptive, administratively burdensome and unnecessary to require the Debtor to close its existing Bank Accounts and open new debtor

in possession bank accounts. The Debtor's use of the Bank Accounts constitutes an ordinary course and appropriate business practice of the Debtor. Moreover, authorizing the Debtor to continue to use its Bank Accounts will assist the Debtor in accomplishing a smooth transition to operating as a debtor in possession. Accordingly, the Debtor seeks authority to continue to use its Bank Accounts in the ordinary course of its business.

19. The Debtor further seeks authority to open and close bank accounts as it deems necessary (consistent with the terms of the Funding Agreement and the Cash Pooling Agreement). The Debtor requests that Bank of America and any other Bank be authorized to honor the Debtor's requests to open or close any bank accounts, provided, however, that any new domestic account is established at a bank that is insured with the FDIC or the FSLIC and is organized under the laws of the United States or any State therein. Moreover, prior to opening or closing a bank account, the Debtor will provide notice to (a) the United States Bankruptcy Administrator for the Western District of North Carolina (the "Bankruptcy Administrator"), (b) any official committee appointed in the Chapter 11 Case and (c) the future claimants' representative appointed in the Chapter 11 Case.

20. Bankruptcy courts routinely permit chapter 11 debtors to maintain their bank accounts, generally treating requests for such relief as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); see also In re Columbia Gas Sys., 997 F.2d 1039, 1061 (3d Cir. 1993) (recognizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient"); Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition "routine cash management system" was entirely consistent with applicable provisions of the Bankruptcy Code).

21. Authority to continue the use of bank accounts has been granted in other bankruptcy cases in this District and other districts. See, e.g., In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 7, 2017) (the "Kaiser Gypsum Order"); In re Garlock Sealing Techs., LLC, No. 10-31607 (JCW) (Bankr. W.D.N.C. June 8, 2010) (the "Garlock Order"); In re Hendricks Furniture Grp., LLC, No. 09-50790 (JCW) (Bankr. W.D.N.C. June 12, 2009) (the "Hendricks Order"); see also In re Alpha Nat. Res., Inc., No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 5, 2015) (the "Alpha Order"); In re Bi-Lo, LLC, No. 09-02140 (Bankr. D. S.C. June 24, 2009) (the "Bi-Lo Order").

22. To protect against the possible inadvertent payment of prepetition claims, the Debtor already has advised Bank of America not to honor checks issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtor. The Debtor, moreover, has the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones.

Cash Management System

23. The Debtor similarly seeks authority to maintain its ordinary course process for collecting, holding and disbursing cash through its Cash Management System and to perform under the terms of the Cash Pooling Agreement. Cash management systems similar to that of the Debtor, and related agreements like the Cash Pooling Agreement, are routinely implemented to consolidate and manage cash flows and bank accounts among affiliates within a corporate enterprise. See, e.g., In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW) (Bankr. W.D.N.C. Sept. 30, 2017) (describing a cash management system in which cash was consolidated from and distributed among affiliated entities in the debtors' enterprise); In re

Garlock Sealing Techs., LLC, No. 10-31607 (JCW) (Bankr. W.D.N.C. June 5, 2010) (same); see also In re Alpha Nat. Res., Inc., No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 3, 2015) (same).

24. Not only is it ordinary course, the Cash Management System, as implemented consistent with the Cash Pooling Agreement, promotes the central management of cash assets of the Debtor and its affiliates. Among other things, it ensures adequate liquidity among the Debtor's Bank Accounts and its subsidiaries and maximizes the efficiency of their financial management and accounting. The Debtor believes continued use of the Cash Management System, as well as its continued performance under the Cash Pooling Agreement, is in the best interest of the Debtor's estate and parties in interest and should be authorized by the Court.⁸

Business Forms

25. In the ordinary course of its business, the Debtor uses checks and other business forms (collectively, and as they may be modified, the "Business Forms"). The Debtor requests that it not be required to include the legend "D.I.P.," or any other debtor in possession designation, and the corresponding bankruptcy case number on its Business Forms. The Debtor respectfully submits that this relief is appropriate. The Debtor, as a non-operating entity, has few business relationships, and the parties it conducts business with (such as law firms) are expected to be well aware of the Debtor's status as debtor in possession. As such, the alteration of the Debtor's checks and business forms to include the debtor in possession designation would be unnecessary. Further, this Court has allowed debtors to use their prepetition business forms and checks without the "D.I.P." label and corresponding bankruptcy case numbers in other large

⁸ For the avoidance of doubt, this Motion does not seek to assume the Cash Pooling Agreement, and the Debtor reserves all rights with respect to assumption or rejection of the Cash Pooling Agreement under section 365 of the Bankruptcy Code.

cases. See, e.g., Kaiser Gypsum Order (authorizing the debtors to continue to use their existing business forms and checks without alteration or change); Garlock Order (same); Hendricks Order (same).

A Limited Waiver of the Requirements of Section 345 of the Bankruptcy Code Is Warranted

26. Section 345 of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires the estate to obtain from the entity with which the money is deposited a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise.⁹

27. In 1994, to avoid "needlessly handcuff[ing] larger, more sophisticated debtors," Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders "for just cause." 140 Cong. Rec. H 10,767 (Oct. 4, 1994), 1994 WL 545773. In In re Service Merchandise Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999), the court identified a number of factors to be considered when determining whether cause exists to waive the requirements of section 345(b) of the Bankruptcy Code, including: (a) the sophistication of the debtor's business; (b) the bank

⁹ In the alternative, the estate may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303. Section 9303 provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may instead provide an eligible obligation, designated by the Secretary of the Treasury, as an acceptable substitute for a surety bond.

ratings of the financial institutions where the debtor's funds are held; and (c) the benefit to the debtor of current practices. See Service Merch., 240 B.R. at 896.

28. The Bank Accounts are insured by the United States through the FDIC and are maintained at a large, well-known and well-capitalized institution. Moreover, by this Motion, the Debtor seeks to limit any new domestic accounts to accounts maintained at a bank that is insured with the FDIC or the FSLIC. Nonetheless, the funds maintained in certain of the Bank Accounts or new accounts will exceed the \$250,000 limit of insurance coverage provided by the FDIC.

29. The Debtor submits that cause exists to justify a waiver of section 345(b) of the Bankruptcy Code in this case to the extent that the funds maintained in the Bank Accounts or any other domestic accounts during the Chapter 11 Case (collectively, the "Account Funds") exceed the amount insured by the FDIC or the FSLIC. Bank of America is an extremely stable and reliable institution, and the Debtor maintains that any other Banks will be of a similar status. It would impose an undue and unnecessary administrative burden on the Debtor to require the Debtor to open and maintain numerous new accounts with limited funds such that all Account Funds may be covered by FDIC insurance, or, alternatively, to maintain a bond for the value of the Account Funds. Thus, the Debtor requests a waiver of the requirements of section 345 of the Bankruptcy Code, to the extent applicable.

***The Court Should Authorize the Banks
to Charge Bank Fees and Certain Other Amounts***

30. The Debtor requests authority for the Banks to charge, and the Debtor to pay or honor, both prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Debtor (collectively, the "Bank Fees"). The Debtor also

requests that the Court authorize the Banks to charge back returned items to the Bank Accounts in the ordinary course of business.

31. The Debtor requires this relief to minimize disruption to its Bank Accounts and to assist in accomplishing a smooth transition to, and operation in, chapter 11. Authority for debtors to pay bank fees and banks to charge back returned items has been routinely granted in chapter 11 cases in this District and other districts. See, e.g., Kaiser Order; Garlock Order; Alpha Order; Bi-Lo Order.

32. The Debtor also requests that the Court authorize the Banks to accept and honor all representations from the Debtor as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date and provided that sufficient funds are available in the applicable accounts to cover such checks and fund transfers.

33. Pursuant to the relief requested in this motion, the Banks shall not be liable to any party on account of (a) following the Debtor's instructions or representations as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) an innocent mistake made despite implementation of reasonable item-handling procedures. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

Waiver of Bankruptcy Rule 6004(h)

34. The Debtor seeks a waiver of any stay of the effectiveness of an Order approving this Motion under Bankruptcy Rule 6004(h), to the extent it applies. Bankruptcy

Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Any delay in granting the relief requested herein likely would be disruptive to the Debtor and its direct and indirect subsidiaries, thereby causing harm to the Debtor's estate. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

35. Notice of this Motion has been provided to: (a) the Bankruptcy Administrator; (b) the top law firms representing asbestos claimants against the Debtor, as identified in the Debtor's chapter 11 petition; (c) counsel to New GP; and (d) Bank of America. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

No Prior Request

36. 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 C, granting the relief requested herein; and (b) grant such other and further relief to the Debtor as the Court may deem just and proper.

Dated: November 2, 2017
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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PROPOSED ATTORNEYS FOR DEBTOR
AND DEBTOR IN POSSESSION

Exhibit A

Schedule of Bank Accounts

Bank	Account Holder	Account Number ¹	Account Type
Bank of America, N.A.	Bestwall LLC	-1858	Concentration Account
Bank of America, N.A.	Bestwall LLC	-8947	Disbursement Account
Bank of America, N.A.	Bestwall LLC	-3199	Segregated Account

¹ To alleviate security concerns, this column only contains the last four digits of the account numbers for each of the Bank Accounts.

Exhibit B

Cash Pooling Agreement

SECOND AMENDED AND RESTATED CASH POOLING AGREEMENT

This Second Amended & Restated Cash Pooling Agreement (“Agreement”), dated as of November 1, 2017, but effective as of October 19, 2017 (“Effective Date”), is made by and among BESTWALL LLC, a limited liability company organized and registered in the state of North Carolina (“Transferee”), GP INDUSTRIAL PLASTERS LLC, a limited liability company organized and registered in the state of North Carolina (“Plaster Sub US”), and INDUSTRIAL PLASTERS CANADA ULC, an unlimited company organized and registered in Nova Scotia (“Plaster Sub Canada”). Plaster Sub and Plaster Sub Canada, collectively, the “Transferors” and singularly, each, a “Transferor”, and Transferee, Plaster Sub US and Plaster Sub Canada, collectively, the “Parties” and singularly, each a “Party.”

WHEREAS, on October 19, 2017, Transferee (then having the name “Georgia-Pacific LLC”), Plaster Sub US and Plaster Sub Canada executed and delivered an Amended and Restated Cash Pooling Agreement, dated as of October 19, 2017 (the “A&R Agreement”), which provided for a coordinated cash system among Transferee, Plaster Sub US and Plaster Sub Canada.

WHEREAS, following the execution and delivery of the A&R Agreement, Transferee effected a change in its name from “Georgia-Pacific LLC” to “Bestwall LLC” (the “Bestwall Name Change”).

WHEREAS, the Parties now desire to amend and restate the A&R Agreement to reflect that the Bestwall Name Change has occurred and that Transferee is a North Carolina limited liability company now having the name “Bestwall LLC.”

Therefore, the Parties agree as follows:

1. **Cash Balance.**

- 1.1 The term “Transferred Cash” shall mean, with respect to a Transferor, any and all cash, in the aggregate, transferred by or on behalf of such Transferor from whatever source, including such Transferor’s bank account, to Transferee’s bank account pursuant to this Agreement. The Transferred Cash of a Transferor, plus any earnings thereon (as described herein), less disbursements, is referred to as the “Cash Balance” for such Transferor.
- 1.2 The Cash Balance shall not include cash or other property transferred to Transferee as a payment pursuant to an obligation set forth in other agreements.
- 1.3 Each month, Transferee shall credit the Cash Balance of each Transferor a return in accordance with Schedule I attached hereto and made a part of this Agreement. Transferee may change such return if it provides Transferors prior notice of such change at least five (5) business days prior to the effective date of such change. Unless directed otherwise by a Transferor in writing and agreed to by Transferee, the return credited to the such Transferor’s Cash Balance will be automatically reinvested under the terms of this Agreement. For the avoidance of doubt, the Parties acknowledge that Transferee shall credit each Cash Balance

as set forth herein regardless of any profits or losses realized by Transferee in its use of Transferred Cash.

- 1.4 Transferee may commingle each Cash Balance with any other Cash Balance and with Transferee's other funds, including, but not limited to, funds from capital contributions, but in all cases (a) Transferee shall hold each Cash Balance solely on the applicable Transferor's behalf, (b) each Transferor shall hold title to, be the beneficial owner of, and be entitled to, its Cash Balance as set forth herein and (c) nothing in this Agreement shall create a lien or encumbrance on any Cash Balance on behalf of Transferee. Transferee shall maintain records of, and at all times account for, each Cash Balance on behalf of the applicable Transferor.
- 1.5 Transferee shall not charge a fee for providing its services under this Agreement.
- 1.6 Upon a Transferor's request, Transferee shall provide such Transferor a reconciliation of its Cash Balance within ten (10) business days of Transferee's receipt of such request. If such Transferor does not object to such reconciliation within thirty (30) days after its receipt thereof, such reconciliation shall be deemed approved.

2. Disbursements from the Cash Balance.

- 2.1 **Requests for Disbursements.** If a Transferor wishes to withdraw the balance, or a portion, of its Cash Balance or for Transferee to disburse the balance, or a portion, of its Cash Balance to a third party on behalf of such Transferor, it shall provide Transferee, via email or other agreed delivery method, prior written notice in a form acceptable to Transferee ("Transfer Notice"); *provided, however*, that such withdrawals and/or disbursements may be made pursuant to standing instructions from Transferee and such Transferor to the applicable bank for automatic transfers to and from the Parties' bank accounts. If a requested withdrawal or disbursement is in excess of the balance of a Transferor's Cash Balance, Transferee will not comply with the request.
 - 2.2 **Disbursements.** Within three (3) business days after its receipt of a Transfer Notice, Transferee shall transfer the requested amount to an account of the applicable Transferor or to an account of a third party, as designated by such Transferor in the Transfer Notice or pursuant to the standing instructions.
 - 2.3 **Assets to be Maintained by Transferee.** Unless otherwise agreed to by a Transferor, Transferee shall maintain in its accounts, at all times, cash, or cash equivalent investments, and/or have access to sufficient liquidity, in an amount equal to or greater than such Transferor's Cash Balance and shall ensure an amount equal to such Cash Balance is available within three (3) business days.
3. **Term.** Any Transferor (solely with respect to such Transferor) or Transferee (with respect to one or more Transferors) may terminate this Agreement, for any or no reason, by providing Transferee or each such Transferor, as applicable, at least ten (10) days prior written notice. Notwithstanding the foregoing, (a) any Transferor (solely with respect to such Transferor) or Transferee (with respect to one or more Transferors) may

immediately terminate this Agreement in the event of a material breach of this Agreement by the Transferee or the applicable Transferor, which breach is not cured within ten (10) days after written notice by the non-breaching Party; and (b) in the event a Transferor is no longer a wholly owned subsidiary of Transferee, this Agreement will automatically terminate with respect to such Transferor without notice and without any other action by any Party. Upon any termination of this Agreement, Transferee shall promptly return the applicable Cash Balance to each Transferor with respect to which this Agreement was terminated. Notwithstanding the foregoing, Transferee, to the extent permitted by law, may offset a Cash Balance against any outstanding obligation of the applicable Transferor owed to Transferee.

4. **Indemnification.** Transferee shall indemnify, defend, and hold each Transferor harmless against third-party claims caused by the negligence or willful misconduct of Transferee arising from its performance under this Agreement.
5. **Performance.** None of Transferee or any Transferor shall be responsible for any failure to perform any of its respective obligations hereunder (a) if such performance would result in a breach of any applicable law, regulation or other requirement of any governmental or other authority; or (b) if its performance is prevented, hindered or delayed by a Force Majeure Event (defined below), in which case, its obligations shall be suspended for so long as the Force Majeure Event continues. “Force Majeure Event” means any event due to any cause beyond control of the relevant Party, such as sabotage, fire, flood, explosion, acts of God, civil commotion, strikes or industrial actions of any kind, riots, insurrection, war or acts of government or similar institutions.
6. **General.**
 - 6.1 **Severability.** If any provision of this Agreement becomes illegal, invalid or unenforceable under any applicable law, then such provision shall be deemed automatically modified in a manner that most closely reflects the original intention of the Parties and conforms to the requirements for validity and enforceability as declared at that time, and as so modified, shall be deemed a provision of this Agreement as though originally included in this Agreement.
 - 6.2 **Choice of Law.** Delaware law applies to this Agreement without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction.
 - 6.3 **Remedies not Exclusive.** Each Party’s rights and remedies under this Agreement are in addition to and not exclusive of any other right or remedy which a Party may have under any other agreement or at law or equity.
 - 6.4 **Assignment of Rights.** No Transferor may assign or transfer its rights and/or obligations under this Agreement without the prior written approval of Transferee, and Transferee may not assign or transfer its rights and/or obligations under this Agreement without the prior written approval of each Transferor. Any assignment in violation of this Agreement shall be void.

- 6.5 **Entire Agreement.** This Agreement, including its schedules, is the entire agreement among the Parties. It supersedes all previous proposals, agreements, documents or communications, whether oral or written, among the Parties (or between any two Parties) relating to this Agreement's subject matter, including the A&R Agreement (and any schedules thereto).
- 6.6 **Modification.** Except as provided in Section 1.3, any modification to this Agreement must be in writing and signed by the duly authorized representatives of each Party.
- 6.7 **Waiver.** If any Party fails to insist that another Party perform any of the terms, covenants, or conditions of this Agreement, or fails to exercise any right under this Agreement, that Party's failure will not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right.
- 6.8 **Notices.** Any notice, request, or demand must be in writing and must be either hand delivered or served by registered or certified mail, express overnight delivery, facsimile, e-mail or other electronic transmission. Notices to any Party may be sent to the addresses shown below.

[Signature page follows]

Executed by each Party as of the Effective Date.

TRANSFeree:
BESTWALL LLC

TRANSFERORS:
GP INDUSTRIAL PLASTERS LLC

By: Scott J. Gordon
Name: Scott J. Gordon
Title: Treasurer

By: Michelle Wortmann
Name: Michelle G. Wortmann
Title: Chief Financial Officer

Addresses for notices:

100 Peachtree Street NW
Atlanta, Georgia 30303
E-mail: sjgordon@gapac.com

100 Peachtree Street NW
Atlanta, Georgia 30303
E-mail: drhughes@gapac.com

INDUSTRIAL PLASTERS CANADA ULC

By: Duane R. Hughes
Name: Duane R. Hughes
Title: President

Addresses for notices:

100 Peachtree Street NW
Atlanta, Georgia 30303
E-mail: drhughes@gapac.com

SCHEDULE I

Transferor:	GP INDUSTRIAL PLASTERS LLC
Effective Date:	September 30, 2017

Transferor:	INDUSTRIAL PLASTERS CANADA ULC
Effective Date:	October 19, 2017

Cash Balance Rate:	The interest rate payable by the bank on funds contained in the bank account of Transferee specified below, or any successor bank account designated by Transferee (the " <u>Pooling Account</u> ")
Cash Balance Rate Credit Calculation:	Daily balance of the Cash Balance multiplied by the Cash Balance Rate divided by 365
Date Cash Balance Rate accrual begins:	Effective Date
Compounding period:	Monthly, beginning on the last day of the month following the Effective Date
Initial Pooling Account	Bank of America Account No. -1858 ¹

¹ To alleviate security concerns, this shows only the last four digits of the account number.

Exhibit C

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

**ORDER (I) APPROVING THE CONTINUED USE OF
THE DEBTOR'S BANK ACCOUNTS, CASH MANAGEMENT SYSTEM
AND BUSINESS FORMS; (II) GRANTING A WAIVER OF
THE REQUIREMENTS OF SECTION 345(b); AND (III) AUTHORIZING
THE DEBTOR'S BANKS TO CHARGE CERTAIN FEES AND OTHER AMOUNTS**

This matter coming before the Court on the *Motion of the Debtor for an Order:*

*(I) Approving the Continued Use of Its Bank Accounts, Cash Management System and Business
Forms; (II) Granting a Waiver of the Requirements of Section 345(b); and (III) Authorizing*

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.

the Debtor's Banks to Charge Certain Fees and Other Amounts (the "Motion"),² filed by the debtor and debtor in possession in the above-captioned case (the "Debtor"); the Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); 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 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion, the Hearing and the relief sought therein was sufficient under the circumstances, (e) cause exists, within the meaning of section 345(b) of the Bankruptcy Code, to permit the Debtor to deposit funds in accordance with its prepetition deposit practices and (f) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; and 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.
2. The Debtor is authorized to continue to use the Bank Accounts under existing account numbers without interruption; provided, however, that no checks issued against the Bank Accounts prior to the commencement of the Chapter 11 Case shall be honored, except as otherwise authorized by an order of this Court and directed by the Debtor.
3. The Debtor is authorized to open and close bank accounts; provided, however, that: (a) prior to opening or closing a bank account, the Debtor must give notice to (i) the Bankruptcy Administrator, (ii) any official committee appointed in the Chapter 11 Case

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

and (iii) the future claimants' representative appointed in the Chapter 11 Case; and (b) any new domestic bank account opened by the Debtor shall be established at an institution that is (i) insured by the FDIC or the FSLIC and (ii) organized under the laws of the United States or any State therein.

4. The Debtor is authorized to (a) maintain the Cash Management System in substantially the same form as the Cash Management System used as of the Petition Date and as described in the Motion and (b) continue to perform under the Cash Pooling Agreement from and after the Petition Date.

5. The Banks are authorized, but not directed, to accept and honor all representations from the Debtor as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date, provided that sufficient funds are available within such Banks to make the payments.

6. The Banks shall not be liable to any party on account of: (a) following the Debtor's instructions or representations as to any order of this Court; (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored; or (c) an innocent mistake made despite implementation of reasonable item-handling procedures.

7. The Banks are authorized to charge, and the Debtor is authorized to pay or honor, the Bank Fees related to the Bank Accounts. The Banks also are authorized to charge back returned items to the Bank Accounts in the ordinary course of business.

8. The Debtor is authorized to continue to use its Business Forms substantially in the forms existing as of the commencement of the Chapter 11 Case, without reference to the Debtor's status as a debtor in possession and its chapter 11 case number.

9. The Debtor is authorized to deposit and hold Account Funds in accordance with its prepetition deposit practices, and a waiver of the requirements of section 345 of the Bankruptcy Code is hereby granted to the extent that the Account Funds exceed the applicable FDIC or FSLIC insurance limits.

10. Any and all accounts opened by the Debtor on or after the Petition Date at any Bank shall, for the purposes of this Order, be deemed a prepetition Bank Account (as if it had been opened prior to the Petition Date and listed in Exhibit A to the Motion), and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order.

11. Nothing contained in the Motion or this Order shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtor; (b) a waiver of the Debtor's or any other party in interest's rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) a request to assume or reject any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (e) a limitation on the authority of the Debtor to conduct its business in the ordinary course without seeking the approval of the Court.

12. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

13. Any party shall be entitled to request that the Court reconsider entry of this Order by filing a motion for reconsideration within 14 days service of this Order.

14. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

15. 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