

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER:
(A) APPROVING AMENDMENT TO SECONDMENT
AGREEMENT WITH NON-DEBTOR AFFILIATE, AS OF
FEBRUARY 1, 2018; AND (B) GRANTING RELATED RELIEF**

Bestwall, LLC, the above-captioned debtor and debtor-in-possession (the "Debtor"), hereby moves the Court for the entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"): (i) approving that certain *First Amendment to Third Amended and Restated Secondment Agreement* between the Debtor and its non-debtor affiliate Georgia-Pacific LLC, a Delaware limited liability company ("New GP") dated as of February 1, 2018 (the "Amendment"),² which amends the *Third Amended and Restated Secondment Agreement* (the "Original Secondment Agreement"³ and, as modified by the Amendment, the "Amended Secondment Agreement") previously approved by the Court; (ii) authorizing the Debtor to perform under and implement the Amended Secondment Agreement; and (iii) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

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 A copy of the Amendment is attached hereto as Exhibit A.

³ For convenience, a copy of the Original Secondment Agreement is attached hereto as Exhibit B.

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 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.

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. The Debtor hereby seeks the entry of an Order, substantially in the form attached hereto as Exhibit C: (a) approving the Amendment and authorizing the Debtor to implement and perform under the Amended Secondment Agreement, effective as of February 1, 2018, pursuant to sections 105(a) and 363 of the Bankruptcy Code; and (b) granting related relief.⁴

Facts Relevant to This Motion

The Original Secondment Agreement

8. In connection with the internal corporate restructuring that led to the formation of the Debtor and its non-debtor affiliate New GP on July 31, 2017 (the "2017 Restructuring"), the Debtor entered into a secondment agreement with New GP whereby certain employees who have significant historical knowledge of, and expertise relating to, the asbestos claims and litigation against the Debtor's predecessor (collectively, the "Seconded Employees") were assigned to work for the Debtor on a full-time basis to provide legal, paralegal and related services.⁵ The Seconded Employees comprise the core legal team that, prior to the Petition Date,

⁴ For the avoidance of doubt, this Motion does not seek to assume the Original Secondment Agreement or the Amended Secondment Agreement, and the Debtor reserves all rights with respect to assumption or rejection of these or any other agreements under section 365 of the Bankruptcy Code.

⁵ That secondment agreement was amended and restated prior to the Petition Date to reflect changes in the Debtor's business organization and employee needs. On November 1, 2017, the Debtor and New GP executed the third restated and amended version of the secondment agreement, which constitutes the Original Secondment Agreement.

managed the asbestos claims and litigation asserted against the Debtor.

9. One of the Seconded Employees is a paralegal (the "Seconded Paralegal") who historically also provided services to businesses owned by New GP after the 2017 Restructuring. As such, to permit the Seconded Paralegal to continue providing services to New GP after her secondment to the Debtor on a full-time basis, the Debtor entered into the *Amended and Restated Services Agreement* dated as of November 1, 2017, but effective as of July 31, 2017, by and between the Debtor, as provider, and New GP, as recipient (the "Bestwall Services Agreement").⁶ Under the Bestwall Services Agreement, the Seconded Paralegal has provided paralegal and related services to New GP as needed. In return, under the Bestwall Services Agreement, New GP is obligated to pay the Debtor for those services at the rate set by the Debtor.

10. The Debtor believes that the transactions contemplated by the Original Secondment Agreement and the Bestwall Services Agreement were ordinary course transactions. Nonetheless, for the avoidance of doubt and because the counterparty to each of these agreements is a non-debtor affiliate, the Debtor filed a motion on the Petition Date (Docket No. 30) (the "Intercompany Agreements Motion") seeking authorization to continue to perform under, among other intercompany agreements, the Original Secondment Agreement and the Bestwall Services Agreement. On December 7, 2017, the Court entered an order (Docket No. 133) (the "Intercompany Agreements Order") granting the Intercompany Agreements Motion, with certain changes agreed upon with the Asbestos Committee, and authorizing the Debtor to continue to perform under the Original Secondment Agreement, the Bestwall

⁶ A copy of the Bestwall Services Agreement is attached to the Intercompany Agreements Motion (defined below) as Exhibit D.

Services Agreement and certain other intercompany agreements⁷ from and after the Petition Date.

11. The Seconded Employees have been integral to the Debtor's postpetition operations and the administration of this case. For example, the Seconded Employees have spent significant time coordinating with local defense counsel with respect to the chapter 11 case and the impact of the automatic stay, assisting in the preparation of the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs (Docket Nos. 156 and 155, respectively) and otherwise assisting in the smooth transition to chapter 11.

12. As the initial transition into chapter 11 concludes, the Debtor has reevaluated its expectations of the amount of work needed from the Seconded Employees. Although the Debtor expects to continue to need certain Seconded Employees on a full-time or nearly full-time basis, other Seconded Employees likely will have certain months where the Debtor will not need their full-time services. This is particularly the case because many of these Seconded Employees historically have worked on litigation matters that have been largely inactive following the Petition Date as a result of (a) the imposition of the automatic stay under section 362 of the Bankruptcy Code and (b) the entry of a preliminary injunction order entered in the Adversary Proceeding initiated by the Debtor (Adv. Proc. No. 17-03105, Docket No. 30) (the "Injunction Order"). As a result, the Debtor anticipates that its need for work from certain of the Seconded Employees will fluctuate from month to month depending on activities in the bankruptcy case.

⁷ In connection with the 2017 Restructuring, the Debtor also entered into a secondment agreement with the Debtor's non-debtor affiliate Georgia-Pacific Building Products LLC ("GPBP"). In particular, under the *Third Amended and Restated Secondment Agreement* with GPBP, dated as of November 1, 2017, but effective as of July 31, 2017 (the "GPBP Secondment Agreement"), an accounting professional of GPBP is seconded to work for the Debtor. The GPBP Secondment Agreement was one of the intercompany agreements that the Debtor was authorized to perform pursuant to the Intercompany Agreements Order. The GPBP Secondment Agreement is not affected by the Amendment and is not a subject of this Motion.

13. To better reflect the actual needs of the Debtor under the circumstances and to minimize unnecessary costs incurred by the Debtor's estate for the Seconded Employees' unused or non-productive time, the Debtor and New GP have agreed to amend the Original Secondment Agreement to permit the Debtor, in its sole discretion, to determine its needs for the Seconded Employees' work each month. The Debtor may elect to utilize the Seconded Employees on a full-time or part-time basis (to the extent directed by the Debtor), as the Debtor determines in its discretion is appropriate to meet its needs from month to month. The Debtor, in turn, will pay for only that portion of the Seconded Employees' working time that it elects to utilize in a given month.

The Amended Secondment Agreement

14. The Debtor and New GP executed the Amendment on February 1, 2018 and, to maximize the benefits to the estate, began implementing the Amended Secondment Agreement as of the execution date, subject to the Court's approval.⁸

15. The Amendment modifies the Original Secondment Agreement to allow the Debtor to increase, up to 100%, or decrease, down to 0%, the amount of time that any Seconded Employee works for the Debtor each month. Amendment, § 1.b. The Debtor may elect to change the proportion of a Seconded Employee's allotted working time devoted to the Debtor as of the first day of each calendar month upon two business days' advance written notice to New GP. Id. The Debtor also will notify the Seconded Employee of any change to the amount of working time required by the Debtor for any given month. Id. The decision regarding the extent to which a Seconded Employee is seconded to the Debtor each month is solely in the control of the Debtor. In addition, although the Debtor's Chief Legal Officer, J. Joel Mercer, Jr.,

⁸ In addition, before filing this Motion, the Debtor discussed the relief sought herein with counsel to the Asbestos Committee and counsel to the proposed future claimants' representative.

is one of the Seconded Employees, the Amendment makes clear that he (or any other person holding the same or substantially similar office as the Chief Legal Officer) will continue to be seconded to the Debtor on a full-time basis. See Amendment, § 1.b.

16. Under the Original Secondment Agreement, the Debtor pays New GP a set monthly fee of one-twelfth of each Seconded Employee's annual base salary—not including benefits or other costs associated with employment—or a prorated portion of the applicable monthly salary if the secondment begins after the first of the month (such amount owed per employee under the Original Secondment Agreement, the "Original Monthly Fee"). See Original Secondment Agreement, § 3.a. Pursuant to the Amended Secondment Agreement, however, the Debtor would pay only the percentage of the Original Monthly Fee that corresponds to the percentage of that employee's time that the Debtor has determined it needs each month (the "Revised Monthly Fee"). See Amendment, § 1.c.

17. As under the Original Secondment Agreement, the Seconded Employees are obligated to keep all of the Debtor's proprietary information confidential under the Amended Secondment Agreement, including as to New GP and other non-debtor affiliates. Original Secondment Agreement, § 1.b. That duty of confidentiality continues even after the conclusion of any Seconded Employee's secondment to the Debtor. Id.

18. Because the Seconded Paralegal will, if the Amended Secondment Agreement is approved, have a portion of her time available to perform services for New GP, the Bestwall Services Agreement is no longer necessary. Therefore, the Amendment provides for the termination of the Bestwall Services Agreement as of the effective date of the Amended Secondment Agreement and retroactive to February 1, 2018.

Basis for Relief Requested

19. Under section 105(a) of the Bankruptcy Code, the Court may "issue any order ... that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code]." 11 U.S.C. § 105(a). Under section 363(c)(1) of the Bankruptcy Code, a debtor in possession may "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Further, section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

20. Under applicable case law in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. See, e.g., In re MCSGlobal Inc., No. 15-11674, 2017 Bankr. LEXIS 16, *12 (Bankr. E.D. Va. Jan. 4, 2017) ("Courts generally look to the trustee's business judgment in analyzing asset sales under Section 363(b)."); In re Century Drive LHDH, LLC, No. 10-01253-8-SWH, 2010 Bankr. LEXIS 1453, *4 (Bankr. E.D.N.C. Apr. 28, 2010) ("In reviewing a proposed . . . transaction under this section [363(b)], the court should consider whether the debtor-in-possession exercised sound business judgment such that approval of the proposed course of action is warranted."); see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.), 650 F.3d 593, 601 (5th Cir. 2011) (stating that section 363(b) of the Bankruptcy Code "incorporates a business judgment standard" and that such standard "is flexible and encourages discretion").

21. The Debtor explained in the Intercompany Agreements Motion its view that (a) the Original Secondment Agreement was an ordinary course agreement that did not require any Court approval and (b) Court approval was sought out of an abundance of caution.

See Intercompany Agreement Motion at ¶¶ 18-25. Similarly, the Debtor believes that (a) the Amendment to the Original Secondment Agreement and (b) the transactions contemplated by the Amended Secondment Agreement are transactions in the ordinary course of business and, therefore, they could be implemented without the need for Court approval.⁹ Nevertheless, because the Amendment is with a non-debtor affiliate of the Debtor and because the Court previously authorized the Debtor's performance under the Original Secondment Agreement in the Intercompany Agreements Order, the Debtor believes it is appropriate to seek an order of this Court approving the Amendment and authorizing it to perform under the Amended Secondment Agreement.

22. The Debtor's entry into the Amendment and its performance under the Amended Secondment Agreement will benefit the bankruptcy estate and represents a sound exercise of the Debtor's business judgment. The terms of the Amendment are fair and reasonable and serve an appropriate business purpose. As the chapter 11 case has progressed and the impact of the automatic stay and the Injunction Order has become more clear, the Debtor has determined that it will not need each Seconded Employee on a full-time basis every month as initially expected. However, the Debtor continues to require the work of the Seconded Employees as and when needed, which is now anticipated to be variable from month to month.

23. Under the Amendment and the resulting Amended Secondment Agreement, the Debtor has greater flexibility to determine its need for the Seconded Employees'

⁹ In particular, section 363(c)(1) of the Bankruptcy Code provides a debtor in possession with the flexibility to engage in those transactions relating to 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., Inc.), 115 B.R. 592, 599 (Bankr. M.D. Tenn. 1990). To that end, "[t]he 'ordinary course of business' standard is purposely not defined so narrowly as to deprive a debtor of the flexibility it needs to run its business and respond quickly to changes in the business climate." Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986).

assistance each month and will pay only the proportion of the Seconded Employee's base salary that corresponds to the extent of the secondment specified by the Debtor. The other terms of the Original Secondment Agreement will remain in place—e.g., the Debtor will not bear the other costs associated with the employment of the Seconded Employees, including employee benefits, employee taxes, employee withholding and surcharges, allowances or deductions arising out of or relating to their employment or payment of their compensation. The only economic change will be a reduction in the Original Monthly Fee for a Seconded Employee who is not needed, nor utilized, on a full-time basis in a given month.

24. Notably, the Debtor has complete discretion over the use of the Seconded Employees and will have access to these employees up to full-time in any month where that is needed. In addition, the Debtor's Chief Legal Officer will continue to be seconded full time to the Debtor.

25. Termination of the Bestwall Services Agreement also is in the best interests of the Debtor and the estate and represents a sound exercise of the Debtor's business judgment. As a result of the time allotment permitted by the Amendment, the Seconded Paralegal will be able to provide services to New GP during the time periods she is not allotted to the Debtor. Accordingly, a separate services agreement for the Seconded Paralegal will no longer be necessary, and termination will eliminate the time and costs associated with continued implementation of the Bestwall Services Agreement.

26. For the foregoing reasons, the Debtor respectfully submits that entry into the Amendment and performance of the Amended Secondment Agreement are reasonable, appropriate and in the best interests of the Debtor's estate. The Debtor further respectfully submits that authorization to implement the Amended Secondment Agreement should be made

effective as of February 1, 2018 so that the Debtor can immediately obtain the cost savings provided by the Amended Secondment Agreement.

Notice

27. 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 New GP; (d) counsel to the proposed future claimants' representative; 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

28. 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 C, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtor as the Court may deem proper.

Dated: February 1, 2018
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada
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ATTORNEYS FOR DEBTOR AND
DEBTOR IN POSSESSION

EXHIBIT A

Amendment

**FIRST AMENDMENT TO THIRD AMENDED AND RESTATED
SECONDMENT AGREEMENT**

This First Amendment to Third Amended and Restated Secondment Agreement (this "Amendment"), executed as of February 1, 2018, is by and between **GEORGIA-PACIFIC LLC**, a Delaware limited liability company ("Provider"), and **BESTWALL LLC**, a North Carolina limited liability company ("Recipient"). Capitalized terms used but not defined in this Amendment have the meanings ascribed thereto in the Third Amended and Restated Secondment Agreement, executed as of November 1, 2017, but effective as of July 31, 2017, by and between Provider and Recipient (the "Agreement").

RECITALS

A. Provider and Recipient previously entered into the Agreement, which provides for the assignment by Provider to Recipient, and the acceptance by Recipient of the assignment from Provider, of the Seconded Employees, in each case on a full-time basis.

B. Recipient has determined, based on Recipient's business operations since the execution of the Agreement, that it is not necessary to Recipient's business operations for each Seconded Employee to be available to Recipient at all times on a full-time basis.

C. Recipient desires to amend the Agreement to allow for each Seconded Employee to be made available to Recipient on a full-time or part-time basis, as Recipient may from time to time determine in its sole discretion is necessary for Recipient's business operations, and Provider has agreed to so amend the Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual agreements in this Amendment, the parties hereto agree as follows:

1. AMENDMENTS TO AGREEMENT.

a. The first sentence of Section 1.a of the Agreement is hereby amended and restated to read in its entirety as follows:

During the term of this Agreement, and while each Seconded Employee remains an employee of Provider, Provider shall make available to Recipient, at such times and places as the officers or managers of Recipient may require, the services of each Seconded Employee, for that portion, expressed as a percentage, of such Seconded Employee's total working hours established from time to time as provided herein (the "Recipient Portion"), to perform any and all duties assigned to each Seconded Employee from time to time as directed by the officers or managers of Recipient.

b. Section 1.d of the Agreement is hereby amended and restated to read in its entirety as follows:

d. Recipient may terminate or demote the secondment of any Seconded Employee upon not less than 10 business days advance written notice to Provider. Recipient may also increase (to not more than 100%) or decrease (to not less than 0%) the Recipient Percentage of any Seconded Employee as of the first day of any calendar month upon not less than 2 business days advance written notice to Provider; provided, however, that the Recipient Percentage of any Seconded Employee holding the office of Chief Legal Officer (or substantially similar office) of Recipient will at all times equal 100%. In connection with any such termination, demotion, increase or decrease, Recipient shall notify the affected Seconded Employee and, in the case of termination or demotion, shall have the right to request from Provider a replacement Seconded Employee reasonably satisfactory to the officers or managers of Recipient to be seconded to Recipient under this Agreement.

c. Section 3.a of the Agreement is hereby amended and restated to read in its entirety as follows:

a. In exchange for Provider providing the services of the Seconded Employees, Recipient shall pay a monthly fee (the "Monthly Fee") for each Seconded Employee equal to the product of (i) one-twelfth of such Seconded Employee's annual base salary with Provider as of the Effective Date (subject to adjustment from time to time as provided herein) and (ii) such Seconded Employee's Recipient Portion for the applicable month.

2. MISCELLANEOUS.

a. Notwithstanding anything contained herein to the contrary, this Amendment shall be subject to, and shall become effective only upon, the entry of an order of the United States Bankruptcy Court for the Western District of North Carolina authorizing and approving the execution, delivery and performance of this Amendment by Recipient. Immediately upon the entry of such order and without any further action by Provider, Recipient or other person, this Amendment will become effective, retroactively, as of February 1, 2018. Provider hereby acknowledges and agrees that Recipient has timely delivered to Provider a written notice specifying each Seconded Employee's Recipient Portion for February 2018 and hereby waives any claims that such notice was not timely delivered.

b. The Amended and Restated Services Agreement, dated as of November 1, 2017, but effective as of July 31, 2017, by and between Recipient and Provider, pursuant to which Recipient provides paralegal and related services of one of the Seconded Employees to Provider, is hereby terminated, with such

termination to become effective upon the effectiveness of this Amendment, retroactively, as of February 1, 2018.

c. This Amendment shall not constitute a waiver, amendment or modification of any other provision of the Agreement not expressly referred to herein. Except as specifically modified and amended hereby, the text of the Agreement and the Schedules thereto shall remain unchanged and in full force and effect. From and after the date hereof, each reference in the Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of similar import shall mean and be a reference to the Agreement as amended by this Amendment.


d. This Amendment and all disputes arising hereunder will be subject to, governed by, and construed in accordance with the laws of the State of Delaware (without regard to conflicts of laws provisions).

e. This Amendment may be executed in counterparts, each of which will be an original and all of which together will constitute one instrument. Delivery of an executed signature page to this Amendment by facsimile or other electronic transmission will be effective as delivery of a manually executed signature page to this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be executed by its duly authorized representative as of the date first above written.

GEORGIA-PACIFIC LLC, a Delaware limited liability company

By: 
Name: Gerald A. Shirk
Title: Treasurer

BESTWALL LLC, a North Carolina limited liability company

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

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be executed by its duly authorized representative as of the date first above written.

GEORGIA-PACIFIC LLC, a Delaware limited liability company

By: _____
Name: Gerald A. Shirk
Title: Treasurer

BESTWALL LLC, a North Carolina limited liability company

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

EXHIBIT B

Original Secondment Agreement

THIRD AMENDED AND RESTATED SECONDMENT AGREEMENT

This Third Amended and Restated Secondment Agreement (this “Agreement”), executed as of November 1, 2017, but effective as of July 31, 2017 (the “Effective Date”), is by and between **GEORGIA-PACIFIC LLC**, a Delaware limited liability company (“Provider”), and **BESTWALL LLC**, a North Carolina limited liability company (“Recipient”), for Provider to second certain employees to Recipient.

RECITALS

A. On the Effective Date, Georgia-Pacific DE LLC, a Texas limited liability company (“GP DE (TX)”), and Georgia-Pacific LLC, a Texas limited liability company (“GP (TX)”), executed and delivered the Secondment Agreement, dated July 31, 2017 (the “Original Agreement”), which provided for the assignment by GP DE (TX), and the acceptance by GP (TX) of the assignment of, certain employees of GP DE (TX) who provide legal and related services with respect to liabilities held by GP (TX) (collectively, the “Seconded Employees”).

B. On the Effective Date, following the execution and delivery of the Original Agreement, (1) GP (TX) effected a conversion (the “NC Conversion”) into Recipient, a North Carolina limited liability company then having the name “Georgia-Pacific LLC,” and (2) GP DE (TX) effected a conversion (the “DE Conversion”) into Provider, a Delaware limited liability company having the name “Georgia-Pacific LLC.”

C. On the Effective Date, Provider and Recipient thereafter entered into an Amended and Restated Secondment Agreement to reflect that the NC Conversion and DE Conversion had occurred, that Provider was a Delaware limited liability company having the name “Georgia-Pacific LLC” and that Recipient was a North Carolina limited liability company then having the name “Georgia-Pacific LLC” (the “A&R Agreement”).

D. On October 19, 2017, Provider and Recipient (then having the name “Georgia-Pacific LLC”) amended and restated the A&R Agreement to reflect certain additional agreements reached by Provider and Recipient (the “Second A&R Agreement”).

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

F. Provider and Recipient now desire to amend and restate the Second A&R Agreement to reflect that the Bestwall Name Change has occurred and that Recipient is a North Carolina limited liability company now having the name “Bestwall LLC.”

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual agreements in this Agreement, the parties hereto agree as follows:

1. PROVISION OF SERVICES AND REPLACEMENTS.

a. During the term of this Agreement, and while each Seconded Employee remains an employee of Provider, Provider shall make available to Recipient at such times and places as the officers or managers of Recipient may require, the services of each Seconded Employee to perform any and all duties assigned to each Seconded Employee from time to time as directed by the officers or managers of Recipient. The Seconded Employees and their respective roles with Recipient, all as of the Effective Date, are identified on Schedule 1 hereto (the "Secoded Employee Schedule"). The Seconded Employee Schedule shall be amended from time to time as Seconded Employees are added or removed as permitted hereunder.

b. Each Seconded Employee shall perform for Recipient those duties assigned to him or her from time to time, as directed by the officers or managers of Recipient. Recipient will inform each Seconded Employee of his or her duties and his or her continuing obligation to keep confidential all proprietary information of Recipient as to third parties, Provider, their respective affiliated companies, and their respective vendors and customers, which duty of confidentiality shall continue after the conclusion of any Seconded Employee's secondment to Recipient.

c. Provider shall not remove any of the Seconded Employees from Recipient, unless mutually agreed by Recipient and Provider.

d. Recipient may terminate or demote the secondment of any Seconded Employee upon 10 business days advance written notice to Provider. In connection with any such termination or demotion, Recipient shall notify the affected Seconded Employee and shall have the right to request from Provider a replacement Seconded Employee reasonably satisfactory to the officers or managers of Recipient to be seconded to Recipient under this Agreement.

e. In the event that any Seconded Employee terminates employment with Provider or provides notice of such termination, Provider shall immediately notify Recipient and shall have the right to appoint a replacement Seconded Employee reasonably satisfactory to the officers or managers of Recipient to be seconded to Recipient as a Seconded Employee under this Agreement; *provided further* that nothing herein shall prohibit Recipient from hiring any Seconded Employee who terminates employment with Provider as an employee or independent contractor of Recipient.

2. COMPENSATION OF SECODED EMPLOYEES.

a. Provider shall be responsible for and shall pay each of its Seconded Employee's salaries and all other compensation, including but not limited to salary, wages, commissions, overtime, vacation and other paid leave, or incentive payments (collectively, "Compensation"). Recipient shall have no liability or responsibility whatsoever for such Compensation.

b. Provider shall be responsible for and shall pay each of its Seconded Employee's employment-related expenses (collectively, "Expenses"), including the following:

- i. all employee benefits in accordance with Provider's practices and policies then in effect; and
- ii. all employer payroll taxes, employee tax withholding, trust funds, surcharges, allowances or deductions arising out of or relating to the employment or payment of Compensation to the Seconded Employees.

Recipient shall have no liability or responsibility whatsoever for such Expenses.

3. RECIPIENT'S COSTS.

a. In exchange for Provider providing the services of the Seconded Employees, Recipient shall pay a monthly fee for each Seconded Employee equal to one-twelfth of such Seconded Employee's annual base salary with Provider as of the Effective Date (as such fee may be adjusted as permitted hereunder, the "Monthly Fee").

b. After the end of each calendar month, Provider shall bill Recipient for the Monthly Fee for each Seconded Employee for such month, and Recipient shall pay Provider the Monthly Fees Provider has billed to Recipient with respect to each Seconded Employee. For any Seconded Employee whose employment with Provider or secondment to Recipient is commenced after the beginning or concluded before the end of any calendar month, the Monthly Fee for such Seconded Employee shall be prorated based on the number of days such Seconded Employee provided services to Recipient during the month compared to the total number of days in the month.

c. From time to time, Provider may adjust each Seconded Employee's base salary and, on written notice to and after the written agreement of Recipient, adjust the Monthly Fee for such Seconded Employee accordingly.

4. TERMINATION AND INDEMNIFICATION.

a. This Agreement shall remain in effect until the date of termination of this Agreement by mutual agreement of the parties to this Agreement or by Recipient on 30 calendar days advance written notice. The parties acknowledge that various rights and obligations accrued prior to the termination of this Agreement shall remain until such accrual is satisfied.

b. Recipient shall indemnify and hold harmless Provider from any losses incurred by Provider to the extent such losses arise from, relate to, or otherwise result in respect of, Recipient's supervision, control, direction, management or termination of any Seconded Employee.

c. Provider shall indemnify and hold harmless Recipient from any losses incurred by Recipient to the extent such losses arise from, relate to or otherwise result in respect of, Provider's employment, supervision, control, direction, management or termination of any Seconded Employee.

d. Provider and Recipient shall advise each other as to matters that come to their respective attention involving potential legal actions or regulatory enforcement activity involving the employment or secondment of Seconded Employees and that are related to the activities of either party, and shall promptly advise each other of legal actions or administrative proceedings that are actually commenced.

e. Provider and Recipient will fully cooperate with one another in the defense of any such action or proceeding arising out of such a lawsuit or administrative proceeding, and further agree not to oppose any intervention by the other party to intervene in such action or proceeding if only one of the parties is named.

5. OTHER PROVISIONS.

a. Unless otherwise specified, all notices, consents, waivers and other communications under this Agreement shall be in writing and shall be deemed given to Provider or Recipient, as applicable, when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by e-mail with personal confirmation of transmission by the addressee; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, e-mail address or person as Provider or Recipient, as applicable, may designate by notice to the other party):

if to Provider:	133 Peachtree Street, N.E. Atlanta, Georgia 30303 Email: gashirk@gapac.com Attention: Gerald A. Shirk, Treasurer
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if to Recipient:	100 Peachtree Street, N.W. Atlanta, Georgia 30303 Email: drhughes@gapac.com Attention: Duane R. Hughes, President
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b. **WAIVER OF BREACH.** Failure to enforce any right or obligation by either Provider or Recipient with respect to any matter arising in connection with this Agreement will not constitute a waiver as to that matter or to any other matter. No waiver of any provision of this Agreement or any breach thereof will be valid

or enforceable unless in writing and signed by the party against whom enforcement of the waiver is sought. The waiver of any provision of this Agreement at any time by either Provider or Recipient does not constitute a waiver of future compliance with such provision or a waiver of compliance with any other provision of this Agreement.

c. **SUCCESSORS BOUND; ASSIGNMENT.**

i. Successors Bound. This Agreement will benefit and bind Provider and Recipient and their respective successors and permitted assigns.

ii. Assignment. Neither Provider nor Recipient may assign or transfer this Agreement without the prior written consent of the other party.

d. **NO THIRD PARTY BENEFICIARIES.** The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person, including any Seconded Employee.

e. **INVALIDITY.** The invalidity or unenforceability of any provision of this Agreement will not affect or impair the validity or enforceability of any other provision.

f. **GOOD FAITH AND FURTHER ASSURANCES.** Provider and Recipient expressly accept their respective responsibility of good faith and fair dealing with regard to their obligations under this Agreement and agree to take such further actions and execute such further documents as may be reasonably necessary or appropriate to complete and carry out the terms and intent hereof. If changes in the operations, facilities or methods of either Provider or Recipient will materially benefit one party without detriment to the other party, Provider and Recipient commit to each other to make reasonable efforts to cooperate and assist each other in making such change. Neither Provider nor Recipient will unreasonably withhold, condition or delay its compliance with any reasonable request made under this Agreement.

g. **HEADINGS.** All section headings are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. This Agreement will be construed according to its fair meaning and not strictly for or against either Provider or Recipient.

h. **GOVERNING LAW.** This Agreement and all disputes arising hereunder will be subject to, governed by, and construed in accordance with the laws of the State of Delaware (without regard to conflicts of laws provisions).

i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Provider and Recipient relating to the subject matter hereof and


supersedes, in its entirety, the Second A&R Agreement (and any schedules thereto). This Agreement may only be amended or supplemented by writing executed by each of the parties hereto.

j. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be an original and all of which together will constitute one instrument. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission will be effective as delivery of a manually executed signature page to this Agreement.

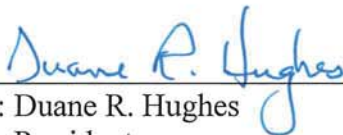
[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by its duly authorized representative as of the date first above written, but to be effective as of the Effective Date.

GEORGIA-PACIFIC LLC, a Delaware limited liability company

By: 
Name: Gerald A. Shirk
Title: Treasurer

BESTWALL LLC, a North Carolina limited liability company

By: 
Name: Duane R. Hughes
Title: President

Seconded Employee Schedule

<u>Name</u>	<u>Role</u>
J. Joel Mercer, Jr.	Chief Legal Officer
Melissa Halstead Baugher	Senior Counsel
Robert D. Stonebraker	Senior Counsel
Brenda Godfrey	Senior Counsel
Shannon J. Harris	Senior Counsel
Stacy R. Norris	Senior Paralegal
Deborah Young	Senior Paralegal
Kristine M. Meeks	Paralegal
Terence O. Hatcher	Litigation Support Assistant

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 (LTB)

**ORDER: (A) APPROVING AMENDMENT TO
SECONDMENT AGREEMENT WITH NON-DEBTOR AFFILIATE,
AS OF FEBRUARY 1, 2018; AND (B) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtor for Entry of an Order: (A) Approving Amendment to Secondment Agreement With Non-Debtor Affiliate, as of February 1, 2018; and (B) Granting Related Relief* (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 the exhibits thereto and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing");

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 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 pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances and in compliance with the Case Management Order, (e) the Debtor's entry into the Amendment and performance under the Amended Secondment Agreement represent a reasonable exercise of the Debtor's business judgment and are in the best interests of the Debtor's estate and creditors and (f) the terms of the Amendment and the resulting Amended Secondment Agreement are fair and reasonable; 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. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Amendment is approved, and the Debtor is authorized to enter into the Amendment and perform all of its obligations, and receive all benefits, under the Amended Secondment Agreement, including its obligations to pay any amounts due thereunder, effective as of February 1, 2018.
3. All transactions contemplated by the Amendment and the Amended Secondment Agreement, including (a) the payment of Revised Monthly Fees to New GP and (b) termination of the Bestwall Services Agreement as of February 1, 2018, are approved.
4. The Intercompany Agreements Order shall remain in effect, as supplemented by this Order.
5. 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.

6. This Order shall be immediately effective and enforceable upon its entry.

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

8. 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