IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
CARBO CERAMICS INC., *et al.*[1]	§	**Case No. 20-31973 (MI)**
	§	
Debtors.	§	**(Jointly Administered)**
	§	
	§	

EMERGENCY MOTION OF THE PLAN ADMINISTRATOR FOR (I) ENTRY OF A FINAL DECREE CLOSING CERTAIN CHAPTER 11 CASES; (II) AMENDMENT OF THE ORDER DIRECTING JOINT ADMINISTRATION OF THE CHAPTER 11 CASES; AND (III) GRANTING RELATED RELIEF

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 20, 2021 AT 9:00 AM (PREVAILING CENTRAL TIME) IN COURTROOM 400, 515 RUSK STREET, HOUSTON TEXAS 77002.

IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING. AUDIO

[1] The Reorganized Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: CARBO Ceramics Inc. ("CARBO") (0013); StrataGen, Inc. ("StrataGen") (5205); and AssetGuard Products Inc. ("AssetGuard") (6422). The location of the Debtors' U.S. corporate headquarters and the Debtors' service address is: 575 N. Dairy Ashford Road, Suite 300, Houston, Texas 77079.

COMMUNICATION WILL BE BY USE OF THE COURT'S REGULAR DIAL-IN NUMBER. THE DIAL-IN NUMBER IS 832-917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGES. YOU WILL BE ASKED TO KEY IN THE CONFERENCE ROOM NUMBER. JUDGE ISGUR'S CONFERENCE ROOM NUMBER IS 954554.

PARTIES MAY PARTICIPATE IN ELECTRONIC HEARINGS USING GOTOMEETING. PERSONS CONNECTING BY MOBILE DEVICE WILL NEED TO DOWNLOAD THE FREE GOTOMEETING APPLICATION. A LINK TO THE GOTOMEETING AND INFORMATION FOR PARTICIPATING IN THE HEARING THROUGH THE APPLICATION IS AVAILABLE ON THE COURT'S WEBSITE AT JUDGE ISGUR'S HOME PAGE AT: https://www.txs.uscourts.gov/content/united-states-bankruptcy-judge-marvin-isgur

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE:

GlassRatner Advisory & Capital Group (the "Plan Administrator")[2], trustee of the liquidating trust ("Liquidating Trust") in the above-styled chapter 11 cases (each, individually, a "Case" and collectively, the "Cases") of the above-captioned reorganized debtors (the "Debtors" or "Reorganized Debtors," as applicable) by and through its undersigned counsel, hereby files this emergency motion (the "Motion") and in support thereof, respectfully submits as follows:

RELIEF REQUESTED

1. The Plan Administrator seeks entry of a final decree in two of these Cases, substantially in the form of the proposed final decree filed herewith (the "Final Decree"), (a) closing, for procedural purposes, the Cases (the "Affiliate Cases") of CARBO and AssetGuard (the "Affiliate Debtors"), (b) amending the order of joint administration entered in these Cases to

[2] Capitalized terms used but not immediately defined shall have the meaning given to them in the Plan (as defined herein).

provide for joint administration under the lead case of StrataGen (the "Open Debtor"), Case No. 20-31975, *In re StrataGen, Inc.* (the "Open Case"); and (c) granting related relief.[3]

JURISDICTION AND VENUE

2. The Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. § 1408.

3. The Court has constitutional authority to enter a final order in this matter. If it is determined that the bankruptcy judge does not have the constitutional authority to enter a final order or judgment in this matter, the Plan Administrator consents to the entry of a final order or judgment by this Court in this matter.

4. The bases for the relief requested herein are section 350(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 1009(a), 3022, and 9006(b)of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

BACKGROUND

A. General Background

5. The Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 29, 2020 (the "Petition Date") commencing the above-styled cases (the "Chapter 11 Cases").

6. On March 29, 2020, the Debtors filed their *Emergency Motion for Entry of an Order Directing Joint Administration of the Debtors' Chapter 11 Cases* [Dkt. No. 2].

[3] Including, among other things, authorization, pursuant to Bankruptcy Rules 1009(a) and 9006(b), to amend, if necessary, the Schedules and Statements of Financial Affairs filed by the Affiliate Debtors by filing such an amendment in the Open Case.

7. On January 16, 2018, the Court entered an order directing joint administration of the Cases [Docket No. 24] (the "Joint Administration Order") under the lead Case of Debtor CARBO, *In re CARBO Ceramics, Inc.*, Case No. 20-31973. The Cases jointly administered with CARBO's are:

- *In re AssetGuard Products Inc.*, Case No. 20-31974; and
- *In re StrataGen, Inc.*, Case No. 20-31975.

8. On June 18, 2020, the Court entered its order [Docket No. 539] (the "Confirmation Order") confirming the Debtors' *Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 528] (the "Plan").[4] The Effective Date of the Plan occurred on July 2, 2020.

B. The Plan Has Been Substantially Consummated

9. On or shortly after the Effective Date, *inter alia*: (1) the Debtors emerged from the Cases as the Reorganized Debtors; (2) the Liquidating Trust was formed pursuant to the terms of the Plan with the Plan Administrator as trustee; (3) the restructuring transactions contemplated by the Plan were executed; and (4) the Plan was substantially consummated. The Confirmation Order is final and non-appealable.

10. On December 11, 2020, the Plan Administrator filed a motion (the "Prior Motion") [Dkt. No. 676] substantially similar to this Motion seeking entry of final decrees in the Affiliate Cases. Following a hearing on the Prior Motion, and giving due consideration to the Court's comments at such hearing, the Plan Administrator withdrew [Dkt. No. 689] the Prior Motion without prejudice and, with the aid of its professionals, conducted a comprehensive review of avoidance actions owned by the trust. Upon the completion of this review and settlement of a key avoidance action which was negotiated without the need for the filing of a complaint, the Plan

[4] Article XII(M) of the Plan expressly grants the Plan Administrator authority to seek entry of a final decree in the Cases.

Administrator believes it is in the best interests of the Liquidating Trust and its beneficiaries that the Final Decree be entered in the Affiliate Cases at this time.

11. The Plan Administrator does not believe there is any administrative need for the Affiliate Cases to remain open at this time. Closing the Affiliate Cases will not affect distributions to creditors because, through the Open Case, the Plan Administrator and Reorganized Debtors, as applicable, can continue to administer the Plan, reconcile filed proofs of claim against all Debtors, make objections and motions to estimate disputed claims where appropriate, pursue chapter 5 actions preserved under the Plan, and make disbursements to holders of claims in classes entitled to a distribution. In addition, pending and future contested matters and adversary proceedings related to the Affiliate Debtors or Affiliate Cases can be administered under the Open Case pursuant to the terms of the Plan.

12. No creditor or party-in-interest will be prejudiced by the relief sought in this Motion. Closing the Affiliate Cases will, however, provide a major benefit to the Liquidating Trust and, by proxy, its beneficiaries, in the form of substantially reduced fees owed pursuant to section 1930(a)(6) of title 28 of the U.S. Code ("Quarterly Fees"), which requires that Quarterly Fees be paid for each chapter 11 case until such case is closed. Such fees are a financial burden and approval of this motion would result in significant savings and corresponding benefits for general unsecured creditors.

C. Remaining Tasks and Open Matters

13. The Plan Administrator and Reorganized Debtors, as applicable, have also focused on analyzing and resolving various filed proofs of claim and requests for payment of administrative expenses. Approximately 348 proofs of claim were filed in the Cases.

14. The Plan Administrator is involved in ongoing efforts to analyze filed proofs of claim, and anticipates filing objections to disputed claims in the future (such objections,

collectively with any claim objections filed or to be filed by the Reorganized Debtors, the "Claim Objections").

15. Finally, from time to time various motions, applications, pleadings, objections, chapter 5 causes of action, or other matters or proceedings may arise in respect of the Cases or the Debtors. The Plan Administrator submits that these remaining matters, whether or not they pertain to the Open Case or the Affiliate Cases, including any Claims Objections, and any adversary proceedings pertaining to the Affiliate Cases or Affiliate Debtors, may be filed, administered, and adjudicated in the Open Case and therefore the closure of the Affiliate Cases will not cause any substantive impact on any party in interest. While no adversary proceedings are currently pending relating to either of the Affiliate Cases or Affiliate Debtors, the Plan Administrator anticipates that it may pursue certain causes of action in the future. For the reasons discussed herein, the Plan Administrator submits that this is not an impediment to closing the Affiliate Cases, and language addressing the Court's comments at the hearing on the Prior Motion has been added to the attached Final Decree at decretal paragraph 6.

16. No appeals are pending in the Affiliate Cases.

BASIS FOR RELIEF

A. Entry of a Final Decree in the Affiliate Cases Is Appropriate Under the Circumstances

17. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case."[5] Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, further provides that "[a]fter

[5] 11 U.S.C. §350(a).

an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."[6]

18. The term "fully administered" is not defined in the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Local Rules. The Advisory Committee Notes to Bankruptcy Rule 3022 (the "Advisory Committee Notes"), however, set forth the following non-exclusive factors for consideration in determining whether a case has been fully administered:

a. whether the order confirming the plan has become final;

b. whether deposits required by the plan have been distributed;

c. whether the property proposed by the plan to be transferred has been transferred;

d. whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;

e. whether payments under the plan have commenced; and

f. whether all motions, contested matters, and adversary proceedings have been finally resolved.

19. Courts look "to the advisory committee's notes on Bankruptcy Rule 3022 in seeking guidance as to the meaning of 'fully administered.'"[7] "[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree."[8] As this Court has noted in a

---

6 Fed. R. Bankr. Proc. 3022.

7 *In re JCP Props., Ltd.*, 540 B.R. 596, 605 (Bankr. S.D. Tex. 2015); *see also In re Valence Tech., Inc.*, No. 12-11580-CAG, 2014 WL 5320632, at *3 (Bankr. W.D. Tex. Oct. 17, 2014) ("Although courts have generally used the Advisory Notes six factors to determine whether a case has been fully administered, these factors are not exhaustive nor must all six factors be present to establish that a case should be closed."); *In re McClelland*, 377 B.R. 446, 453 (Bankr. S.D.N.Y. 2007) (noting that the 1991 Advisory Committee Notes to Rule 3022 "list a number of factors for the Court to consider before entering a final decree"); *In re Jay Bee Enters., Inc.*,207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case).

8 *In re Idearc Inc.*, No. 09-31828 (BJH) (Bankr. N.D.Tex. Dec. 29, 2011); *see also In re SLI, Inc.*, No. 02-12608, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) ("[T]hese factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed."); *see In re Mold Makers, Inc.*, 124 B.R. 766, 768–69 (Bankr. N.D. Ill. 1990) (stating that "the Committee Note and the factors therein merely serve as a guide in assisting the Court in its decision to close a case.").

case on a very similar procedural footing with similar relief being sought, it can be appropriate "to close the case . . . even where there are pending matters that don't directly affect the reorganization of the [d]ebtor."[9]

20. In addition to the factors set forth in the Advisory Committee Notes, courts consider whether the plan of reorganization has been substantially consummated.[10] Section 1101(2) of the Bankruptcy Code defines substantial consummation as the: "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."[11] Moreover, case law is clear that entry of a final closing decree is only an administrative task that does not determine substantive rights of the parties.[12]

21. All of these factors need not be present before a court will enter a final decree. For example, pending adversary proceedings do not necessarily preclude a court from entering a final

---

9 *In re Vanguard Natural Resources, Inc.*, Case No. 18-03244; Dkt. No. 29 at 98.

10 *See JCP Props.*, 540 B.R. at 605 ("[S]ubstantial consummation is the pivotal question here to determine the propriety of closing the [case]"); *In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (stating that "several courts have concluded that a Chapter 11 case should be considered 'fully administered' when it reaches the point of substantial consummation as defined in Section 1101(2)."") (citing *Walnut Assocs. v. Saidel*, 164 B.R 487, 493 (E.D. Pa. 1994); *In re BankEast Corp.*, 132 B.R. 665 (Bankr. D.N.H. 1991)).

11 11 U.S.C. 1101(2).

12 *See In re Clayton*, 101 F.3d 697 (table), 1996 WL 661099, at *1 (5th Cir. 1996)("[E]ntry of a final decree is merely a perfunctory, administrative event and nothing more than a ministerial housekeeping act which was never designed to determine with finality the substantive rights of parties involved in a Chapter 11 case.") (quoting *Greater Jacksonville Transp. Co. v. Willis (In re Greater Jacksonville Transp. Co.)*, 169 B.R. 221, 224 (Bankr. M.D. Fla. 1994)); *see also In re Gould*, 437 B.R. 34, 38 (Bankr. D. Conn. 2010) (noting that a final decree "simply delineates on the docket that the case is closed; it represents the administrative conclusion of the case for recording keeping purposes.").

decree.[13] In addition, the fact that some portion of the consideration to be distributed pursuant to a plan remains to be distributed should not be an impediment to the issuance of a final decree.[14]

22. Courts in the Fifth Circuit have entered final decrees and closed cases when various claims and contested matters remained pending and the bankruptcy court retained jurisdiction over open claims and ongoing adversary proceedings. *See, e.g., In re EXCO Resources, Inc.*, Case No. 18-30155 (MI) (Bankr. S.D. Tex. Aug. 13, 2019) [Docket No. 2285]; *In re Parker Drilling,* Case No. 18-36958 (MI) (Bankr. S.D. Tex. May 13, 2019) [Docket No. 13]; *In re Gastar Expl., Inc.*, Case No. 18-36057 (MI) (Bankr. S.D. Tex. Mar. 29, 2019) [Docket No. 340]; *In re Goodman Networks Inc.*, Case No. 17-31575 (MI) (Bankr. S.D. Tex. Aug. 14, 2018) [Docket No. 358]; *In re Seadrill Ltd.*, Case No. 17-50079 (DRJ) (Bankr. S.D. Tex. July 2, 2018) [Docket No. 1390]; *In re Expro Holdings US Inc.*, Case No. 17-60179 (DRJ) (Bankr. S.D. Tex. May 8, 2018) [Docket No. 277]; *In re Vanguard Natural Resources, LLC,* Case No. 17-30561 (MI) (Bankr. S.D. Tex. Nov. 9, 2017) [Docket No. 9].[15]

23. Here, the foregoing factors weigh strongly in favor of closing the Affiliate Cases. The Effective Date has occurred and the Plan has been substantially consummated. Further, the Confirmation Order is final, non-appealable, and not subject to any pending appeal. The remaining transactions and distributions to be made pursuant to the Plan primarily depend on the resolution

---

[13] *See In re JMP-Newcor Int'l, Inc.*, 225 B.R. 462 (Bankr. N.D. Ill. 1998) (entering a final decree when an adversary proceeding was pending); *In re Valence Tech, Inc.*, No. 12-11580-CAG, 2014 Bankr. LEXIS 4429, at *4 (Bankr. W.D. Tex. Oct. 17, 2014) ("[I]t is well-established that '[t]he continuation of an adversary proceeding . . . is insufficient by itself to keep a case from being considered 'fully administered.'"") (citation omitted).

[14] *See* Advisory Committee Notes ("Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed."); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (finding that Bankruptcy Rule 3022 "does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid"); *JMP-Newcor Int'l*, 225 B.R. 462 (entering a final decree though debtors still needed to make certain distributions).

[15] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Plan Administrator's counsel.

of disputed claims and can be mechanically implemented in the Open Case pursuant to the terms of the Plan, as well as the Plan Administrator's pursuit of various adversary proceedings which can also be efficiently administered in connection with the Open Case.

24. The Plan Administrator (and Reorganized Debtors, as applicable) will continue working to resolve all remaining matters and the issues that will relate to the Affiliate Cases can be handled under the Open Case without keeping the Affiliate Cases open. Closing the Affiliate Cases will have no impact on the resolution of disputed claims, distributions, or other legal entitlements under the Plan, or the substantive rights of any party in interest. Just like the final decree at issue in this Court's opinion in *In re Vanguard Natural Resources, Inc.*, the relief sought in this Motion is purely procedural in nature, and is intended to facilitate the administration of the Affiliate Cases by organizing the Cases in a way that will minimize overall costs.[16]

25. By contrast, closing the Affiliate Cases will provide Holders of Class 4 General Unsecured Claims a significant benefit in the form of reduced U.S. Trustee Fees during the remaining pendency of these Cases. Such fees are a financial burden and approval of this motion would result in significant savings and corresponding benefits for general unsecured creditors.

26. The Plan Administrator believes the relevant factors support a finding that the Affiliate Cases satisfy the standard for procedural closing under section 350(a) of the Bankruptcy Code, the Plan has been substantially consummated in respect of the Affiliate Cases, and entry of the Final Decree is appropriate to procedurally close each Affiliate Case.

27. In addition, the Plan Administrator submits that amendment of the Joint Administration Order to reflect the procedural closure of the Affiliate Cases and ongoing

[16] 2020 WL 2027284 at *22-23 (Bankr. S.D. Tex.) (noting, in the context of a number of affiliated chapter 11 cases where final decrees had been entered in each case but one, in which any remaining matters from the closed cases could also be administered or otherwise dealt with, that "Vanguard's purpose was unmistakable—it sought entry of the Final Decree to continue its administration of the Reorganized Debtors in a manner that would minimize its overall costs.").

administration under the Open Case is appropriate in the circumstances. Accordingly, the Plan Administrator requests that the Court enter: (a) the Final Decree, in accordance with section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, procedurally closing each of the Affiliate Cases, but retaining jurisdiction over any and all matters currently pending in the Cases or arising in connection with any of the Cases in the future, and (b) amending the Joint Administration Order to provide for joint administration of the Cases under the Open Case and adjusting the caption going forward.

EMERGENCY CONSIDERATION

28. The Plan Administrator respectfully requests emergency consideration to preserve the resources of the Liquidating Trust. As the Reorganized Debtors associated with the Affiliate Cases are making disbursements in the ordinary course of the operation of their business, each passing day potentially adds to the Quarterly Fees that would need to be paid in connection with the Affiliate Cases. In addition, the Plan Administrator has conferred the U.S. Trustee, through counsel, regarding the relief sought in this Motion and the U.S. Trustee has consented to the emergency consideration of the Motion. In accordance with Bankruptcy Local Rule 9013-1(i), undersigned counsel for the Plan Administrator certifies that the information in this motion is accurate.

NOTICE

29. The Plan Administrator will provide notice of this motion to: (a) the U.S. Trustee; and (b) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Plan Administrator respectfully requests that the Court enter the Final Decree granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: September 16, 2021

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Michael K. Riordan

Michael K. Riordan
State Bar No. 24070502
1000 Louisiana, Suite 2000
Houston, Texas 77002-5011
Telephone: 713-276-5727
Email: mriordan@foley.com

-and-

Holland N. O'Neil
State Bar No. 14864700
Telephone: 214-999-4961
Email: honeil@foley.com
2021 McKinney Avenue, Suite 1600
Dallas, Texas 75201

ATTORNEYS FOR THE PLAN ADMINISTRATOR

CERTIFICATE OF SERVICE

I do hereby certify that on September 16, 2021 a true and correct copy of the foregoing pleading was served via CM/ECF to all parties authorized to receive electronic notice in these cases.

/s/ Michael K. Riordan
Michael K. Riordan