

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

RECEIVED
Date

AUG 23 2021

In re	:	Chapter 11	Washington State Department of Ecology Toxics Cleanup Program
KAISER GYPSUM COMPANY, INC., <i>et al.</i> , ¹	:	Case No. 16-31602 (JCW)	
Debtors.	:	(Jointly Administered)	
	:		

NOTICE OF: (I) ENTRY OF ORDER CONFIRMING THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.; (II) EFFECTIVE DATE; AND (III) BAR DATE FOR CERTAIN ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS AND REJECTION DAMAGES CLAIMS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Confirmation of the Plan. On September 28, 2020, the United States Bankruptcy Court for the Western District of North Carolina entered an order [Dkt. 2486] recommending the United States District Court of the Western District of North Carolina issue the proposed order (the "Confirmation Order") confirming the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., dated July 20, 2020 (as modified, the "Plan") filed by the above-captioned debtors (together, the "Debtors"). On July 28, 2021, the United States District Court for the Western District of North Carolina issued the Confirmation Order [Dist. Ct. Dkt. 52]. Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order.

2. Effective Date. Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the Effective Date occurred, on August 12, 2021.

3. Settlement of Claims.

(a) Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, any and all claims against the Protected Parties that are or would have been property of the Debtors' Estates or could have been brought by the Debtors' Estates, including without limitation Recovery Actions and any claims based upon a legal or equitable theory of liability in the nature of veil piercing, alter ego, successor liability, vicarious liability, fraudulent transfer, malpractice, breach of fiduciary duty, waste,

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313). The Debtors' address is 300 E. John Carpenter Freeway, Irving, Texas 75062.

fraud or conspiracy, except for Intercompany Claims, are deemed settled, released and extinguished. The entry of the Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

(b) Pursuant to Bankruptcy Rule 9019 and in consideration for the releases and other benefits provided under the Plan, any and all claims against the holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), that are or would have been property of any of the Debtors' Estates or could have been brought by any of the Debtors' Estates or any Protected Party, including without limitation Recovery Actions, and any claims based upon a legal or equitable theory of liability, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to the Petition Date, are deemed settled, released and extinguished. The entry of the Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, the Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

4. Releases.

(a) General Releases of Debtors and Reorganized Debtors. Except as otherwise expressly set forth in the Plan, and except to the extent it would diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset, as of the Effective Date, the Debtors and the Reorganized Debtors are released from all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the releases set forth in this paragraph will not become effective with respect to holders of General Unsecured Claims until the General Unsecured Claims Escrows have been funded as set forth in Section IV.R.3.a. of the Plan.

(b) Release by the Debtors, Reorganized Debtors and Lehigh Hanson.

(i) Without limiting any other provision of the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, are deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts,

causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against each of the present and former directors, officers, employees, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents of the Debtors, the DIP Lender and DEQ, in each case acting in such capacity, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date with respect to the Reorganization Cases, the Plan or the DEQ Settlement, except for the liability of any Entity that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

(ii) Without limiting any other provision of the Plan, as of the Effective Date, the Debtors, the Reorganized Debtors and Lehigh Hanson, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, are deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to the Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), including without limitation Recovery Actions, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to the Petition Date.

(c) General Releases by Holders of Claims or Interests. Without limiting any other provision of the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for, among other things, the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or Interest that voted in favor of the Plan or was deemed to have accepted the Plan is deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date and in any way relating to the Reorganization Cases or the Plan (which release is in addition to the discharge of Claims provided herein and under the Confirmation Order and the Bankruptcy Code). Notwithstanding the foregoing, no release or discharge of any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys,

accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, diminishes, reduces or eliminates the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

(d) Injunction Related to Releases. Except as otherwise expressly provided in the Plan, including in Section IV.O.1., the Confirmation Order permanently enjoins the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities released pursuant to the Plan.

5. Discharge of Claims.

(a) Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction and discharge of all Claims, and including any interest accrued on Claims from the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation, as of the Effective Date, discharges the Debtors from all Claims or other liabilities that arose on or before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of Claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the holder of a Claim based on such debt has accepted the Plan.

(b) In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order is a judicial determination, as of the Effective Date, of a discharge of all Claims and other debts and liabilities against the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge voids any judgment obtained against a Debtor at any time, to the extent that such judgment relates to a discharged Claim, debt or liability. Nothing contained in the foregoing discharge, to the full extent provided under section 524(e) of the Bankruptcy Code, affects the liability of any other Entity on, or the property of any other Entity for, any debt of the Debtors that is discharged under the Plan.

(c) Notwithstanding any provision of the Plan or the Confirmation Order to the contrary, Confirmation does not discharge (i) the Debtors from any debt of a kind specified in 11 U.S.C. § 1141(d)(6) or (ii) the Debtors' obligations under the settlement agreements with the Settled Environmental Insurers.

6. Asbestos Permanent Channeling Injunction.

(a) Pursuant to section 524(g) of the Bankruptcy Code, and except as otherwise provided in the Plan, including Section IV.O.1., the Plan and the Confirmation Order permanently and forever stay, restrain and enjoin any Entity from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which are channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures,

including permanently and forever staying, restraining and enjoining any Entity from any of the following:

(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party;

(ii) enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against any Protected Party or any property or interests in property of any Protected Party;

(iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

(iv) setting off, seeking reimbursement of, contribution from or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

(v) proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Personal Injury Trust Documents, except in compliance therewith.

(b) For the avoidance of doubt, the Asbestos Permanent Channeling Injunction shall not affect any claims or causes of action under Sections IV.L.1. and IV.L.2. of the Plan.

7. Environmental Injunction.

(a) In consideration of the undertaking of the Settled Environmental Insurers, and other consideration, and pursuant to their respective settlements with the Debtors and to preserve and promote further the agreements between and among the Debtors and any Settled Environmental Insurers, and pursuant to section 105 of the Bankruptcy Code:

(i) any and all Environmental Claims shall be treated, administered, determined and resolved under the procedures and protocols under the Plan as the sole and exclusive remedy with respect to Environmental Claims; and

(ii) all Entities are hereby permanently stayed, enjoined, barred and restrained from doing any of the following against the Settled Environmental Insurers:

(A) commencing or continuing in any manner any action or other proceeding of any kind with respect to any Environmental Claim against any of the Settled Environmental Insurers or against the property of any of the Settled Environmental Insurers;

(B) commencing or continuing in any manner any contribution, indemnity or other equitable action or other similar proceeding relating to the environmental settlements made in this bankruptcy case against any of the Settled Environmental Insurers or against the property of any of the Settled Environmental Insurers;

(C) enforcing, attaching, collecting or recovering, by any manner or means, from any of the Settled Environmental Insurers, or the property of any of the Settled Environmental Insurers, any judgment, award, decree, payment or order relating to any Environmental Claim against any of the Settled Environmental Insurers; and

(D) creating, perfecting or enforcing any lien of any kind relating to any Environmental Claim against any of the Settled Environmental Insurers, or the property of the Settled Environmental Insurers.

(b) The injunction set forth set forth in Section IX.B.3. of the Plan is an integral part of the Plan and is essential to the Plan's consummation and implementation. The Environmental Injunction shall inure to the benefit of the Settled Environmental Insurers, but shall not apply to any Debtor or Reorganized Debtor.

(c) For the avoidance of doubt, the Environmental Injunction shall not apply to Asbestos Personal Injury Claims, or to Asbestos Insurance Policy Claims arising from the payment of, or obligations arising from, Asbestos Personal Injury Claims.

8. General Injunctions.

(a) No Actions on Account of Discharged Claims. In addition to the Asbestos Permanent Channeling Injunction and the Environmental Injunction set forth above, except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged pursuant to the terms of the Plan is permanently enjoined from taking any of the following actions on account of any such discharged Claim, debt or liability:

(i) commencing or continuing in any manner any action or other proceeding against any Debtor or Reorganized Debtor, or any of its property, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against any Debtor or Reorganized Debtor, or any of its property, other than as permitted pursuant to (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance against any Debtor or Reorganized Debtor, or any of its property; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any Debtor or Reorganized Debtor; and (v) commencing or continuing any action, in any place that does not comply with or is inconsistent with the provisions of the Plan.

(b) No Actions on Account of Released Claims. In addition to the Asbestos Permanent Channeling Injunction and the Environmental Injunction set forth above, except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the

Effective Date, all Entities that have held, currently hold or may hold any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities that are released pursuant to the Plan are permanently enjoined from taking any of the following actions against any released Entity, or any of its property, on account of such released claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any released Entity; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

(c) Recipients of Distributions Deemed to Consent. By accepting Distributions pursuant to the Plan, each holder of an Allowed Claim receiving Distributions pursuant to the Plan is deemed to have specifically consented to the injunctions set forth in Section IX.B. of the Plan.

9. Bar Dates.

(a) Bar Dates for Administrative Claims. Except as otherwise provided in Section III.A.1.d.ii. of the Plan and section 9(b) below, unless previously filed, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors, at the addresses set forth in Section XI.K. of the Plan, no later than sixty (60) days after the Effective Date (i.e., October 12, 2021). Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party no later than 120 days after the Effective Date (i.e., December 10, 2021).

(b) Bar Dates for Professional Compensation. With certain limited exceptions, Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must file and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than ninety (90) days after the Effective Date (i.e., November 10, 2021). A Professional may include any outstanding, non-filed monthly or interim request for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be filed and served on the Reorganized Debtors and the requesting party by the later of (i) eighty (80) days after the Effective Date or (ii) thirty (30) days after the Filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, filed interim requests for a Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

(c) Ordinary Course Liabilities. Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including any Intercompany Claims that are Administrative Claims, Administrative Claims of governmental units for Taxes and Administrative Claims arising from those contracts and leases of the kind described in Section V.E. of the Plan, are not required to file or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c. of the Plan.

(d) Rejection Damage Claims. Notwithstanding anything in the Bankruptcy Court's Order Establishing Bar Dates for Filing Proofs of Claim Other Than Asbestos Personal Injury Claims and Approving Related Relief [Dkt. 553] to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C. of the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, their respective successors or their properties unless a proof of Claim is filed and served on the Reorganized Debtors at the addresses set forth in Section XI.K. of the Plan, on the latter to occur of (i) sixty (60) days after the Effective Date or (ii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease.

10. Bankruptcy Court Address. For purposes of Filing requests for payment of Administrative Claims, applications for allowance of Fee Claims or other documents, the address of the Bankruptcy Court is 401 West Trade Street, Suite 2500, Charlotte, North Carolina 28202.

11. Claims Agent Address. For purposes of Filing proofs of Claim arising from the rejection of Executory Contracts or Unexpired Leases, Prime Clerk LLC's address is 850 3rd Avenue, Suite 412, Brooklyn, New York 11232 (Attn: Kaiser Gypsum Company, Inc. Claims Processing Center).

12. Copies of Confirmation Order. Copies of the Confirmation Order may be obtained free of charge at www.primeclerk.com/kaisergypsum or by sending a request, in writing, to Prime Clerk, LLC, 850 3rd Avenue, Suite 412, Brooklyn, New York 11232 (Attn: Kaiser Gypsum Company, Inc.)

Dated: August 12, 2021

BY ORDER OF THE COURT

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ATTORNEYS FOR THE REORGANIZED DEBTORS

If you have questions about this notice, please contact the Debtors' Claims and Noticing Agent, Prime Clerk, LLC at (855) 855-7644 (US/Canada toll free) or (347) 897-3453 (International) or by email to kaisergypsuminfo@primeclerk.com. You may also find our more information at <https://cases.primeclerk.com/kaisergypsum>.