

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

In re:

BESTWALL LLC,¹

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**DEBTOR'S MOTION FOR AN ORDER EXTENDING
THE EXCLUSIVE PERIODS TO FILE A PLAN
OF REORGANIZATION AND SOLICIT ACCEPTANCES THEREOF**

The above-captioned debtor and debtor in possession (the "Debtor") hereby moves the Court, pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code"), for an order: (i) extending the period during which the Debtor has the exclusive right to file a plan of reorganization (the "Exclusive Filing Period") by approximately four months, through and including July 6, 2018; and (ii) extending the period during which the Debtor has the exclusive right to solicit acceptances thereof (the "Exclusive Solicitation Period") and, together with the Exclusive Filing Period, the "Exclusive Periods") through and including September 7, 2018, or approximately 60 days after the expiration of the Exclusive Filing Period, as extended. In support of this Motion, the Debtor respectfully represents as follows:

Preliminary Statement

This chapter 11 case was precipitated by the onslaught of asbestos-related claims filed or asserted against the Debtor. The Debtor and its predecessor, Georgia-Pacific LLC ("Old GP"), have faced hundreds of thousands of asbestos-related lawsuits dating back to at least 1979.

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.

Overall, the Debtor and Old GP, over the last nearly 40 years, have spent approximately \$2.9 billion defending and resolving more than 430,000 personal injury lawsuits relating to alleged asbestos exposure. At the filing of this case, there were approximately 64,000 asbestos-related claims pending against the Debtor in nearly every state and certain territories of the United States. Absent this chapter 11 case, the Debtor expected that thousands of additional claims would be filed or asserted against it every year for decades to come. The Debtor commenced this case to resolve current and future asbestos-related claims on a permanent and equitable basis by establishing a section 524(g) trust to pay asbestos claims in accordance with trust distribution procedures approved by this Court.²

Since the commencement of this chapter 11 case less than four months ago, the Debtor has made considerable progress on a variety of issues. Among other things, it obtained various "first day" and "second day" orders to ensure the efficient administration of this chapter 11 case and the smooth transition into chapter 11. The Debtor has completed the complex and time-consuming process of preparing and filing its schedules of assets and liabilities and its statement of financial affairs. It obtained a temporary restraining order, and then an agreed preliminary injunction, enjoining asbestos claimants from filing or continuing to prosecute Bestwall Asbestos Claims (as defined in the orders) against the Protected Parties (as defined in the orders). The preliminary injunction has been extended by agreement and currently is in effect through April 23, 2018. A further hearing on the preliminary injunction is scheduled on April 19, 2018.

² The history of the Debtor's asbestos litigation and the reasons for the commencement of this case are described in greater detail in the Informational Brief and First Day Declaration (as such terms are defined below).

The Debtor also has devoted significant time to engaging with the Official Committee of Asbestos Claimants appointed in this case (the "Committee") to explore settlement opportunities and address other issues important to the conduct of this case. The Debtor has been working diligently to collect documents for production to the Committee—with more than 45,000 pages of documents delivered as of the date of this Motion. Most recently, the Debtor worked with the Committee to identify a legal representative for future asbestos claimants (the "Future Claimants' Representative") acceptable to both parties, and his appointment was approved by the Court just a week ago.

Despite the progress to date, this case is still in its early stages. Given the magnitude and complexity of the issues presented by this case, more time will be needed for the Debtor to pursue a resolution of this case, with or without litigation, and for the Debtor to develop a plan of reorganization. As such, the Debtor seeks an order extending, by approximately four months, each of the Exclusive Periods. The governing statute and case law make plain that, in complex chapter 11 cases such as this one, exclusivity can and should be extended, especially where, as here, the debtor has made, and is continuing to make, progress toward a successful reorganization. Further, the Debtor's requested extension is in line with or shorter than similar extensions granted in other complex chapter 11 asbestos cases filed in this district and elsewhere, and has been agreed upon by the Committee and the Future Claimants' Representative. The Court, accordingly, should grant the requested extensions of the Exclusive Periods.

Background

1. On November 2, 2017 (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

The Debtor is continuing in possession of its properties and is managing its business, as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On November 16, 2017, the Court entered an order appointing the Committee [Docket No. 97]. On February 23, 2018, the Court entered an order appointing Sander L. Esserman as the Future Claimants' Representative [Docket No. 278].

3. On the Petition Date, the Debtor filed the Informational Brief of Bestwall LLC [Docket No. 12] (the "Informational Brief") to provide additional information about its asbestos-related liabilities and litigation, as well as the Debtor's plans to address these matters in this chapter 11 case. In addition, the Debtor provided a comprehensive description of the Debtor, its history, its assets and liabilities and the events leading to the commencement of this chapter 11 case in the declaration of Tyler L. Woolson [Docket No. 2] (the "First Day Declaration"), also filed on the Petition Date.

Jurisdiction

4. This Court has 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 for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

Significant Events in the Debtor's Chapter 11 Case

5. Since the commencement of this case, the Debtor has worked diligently to effect a smooth transition into chapter 11 and initiate efforts to pursue a resolution of this case.

The Debtor's achievements to date include, among others:

- a. obtaining "first day" relief to establish procedures for the efficient administration of this chapter 11 case and to promote the Debtor's reorganization efforts, including by retaining professionals necessary to those efforts and establishing cash management procedures;

- b. obtaining "second day" relief to promote the efficiency of the Debtor's operations, including by obtaining approval for the continued implementation of certain intercompany agreements important for the conduct of the Debtor's day-to-day activities and the retention of ordinary course professionals;
- c. obtaining a temporary restraining order and then a preliminary injunction (which was later extended) enjoining asbestos claimants from filing or continuing to prosecute Bestwall Asbestos Claims against the Protected Parties through April 23, 2018 with a further hearing scheduled on April 19, 2018;
- d. completing and filing its schedules of assets and liabilities [Docket No. 156] and statement of financial affairs [Docket No. 155], and participating in the meeting of creditors under section 341 of the Bankruptcy Code;
- e. completing the first periodic report regarding values, operations and profitability of entities in which the Debtor holds a substantial or controlling interest as required by Rule 2015.3 of the Federal Rules of Bankruptcy Procedure;
- f. reaching agreement to sell a claim in the insurance liquidation proceeding of Midland Insurance Company to monetize this estate asset on favorable terms;
- g. reviewing, collecting and producing to date tens of thousands of documents responsive to information requests from the Committee;
- h. initiating discussions with the Committee to explore the possibility of a prompt settlement to resolve this case; and
- i. selecting the Future Claimants' Representative with the input and support of the Committee and obtaining appointment of the Future Claimants' Representative.

Next Steps

6. With the initial transition into chapter 11 now largely complete, the Debtor expects to focus its efforts on engaging in discussions with the Committee and the Future Claimants' Representative with the hope of negotiating a consensual plan of reorganization that would, among other things, provide for the creation and funding of a trust under section 524(g) of the Bankruptcy Code to pay asbestos claims. If a prompt resolution of this case cannot be

achieved on a negotiated basis, the Debtor expects that it will seek the assistance of the Court to estimate the Debtor's current and future asbestos claims to advance the resolution of this case.

7. Given the complexity of the issues presented in this case, the process for achieving a consensus on the terms of a plan of reorganization could take time. The parties' review of the requested due diligence material alone could take weeks or months, and negotiation of a global resolution of current and future asbestos claims is expected to require additional time beyond that. If litigation is needed, the process of addressing key issues in Court could potentially consume many additional months. Pending a consensual or litigated resolution of matters central to a section 524(g) plan of reorganization, neither the Debtor nor any other party will be in a position to propose and seek confirmation of a plan. In the interim, the Exclusive Periods should be extended.

8. By this Motion, the Debtor is requesting an extension of approximately four months to formulate, file and seek acceptances of a plan of reorganization in this case. Given the number of complex issues that must be resolved and the potential for litigation of certain issues, including potentially an estimation of the Debtor's asbestos liability, the Debtor recognizes that additional time likely will be needed to complete this work. The Debtor thus expressly reserves the right to request further extensions of the Exclusive Periods.

Request for Extension of Exclusive Periods and Grounds for Relief

9. Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization during the first 120 days after the commencement of a chapter 11 case (i.e., the Exclusive Filing Period). If a debtor files a plan during this exclusive filing period, section 1121(c)(3) of the Bankruptcy Code grants the debtor an additional 60 days during which the debtor may solicit acceptances of that plan, and no other party in interest may file a competing plan (i.e., the Exclusive Solicitation Period).

In this case, the Exclusive Filing Period currently expires on March 2, 2018, and the Exclusive Solicitation Period expires on May 1, 2018.³

10. Section 1121(d) of the Bankruptcy Code provides that the Court may, "for cause," extend these periods: "[o]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d). Although the Bankruptcy Code does not define "cause," a number of courts have construed the term based on an examination of the Bankruptcy Code's underlying legislative history. See, e.g., Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.), 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003); Cont'l Casualty Co. v. Burns & Roe Enters., Inc., (In re Burns & Roe Enters., Inc.), No. 00-41610, 2005 WL 6289213, at *3-4 (D.N.J. Nov. 2, 2005); In re Newark Airport/Hotel Ltd. P'ship, 156 B.R. 444, 451 (Bankr. D.N.J. 1993). As discussed below, the legislative history of section 1121(d) and applicable case law support the Debtor's requested extension of the Exclusive Periods.

11. In determining whether cause exists for an extension of a debtor's exclusive periods, courts have relied on a variety of factors, each of which may constitute sufficient grounds for extending the periods. In re Lichtin/Wade, L.L.C., 478 B.R. 204, 210 (Bankr. E.D.N.C. 2012) (noting that the court was not able to locate Fourth Circuit precedent regarding extension of exclusivity, but then looking to other circuits for the proposition that "whether cause exists is a factual determination that must be considered on a case by case basis"); Hoffinger, 292 B.R. at 644 ("It is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate weight to each."); In re Homestead Partners

³ Pursuant to the paragraph 24 of the *Notice, Case Management and Administrative Procedures* in this case, because this Motion has been filed before the expiration of the Debtor's current Exclusive Filing Period of March 2, 2018, such period is automatically extended until the Court acts on this Motion. See Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. 65] (the "Case Management Order"), Annex 1, ¶ 24.

Ltd., 197 B.R. 706, 720 (Bankr. N.D. Ga. 1996) (applying only those factors relevant to the case at hand).

12. The factors relevant to the instant case include: (a) the size and complexity of the case; (b) the Debtor's progress in resolving issues facing the estate; and (c) whether an extension of time will harm the Debtor's creditors. See, e.g., Lichtin/Wade, 478 B.R. at 210; Hoffinger, 292 B.R. at 644-45; In re Adelphia Commc'ns Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); In re Grand Traverse Dev. Co. Ltd. P'ship., 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); In re Gen. Bearing Corp., 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992); In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409-10 (E.D.N.Y. 1989). The Debtor submits that, under all these factors, the Exclusive Periods should be extended.

A. The Requested Extension of the Exclusive Periods Is Justified by the Size and Complexity of the Debtor's Chapter 11 Case.

13. Both Congress and the courts have recognized that the size or complexity of a debtor's case alone may constitute cause for the extension of a debtor's exclusive periods. See, e.g., H.R. Rep. No. 95-595, at 231, 232, 406 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191, 6362; In re Texaco Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) ("The large size of the debtor and the consequent difficulty in formulating a plan of reorganization . . . are important factors which generally constitute cause for extending the exclusivity periods."); Burns & Roe Enters., 2005 WL 6289213, at *3 (quoting Texaco and recognizing that a large, complex case can constitute cause for extension).

14. This chapter 11 case is not only large but highly complex. As of the Petition Date, the Debtor was a defendant in tens of thousands of pending asbestos-related personal injury lawsuits filed in state courts across the country. The process of reaching an

accurate and fair assessment of the Debtor's asbestos liability, and addressing the various other asbestos-related issues that must be resolved in formulating a consensual plan of reorganization, are necessarily complex.

15. Given the size and complexity of this case, it is simply unrealistic to expect that any party—be it the Debtor or any other party in interest—would be in a position to formulate, promulgate and build consensus around a reorganization plan during the initial Exclusive Periods, and an extension of these periods is justified.

B. The Debtor's Progress in This Case Warrants an Extension of the Exclusive Periods.

16. An extension of a debtor's exclusive periods also is justified by progress in the resolution of issues facing the debtor's creditors and estates. See, e.g., In re Lionel L.L.C., No. 04-17324, 2007 WL 2261539, at *6 (Bankr. S.D.N.Y. Aug. 3, 2007); Cent. Jersey Airport Servs., 282 B.R. at 184; In re McLean Indus. Inc., 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987); Texaco, 76 B.R. at 327. As described in detail above, the Debtor has accomplished much during the first few months of this chapter 11 case and has made substantial progress in addressing early case matters, including (among other things) obtaining relief from the Court on issues essential to the conduct of this case, complying with the reporting and other obligations of a debtor in possession and initiating discussions with the Committee to promote a prompt resolution of this case, if possible. The Debtor's progress to date on these and the other matters described above justifies the requested extension of the Exclusive Periods.

C. The Requested Extension of the Exclusive Periods Will Not Harm the Debtor's Creditors or Other Parties in Interest.

17. The extension of the Exclusive Periods requested herein will not harm the Debtor's creditors or other parties in interest. In light of the size and complexity of the Debtor's chapter 11 case and the issues that necessarily must be resolved before a

reorganization plan can be formulated, neither the Debtor's creditors nor any other party in interest likely would be in a position to propose and solicit acceptances of a plan of reorganization prior to the extended Exclusive Periods proposed herein. Notably, the Debtor's goal of confirming a plan of reorganization establishing a trust under section 524(g) of the Bankruptcy Code contemplates a settlement of issues with asbestos claimants that will require additional time to pursue. Accordingly, the relief requested herein will not result in a delay of the plan process; rather, it will simply permit the process to move forward in an orderly fashion.

D. Little Time Has Elapsed in the Debtor's Chapter 11 Case.

18. Not only has the Debtor made significant progress in this case, it is notable that the Debtor filed this case less than four months ago, and this is its initial request for an extension of the Exclusive Periods. In fact, the Debtor's requested extension is in line with or more modest than the initial extensions of exclusivity granted in other complex asbestos-related chapter 11 cases. See, e.g., In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW) (Bankr. W.D.N.C. Jan. 20, 2017) (three months); In re Garlock Sealing Techs. LLC, Case No. 10-31607 (JCW) (Bankr. W.D.N.C. Aug. 27, 2010) (six months); In re Specialty Prods. Holding Corp., Case No. 10-11780 (JKF) (Bankr. D. Del. Oct. 27, 2010) (same); In re Hercules Chem. Co., Case No. 08-27822 (MBM) (Bankr. D.N.J. Dec. 18, 2008) (same); In re Kaiser Aluminum Corp., Case No. 02-10429 (JKF) (Bankr. D. Del. July 12, 2002) (same); In re Fed. Mogul Global Inc., Case No. 01-10578 (CSS) (Bankr. D. Del. Jan. 14, 2002) (same); In re W.R. Grace & Co., Case No. 01-1139 (JKF) (Bankr. D. Del. Feb. 25, 2002) (same); In re USG Corp., Case No. 01-2094 (JKF) (Bankr. D. Del. Nov. 7, 2001) (same); In re G-I Holdings, Inc., Case No. 01-30135 (RG) (Bankr. D.N.J. June 8, 2001) (eight months); In re Armstrong World Indus., Inc., No. 00-4471

(JKF) (Bankr. D. Del. Mar. 8, 2001) (six months); In re Owens Corning, Case No. 00-3837 (KG) (Bankr. D. Del. Jan. 17, 2001) (same).

E. The Committee and the Future Claimants' Representative Have Consented to the Requested Extension.

19. The Debtor has discussed this four-month extension with the Committee and the Future Claimants' Representative, and both have indicated that the extension is acceptable to them.

Notice

20. Consistent with 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 Committee; (c) counsel to the Future Claimants' Representative; (d) counsel to the Debtor's non-debtor affiliate, Georgia-Pacific LLC, a Delaware limited liability company; 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

21. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A: (i) extending the Exclusive Filing Period in this case through and including July 6, 2018; (ii) extending the Exclusive Solicitation Period in this case through and including September 7, 2018; and (iii) granting such other relief to the Debtor as the Court may deem proper.

Dated: March 1, 2018
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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ATTORNEYS FOR DEBTOR AND
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EXHIBIT A

**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 EXTENDING THE EXCLUSIVE PERIODS TO FILE A PLAN
OF REORGANIZATION AND SOLICIT ACCEPTANCES THEREOF**

This matter coming before the Court on the *Debtor's Motion for an Order Extending the Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof* (the "Motion"),² filed by the above-captioned debtor and debtor in possession (the "Debtor"); the Court having reviewed the Motion and having heard the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C.

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.

§ 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) cause exists within the meaning of section 1121(d) of the Bankruptcy Code for the extension of the Exclusive Periods granted herein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Exclusive Filing Period is hereby extended through and including July 6, 2018 pursuant to section 1121(d) of the Bankruptcy Code.
3. The Exclusive Solicitation Period is hereby extended through and including September 7, 2018, pursuant to section 1121(d) of the Bankruptcy Code.
4. The extensions of the Exclusive Periods in this Order are without prejudice to the Debtor's right to seek further extensions of these periods.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation 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