

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

In re

BESTWALL LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**MOTION OF THE DEBTOR FOR ENTRY  
OF AN ORDER EXTENDING PERIOD WITHIN WHICH THE  
DEBTOR MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND  
RULE 9027 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Bestwall, LLC, the above-captioned debtor (the "Debtor"), hereby moves the Court for the entry of an order, pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), extending the period within which the Debtor may remove actions pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027. In support of this Motion, the Debtor respectfully states as follows:

**Background**

1. On November 2, 2017 (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

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<sup>1</sup> 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 courts of nearly every state and certain territories of the United States (collectively, the "Asbestos Actions").

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 [Docket No. 2] (the "First Day Declaration"), which was filed on the Petition Date. In addition to the First Day Declaration, the Debtor filed an Informational Brief [Docket No. 12] to provide additional information about its asbestos litigation, related costs and plans to address these matters in this chapter 11 case.

5. On November 16, 2017, the Court entered an order [Docket No. 97] appointing an official committee of asbestos claimants (the "Asbestos Committee") in this chapter 11 case.

#### **Jurisdiction**

6. 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**

7. By this Motion, the Debtor seeks the entry of an order pursuant to Bankruptcy Rule 9006(b) extending the period within which the Debtor may remove actions pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027 by approximately six months, through

and including July 31, 2018, to the extent that the time period for filing any such notices of removal expires on or before such date.

8. The relief requested is without prejudice to (a) any position the Debtor may take regarding whether section 362 of the Bankruptcy Code applies to stay any given civil action pending against the Debtor and (b) the Debtor's right to seek from this Court further extensions of the period within which the Debtor may file notices of removal under Bankruptcy Rule 9027(a).

#### **Basis for Relief Requested**

9. Section 1452 of title 28 of the United States Code provides for the removal of pending claims in civil actions related to bankruptcy cases. Section 1452 provides in pertinent part as follows:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

10. Bankruptcy Rule 9027 establishes the deadline for filing notices of removal of claims or causes of action. Bankruptcy Rule 9027(a)(2) provides in pertinent part as follows:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed [in the bankruptcy court] only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

11. With respect to postpetition actions, Bankruptcy Rule 9027(a)(3) provides that a notice of removal may be filed:

only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

12. Finally, Bankruptcy Rule 9006(b)(1) provides that the Court can extend the period within which the Debtor may remove actions provided for by Bankruptcy Rule 9027, without notice, upon a showing of cause:

(1) Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . . .

Fed. R. Bankr. P. 9006(b)(1).

13. It is well-settled that this Court is authorized by Bankruptcy Rule 9006 to extend the removal period provided under Bankruptcy Rule 9027. See, e.g., Pacor, Inc. v. Higgins, 743 F.2d 984, 996 n.17 (3d Cir. 1984), *effectively overruled in part on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995); Raff v. Gordon, 58 B.R. 988, 990 (E.D. Pa. 1986); see also In re World Fin. Servs. Center, Inc., 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987).

14. The Debtor submits that "cause" exists to extend the time to remove actions within the meaning of Bankruptcy Rule 9006. To date, the Debtor has not had an adequate opportunity to determine whether to remove any actions brought prepetition that may

be subject to removal. As of the Petition Date, among other things, the Debtor was a defendant in tens of thousands of pending Asbestos Actions throughout the United States. Given the volume of the Asbestos Actions and the other critical matters to address in the early stages of this case, the Debtor requires additional time to evaluate the possible removal of actions under 28 U.S.C. § 1452.

15. Under Bankruptcy Rule 9027(a)(2)(A), the Debtor may have as little as 90 days from the Petition Date (e.g., through and including January 31, 2018) to make certain removal decisions, but may obtain an extension of this period for cause under Bankruptcy Rule 9006. Accordingly, absent an extension of the removal period, the Debtor risks waiving its removal rights before it has had an opportunity to complete an evaluation of these issues.<sup>2</sup> The requested relief will protect the Debtor's right to remove lawsuits under 28 U.S.C. § 1452 if the circumstances warrant.

16. This Court has recently granted similar relief in bankruptcy cases involving a large number of asbestos claims. See, e.g., In re Kaiser Gypsum Co., Case No. 16-31602 (JCW) (Bankr. W.D.N.C. Dec. 20, 2016) [Docket No. 273] (granting an initial extension of the removal deadline of six months); In re Garlock Sealing Tech., Case No. 10-31607 (Bankr. W.D.N.C. Aug. 27, 2010) [Docket No. 442] (granting an initial extension of the removal deadline of seven months).

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<sup>2</sup> As quoted above, for a chapter 11 debtor in possession, the actual deadline under Bankruptcy Rule 9027(a) with respect to a prepetition action is the **longer** of (a) 90 days after the Petition Date or (b) 30 days after entry of an order terminating the automatic stay as to an action. Because the Asbestos Actions currently are stayed by section 362 of the Bankruptcy Code, the Debtor believes that it would have until 30 days after the entry of any order terminating the automatic stay as to a particular Asbestos Action to remove such action under 28 U.S.C. § 1452 and Bankruptcy Rule 9027(a)(2), which deadline could extend well beyond the initial 90-day period. Nevertheless, the Debtor seeks the extension herein out of an abundance of caution to ensure that the removal period does not lapse.

17. For the foregoing reasons, the Debtor has demonstrated cause for the relief requested herein.

**Notice**

18. Consistent with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 65] (the "Case Management Order"), notice of this motion has been provided to: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) counsel to the Asbestos Committee; (c) counsel to the Debtor's non-debtor affiliate, Georgia-Pacific LLC, a Delaware limited liability company; (d) opposing counsel in the Asbestos Actions and other litigation parties; and (e) the other parties on the Service List established by the Case Management Order. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

**No Prior Request**

19. No prior request for the relief sought herein has been made to this Court or any other court.

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

Dated: December 28, 2017  
Charlotte, North Carolina

Respectfully submitted,

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ATTORNEYS FOR DEBTOR AND  
DEBTOR IN POSSESSION

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

In re

BESTWALL LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**ORDER EXTENDING PERIOD WITHIN WHICH THE  
DEBTOR MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND  
RULE 9027 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

This matter coming before the Court on the *Motion of the Debtor for Entry of an Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure* (the "Motion"),<sup>2</sup> 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 and the evidence adduced 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. §§ 1408 and 1409, (c) this is a core proceeding

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

pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances and (e) cause exists under Bankruptcy Rule 9006(b)(1) to grant an extension of the removal periods established under Bankruptcy Rule 9027(a); 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 time period provided under Bankruptcy Rule 9027(a) within which the Debtor may file notices of removal of any and all civil actions is extended to and including July 31, 2018 to the extent that the time period for filing any such notices of removal otherwise would expire before such date.
2. This Order shall be without prejudice to (a) any position the Debtor may take regarding whether section 362 of the Bankruptcy Code applies to stay any given civil action pending against the Debtor and (b) the Debtor's right to seek from this Court further extensions of the period within which the Debtor may file notices of removal under Bankruptcy Rule 9027(a).
3. This Order shall be immediately effective and enforceable upon its entry.
4. This Court shall retain exclusive jurisdiction over any and all matters arising from 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