

**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 SECOND 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 November 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 January 7, 2019, 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

The Debtor continues to make significant progress in this case. During its first four-month extension of exclusivity, the Debtor continued to devote significant time engaging with the Official Committee of Asbestos Claimants (the "Committee") and the legal

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.

representative for future asbestos claimants (the "Future Claimants' Representative") on a possible consensual resolution of this case. In that regard, the Debtor continued to produce a broad array of documents and other information responsive to informal information requests from the Committee and the Future Claimants' Representative. In addition, to facilitate settlement discussions, the Debtor, the Committee and the Future Claimants' Representative agreed to various extensions of deadlines in this case to provide time for the parties to explore a prompt resolution of this case. Among other things, the parties agreed to extend the time for (a) the Committee to contest the preliminary injunction extending the automatic stay to protect affiliates of the Debtor and (b) the date by which certain motions by the Committee to seek dismissal or otherwise challenge this case will be deemed timely. Litigation over those issues thus has been avoided to date in favor settlement efforts.

Further, counsel for the Debtors, the Committee and the Future Claimants' Representative have instituted a practice of convening weekly conference calls to discuss a variety of topics important to the conduct of the case, including potential settlement. Finally, the Debtor met in-person again with the Committee and the Future Claimants' Representative (for the third time with the Committee and the second time with the Future Claimants' Representative), this time specifically to discuss a potential consensual resolution of the case.

Despite the progress to date, this case is still in its relatively early stages. Given the magnitude and complexity of the issues presented by this case, more time will be needed for the Debtor to continue negotiations with the Committee and the Future Claimants' Representative and pursue a resolution of this case. Accordingly, the Debtor seeks an order extending, by approximately four months, each of the Exclusive Periods. The governing statute and case law make it 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. Under the circumstances, the Court 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] , as modified by an order entered on March 29, 2018 [Docket No. 348]. On February 23, 2018, the Court entered an order appointing Sander L. Esserman as the Future Claimants' Representative [Docket No. 278].

3. On March 1, 2018, the Debtor filed its first motion to extend the Exclusive Periods [Docket No. 296]. On March 26, 2018, this Court entered an order [Docket No. 336] (the "First Extension Order") extending the Exclusive Filing Period to July 6, 2018, and the Exclusive Solicitation Period to September 7, 2018 (together, the "Current Extension Period").

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.

The Debtor Has Worked Diligently to Administer and Advance This Case

5. The Debtor continues to work diligently to carry out its responsibilities and preserve and maximize the value of its estate for stakeholders. During the Current Extension

Period, the Debtor fulfilled its obligations as a chapter 11 debtor in possession, including its various reporting obligations and the payment of statutory fees. In addition, the Debtor addressed the following matters since the last request to extend the Exclusive Periods:

- a. The Debtor continued to engage in regular discussions with the Committee and the Future Claimants' Representative with the goal of negotiating a prompt consensual resolution to this chapter 11 case. To assist the Committee and the Future Claimants' Representative in these discussions, the Debtor continued to produce documents and information to the Committee and the Future Claimants' Representative in response to informal information requests from the Committee.
- b. In this regard, since February 1, 2018, the Debtor has produced more than 141,000 Bates-stamped pages of historic corporate records, transactional documents, financial statements, certain non-privileged documents from the Debtor's litigation files and other documents. In addition, the Debtor will shortly make available to the Committee and the Future Claimants' Representative a database containing more than 7 million pages of historic sales records (plant and distribution center records), subject to the terms and conditions of the parties' *Agreed Order Establishing Non-Waiver and Other Conditions for Access to and Use of the Debtor's Electronic Sales Records Database and Underlying Paper Records* [Docket No 426], which was entered by the Court on July 2, 2018.
- c. In connection with providing documents and information as part of informal discovery, the Debtor, the Committee and the Future Claimants' Representative worked together to finalize an agreed protective order. The protective order, as modified to address certain concerns of the Court, was entered by the Court on March 26, 2018 [Docket No. 337] (the "Protective Order"). On April 3, 2018, the Future Claimants' Representative provided notice [Docket No. 367] of his election to become a party to the Protective Order, as contemplated by that order.
- d. To promote the progress of this case, counsel for the Debtor, Committee and the Future Claimants' Representative have instituted a practice of having weekly conference calls to discuss case issues and advance settlement efforts.
- e. The Debtor consummated the sale of one of its insurance assets—a claim in the liquidation of Midland Insurance Company—after a

competitive bidding process, pursuant to an order of the Court entered on March 26, 2018 [Docket No. 334].

- f. On April 18, 2018, the Debtor moved for a second extension of the period during which it may remove actions pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure [Docket No. 381]. The proposed extension was agreed upon by the Committee and the Future Claimants' Representative, and was approved by the Court by an order entered on May 8, 2018 [Docket No. 405].
- g. On the Petition Date, the Debtor commenced an adversary proceeding [Adv. Pro. No. 17-03105 (LTB)] (the "Adversary Proceeding") in which the Debtor, among other things, sought injunctive and declaratory relief prohibiting and enjoining the filing or prosecution of asbestos-related claims against affiliates of the Debtor. A temporary restraining order was entered on November 8, 2018 [Adv. Pro. Docket No. 18] granting the relief on an interim basis, and the relief was subsequently extended by a preliminary injunction agreed upon by the Debtor and the Committee (the "Preliminary Injunction"). On May 31, 2018, the Court entered a fourth agreed order in the Adversary Proceeding, further extending the Preliminary Injunction through August 27, 2018, as well as extending the time for the Committee and others to object to the further extension of the Preliminary Injunction. This extension provided the parties more time to pursue settlement discussions rather than litigation.
- h. To accommodate ongoing settlement efforts, in addition to extending the Preliminary Injunction, the Debtor and the Committee agreed to extend until July 31, 2018 the time established in the *Agreed Order Regarding Filing of Certain Motions* [Docket No. 135] (the "Challenge Motion Order") for the Committee to file any Challenge Motions (as defined in the Challenge Motion Order) and be deemed timely, as described in a notice filed on May 30, 2018 [Docket No. 419]. In general, the Challenge Motions include any motions seeking dismissal or challenging venue of the Debtor's bankruptcy case.
- i. On June 12, 2018, the Debtor, the Committee and the Future Claimants' Representative met in person in Chicago specifically to discuss a potential global settlement of this case. This was the third in-person settlement meeting between the Debtor and the Committee and the second that included the Future Claimants' Representative. The parties' discussions are ongoing.

Next Steps

6. The Debtor remains committed to emerging from chapter 11 as soon as practicable. In that regard, as described above, the Debtor has engaged in regular and ongoing discussions with its major constituencies regarding issues related to this case and an agreement on a plan of reorganization. Because these efforts are ongoing, the Debtor requires additional time to pursue its goal of a consensual restructuring.

Request for Extension of Exclusive Periods and Grounds for Relief

7. 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. 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.

8. Per the First Extension Order, the Exclusive Filing Period expires on July 6, 2018, and the Exclusive Solicitation Period expires on September 7, 2018.² By this Motion, the Debtor seeks an approximate four-month extension of the Exclusive Periods to formulate, file and seek acceptances of a consensual plan of reorganization in these cases.

9. 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

² 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 July 6, 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.

"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.

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

11. 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 Adelpia 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.

12. 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).

13. 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 issues that must be resolved in formulating a consensual plan of reorganization, are necessarily complex.

14. Given the size and complexity of this case, the Debtor requires additional time to negotiate a consensual agreement on the Debtor's asbestos liability and other restructuring issues, and build consensus around a reorganization plan. Thus, a further extension of the Exclusive Periods is justified.

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

15. 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 made substantial progress in this case during the first extension of the exclusive periods, 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; engaging in extensive production of documents and information to the Committee and the Future Claimants' Representative; continuing regular discussions with the Committee and the Future Claimants' Representative to promote a prompt resolution of this case, if possible, including a third in-person settlement meeting; and extending certain deadlines to allow for the continuation of these discussions. 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.**

16. 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, negotiations towards a potential consensual resolution of the Debtor's liability are ongoing. Accordingly, the relief requested herein will not result in a delay of the plan process; rather, it will permit the process to move forward in an orderly and efficient fashion.

17. Further, in advance of filing this Motion, the Debtor advised the Committee and the Future Claimants' Representative of the proposed extension of the Exclusive Periods. The Future Claimants' Representative has informed the Debtor that he does not oppose the proposed extension, and the Committee has not expressed any opposition to this request.

Notice

18. 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

19. 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 November 6, 2018; (ii) extending the Exclusive Solicitation Period in this case through and including January 7, 2019; and (iii) granting such other relief to the Debtor as the Court may deem proper.

Dated: July 5, 2018
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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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,¹

Debtor.

Chapter 11

Case No. 17-31795 (LTB)

**SECOND 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 Second 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 November 6, 2018, pursuant to section 1121(d) of the Bankruptcy Code.
3. The Exclusive Solicitation Period is hereby extended through and including January 7, 2019, 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