




J. Craig Whitley
United States Bankruptcy Judge

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

In re

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**ORDER AUTHORIZING THE DEBTOR
TO ENTER INTO TOLLING AGREEMENT**

This matter coming before the Court on the *Motion of the Debtor for an Order Authorizing It to Enter Into Tolling Agreement* [ECF No. 1069] (the “Motion”);² the Court having reviewed the Motion and having heard the statements of counsel with respect to the Motion at a hearing before the Court (the “Hearing”);

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;

¹ The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

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

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b);

C. A copy of the Motion and notice of the Hearing was provided to: (i) the Bankruptcy Administrator for the Western District of North Carolina; (ii) counsel to the Asbestos Claimants Committee and the Future Claimants' Representative (together, the "Claimant Representatives"); (iii) all parties on the service lists established by the Case Management Order in this chapter 11 case [ECF No. 27]; (iv) all persons or entities that have requested notice of the proceedings in this chapter 11 case; and (v) all non-debtor parties to the tolling agreement proposed in the Motion.

D. Notice of the Motion and the Hearing was sufficient under the circumstances for all purposes;

E. Entry into the tolling agreement in substantially the form attached as Exhibit A to this Order (the "Tolling Agreement") will preserve the Preserved Claims (as defined in the Tolling Agreement) because, among other things, section 546(a) of the Bankruptcy Code sets forth a statute of limitations and not a statute of repose and, therefore, is not jurisdictional in nature;

F. Entry into the Tolling Agreement will not in any way hinder or impair the Claimant Representatives from investigating, commencing, prosecuting, and/or settling any Preserved Claims, subject to any requirements of Court approval;

G. Entry into the Tolling Agreement is in the best interests of the Debtor and its estate and creditors;

H. All persons or entities that are or become parties to the Tolling Agreement have agreed to enter into the Tolling Agreement willingly, without coercion and upon the advice of counsel;

I. The terms of the Tolling Agreement, including the contractual obligations set forth therein, are binding and effective under applicable law upon the parties that execute the Tolling Agreement; and

J. 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. The Debtor is hereby authorized to, and agrees to, enter into the Tolling Agreement substantially in the form attached to this Order as Exhibit A, pursuant to sections 105(a) and 363 of the Bankruptcy Code.
3. The Debtor is authorized to make such revisions to the Tolling Agreement as may be agreed upon by the Debtor, the Claimant Representatives and the applicable Potential Defendant parties to the Tolling Agreement.
4. The Debtor is authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.
5. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

This Order has been signed electronically. The Judge's signature and the Court's seal appear at the top of the Order.

United States Bankruptcy Court

EXHIBIT A

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

In re

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

TOLLING AGREEMENT

This Tolling Agreement (this “Agreement”) is effective as of January [___], 2022 (the “Effective Date”) by and among the following parties (collectively, the “Parties” and each a “Party”): (1) the above-captioned debtor and debtor in possession (the “Debtor” or “DBMP”); (2) the Official Committee of Asbestos Personal Injury Claimants (the “ACC”); (3) Sander L. Esserman as Legal Representative for Future Asbestos Claimants (the “FCR” and, together with the ACC, the “Claimant Representatives”); and (4) and any individual or entity that executes a signature page to this Agreement (each a “Potential Defendant” and collectively, the “Potential Defendants”).

RECITALS

A. On January 23, 2020 (the “Petition Date”), the Debtor commenced this case (the “Bankruptcy Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”).

B. On February 14, 2020, the Court appointed the ACC (ECF No. 155).

C. On June 1, 2020, the Court appointed the FCR (ECF No. 310).

¹ The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

D. On November 3, 2021, the Court entered the *Order Granting in Part and Denying in Part the Motion of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants' Representative for Entry of an Order (I) Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action, and (II) to Conduct Relevant Examinations* (ECF No. 1197) (the “Standing Order”).

E. Pursuant to the Standing Order, the Claimant Representatives were granted standing and authority to prosecute and, if appropriate and approved by the Court after notice and hearing, settle claims on behalf of the Debtor’s estate, with respect to, arising from, or otherwise related to the Corporate Restructuring, as such term is defined in the Claimant Representatives’ motion for standing [ECF No. 1008] (the “Standing Motion”).²

F. The Parties have agreed to enter into this Agreement to preserve any Preserved Claims (as defined below) that the Debtor’s bankruptcy estate may have against the Potential Defendants as of the Effective Date and any defenses and responses that the Potential Defendants may have with respect to such claims.

G. The Parties wish to preserve the *status quo* and toll all applicable statutes of limitations or repose or other rule, provision, defense, or principle based upon the passage of time (including, without limitation, waiver, estoppel, and laches), whether at law or at equity, whether statutory, contractual, or otherwise, including, but not limited to, those contained in sections 546(a), 549(d), and 108(a) of the Bankruptcy Code, and other applicable provisions of

² In particular, the Corporate Restructuring is defined as “the corporate transactions that created the Debtor and New CertainTeed, the new entity that holds the other assets, operations and liabilities that were previously part of a single enterprise with those of the Debtor, including, without limitation, the transactions and decisions that lead to the Debtor ultimately seeking bankruptcy relief before this Court.” Standing Motion at ¶ 1. The Corporate Restructuring is more fully described in, *inter alia*, the *Declaration of Robert J. Panaro in Support of First Day Pleadings* dated January 23, 2020 [ECF No. 24] and in the *Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring That the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Denying Motion of the Official Committee of Asbestos Personal Injury Claimants to Lift the Stay, and Alternatively (III) Preliminarily Enjoining Such Actions* dated August 10, 2021 (Adv. Pro. No. 20-03004 ECF No. 343).

bankruptcy law and/or non-bankruptcy law (each individually referred to as a “Time-Based Defense” and collectively referred to as the “Time-Based Defenses”), thereby to preserve any claims or potential claims that the Debtor’s estate may have against the Potential Defendants as of the Effective Date with respect to, arising from, or otherwise related to the Corporate Restructuring (as that term is defined in the Standing Motion), including, but not limited to, by virtue of the powers of a trustee under chapter 5 and sections 1107 and 1108 of the Bankruptcy Code, under any legal theory or applicable law, whether asserted by claim, counterclaim, cross-claim, or otherwise (collectively, the “Preserved Claims”), and to preserve any defenses and responses the Potential Defendants may have thereto (the “Preserved Defenses”).

H. The Parties are willing to enter into this Agreement to preserve all Preserved Claims that the Debtor’s estate may have against the Potential Defendants as of the Effective Date, and all Preserved Defenses that any such defendant may have, according to the terms set forth herein and subject to approval of the Bankruptcy Court.

AGREEMENT

In consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. To preserve the *status quo*, any and all Time-Based Defenses with respect to the Preserved Claims and the Preserved Defenses are tolled and extended from the Effective Date of this Agreement through and including **July 31, 2022** (the “Initial Extended Date”).

2. The Initial Extended Date shall be automatically extended for additional six-month intervals (each, a “Subsequent Extended Date”) unless a Potential Defendant gives the Debtor, the ACC, and the FCR written notice of its intention not to renew at least 60 days prior to the expiration of the Initial Extended Date or a Subsequent Extended Date. Any Potential

Defendant, however, may opt out of future automatic renewals by giving the Debtor, the ACC, and the FCR written notice of that choice at any time at least 60 days prior to the expiration of the Initial Extended Date or a Subsequent Extended Date (such party, an “Opt-Out Defendant”) in which case any future renewals of the tolling period for such Opt-Out Defendant shall require a written agreement of the Opt-Out Defendant, the Debtor, the ACC, and the FCR. Notwithstanding the foregoing, if a lawsuit relating to any Preserved Claims is brought by the ACC or the FCR against a Potential Defendant, (a) upon the filing of such lawsuit, tolling as to all Preserved Claims against such named Potential Defendant(s) shall immediately terminate; and (b) any other Potential Defendant(s) not named in such lawsuit may give written notice to the Debtor, the ACC, and the FCR to terminate tolling 60 days after such notice. For the avoidance of doubt, if written notice is given by one Potential Defendant of its intention not to renew or to terminate tolling as permitted in this paragraph, this Agreement shall remain in full force and effect as to other Potential Defendants.

3. For the avoidance of doubt, nothing in this Agreement shall affect (a) the rights of the Claimant Representatives during the tolling period to seek discovery to complete their investigation of Preserved Claims, (b) any party’s right to object to such discovery, and (c) the rights of the Claimant Representatives during the tolling period, including while this Agreement is in effect, to commence, prosecute, and/or, if appropriate and approved by the Court after notice and hearing, settle any Preserved Claims.

4. The Parties agree that: (a) section 546(a) of the Bankruptcy Code (or any other Time-Based Defense) is not a limit on the Bankruptcy Court’s jurisdiction and can be tolled by agreement; and (b) no Party will assert any contrary position in any action, suit, or proceeding (whether filed in the Bankruptcy Court, the United States District Court for the Western District

of North Carolina, or, in the event the Debtor's chapter 11 case is no longer pending or a plan of reorganization that preserves the Preserved Claims has been confirmed, a Federal District Court or State Court of competent jurisdiction), including, without limitation, any proceedings relating to confirmation of a plan of reorganization. If a court nonetheless holds, in a final and non-appealable order, that the court does not have jurisdiction over any Preserved Claim because the Preserved Claim was filed after January 23, 2022, or such other date upon which any applicable Time-Based Defense would have expired but for this Agreement, the Parties agree that: (x) the entity asserting such Preserved Claim on behalf of the Debtor's estate nevertheless shall have a separate, distinct contractual right and claim against the Party subject to such Preserved Claim for avoidance and/or recovery (subject to the same legal requirements, levels of proof, and defenses as the related Preserved Claim); and (y) the Party subject to such Preserved Claim will have a corresponding separate and distinct contractual obligation to the entity asserting such Preserved Claim on behalf of the Debtor's estate (if such claim is successful), in the amount and for the remedies, if any, that the entity asserting such Preserved Claim would have been entitled to avoid and/or recover on behalf of the Debtor's estate had it asserted such Preserved Claim prior to January 23, 2022, or such other date upon which any applicable Time-Based Defense would have expired but for this Agreement, and obtained a final and non-appealable judgment from the court in its favor, subject to all other available rights, claims, and defenses of each Party. The agreements contained in this paragraph are a material inducement to each Party to enter into this Agreement.

5. This Agreement shall not in any manner revive, resurrect, or create any claims, rights, causes of action, or suits that, as of the Effective Date, had expired or were barred by any Time-Based Defense, or limit in any way the assertion of any defense available as of the Effective Date. For the avoidance of doubt, nothing in this Agreement shall prevent the Potential

Defendants from asserting that any Preserved Claim became subject to or barred by a Time-Based Defense on or before the Effective Date, and nothing in this Agreement shall prevent the Debtor, any Claimant Representative, or any other party representing the Debtor's estate or the interests of such estate or a successor thereto from contesting such assertion.

6. This Agreement shall bind and inure to the benefit of the Parties hereto, the Debtor's estate, and creditors and heirs, assigns, executors, administrators, successors-in-interest and any agent or authorized representative of any of the foregoing appointed by the Bankruptcy Court in this case or in connection with any plan of reorganization or liquidation. Nothing contained in this Agreement shall create, grant, or limit any person or entity, the right, ability, or standing to pursue the Preserved Claims.

7. This Agreement shall not operate as an admission of liability by any Party. Except as expressly set forth herein, by entering into this Agreement, neither the Debtor nor any Potential Defendant has waived or limited in any respect any right, claim, cause of action, or defense, except as set forth herein with respect to any Time-Based Defenses.

8. Nothing in this Agreement amounts to, and nothing in this Agreement may be considered: (a) a consent by any of the Parties to jurisdiction by the Bankruptcy Court over any Preserved Claim that must be tried by a court established under Article III of the United States Constitution; (b) a consent by any of the Parties to the trial of any Preserved Claim by the Bankruptcy Court as a "core" proceeding under 11 U.S.C. § 157(b)(2); (c) a waiver of any defenses by any of the Parties based on personal jurisdiction that any Party may have with respect to any Preserved Claim; or (d) a waiver of trial by jury that any Party may have with respect to any Preserved Claim as to which a right of trial by jury exists. The Parties consent to Bankruptcy Court jurisdiction solely for purposes of interpreting and enforcing this Agreement.

9. This Agreement may not be modified, altered, or amended except by a writing signed by or on behalf of the Parties to this Agreement and approval of the Bankruptcy Court. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and no representations, acknowledgments, warrants, promises, or conditions were made by any Party except as expressly set forth herein.

10. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

11. Each Party represents that it has entered into this Agreement knowingly and voluntarily, and without any duress, undue influence, or coercion, and upon the advice of independent legal counsel.

12. Each Party entering into and executing this Agreement represents and warrants that such Party has the full authority and legal power to do so. This Agreement may be executed in counterparts and/or by facsimile or other electronic signature, and each such counterpart together with the others shall constitute one and the same instrument.

13. Upon approval of the Bankruptcy Court, this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina, without reference to the conflicts or choice of law principles thereof.

14. The Bankruptcy Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this

Agreement. In the event the Bankruptcy Case is closed, or if the Bankruptcy Court is unwilling or unable to hear any matter arising from or related to the implementation, interpretation or enforcement of this Agreement, then the United States District Court for the Western District of North Carolina (or, if the United States District Court for the Western District of North Carolina declines to accept jurisdiction over a particular such matter, any state or federal court within the County of Mecklenburg, State of North Carolina) shall have such exclusive jurisdiction over that particular matter, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the foregoing state and federal courts solely with respect to that particular matter.

15. This Agreement shall be deemed to have been executed as of the Effective Date hereof.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the date hereof.

[Signature Pages Follow]

DBMP LLC

Name:

Title:

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS

Name:

Title:

FUTURE CLAIMANTS' REPRESENTATIVE

Name: Sander L. Esserman

Title: Legal Representative for Future Asbestos
Claimants

CERTAINTEED LLC

Name:

Title:

CERTAINTEED HOLDING CORPORATION

Name:

Title:

SAINT-GOBAIN CORPORATION

Name:

Title:

[ADD ANY ADDITIONAL SIGNATURE PAGES]