

Hearing Date and Time: February 28, 2012
Responses Due: February 21, 2012

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Corporation Liquidating Trust*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

BETHLEHEM STEEL CORPORATION, *et al.*,

Chapter 11 Case Nos. 01-15288
(BRL) through 01-15302, and 01-
15308 through 01-15315 (BRL)
(Jointly Administered)

Debtors.

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**AMENDED MOTION OF BETHLEHEM STEEL CORPORATION LIQUIDATING TRUST
TO EXTEND THE TERM OF THE LIQUIDATING TRUST THROUGH AND INCLUDING
JULY 31, 2012 AND AUTHORIZING A FINAL DISTRIBUTION TO INTEREST HOLDERS**

Bethlehem Steel Corporation Liquidating Trust (the "Trust"), by and through its attorneys, Carter Ledyard & Milburn LLP, hereby submits this Motion for an order extending the term of the Trust through and including July 31, 2012 (the "Motion"), and in support thereof represents as follows:¹

¹ All capitalized terms used but not defined herein shall have the respective meaning ascribed to them in the Bethlehem Steel Corporation Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, dated September 10, 2003, and the Liquidating Trust Agreement, dated December 31, 2003, as more particularly described herein.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

2. By this Motion, the Trust seeks entry of an Order, in the form attached hereto as Exhibit A, (i) extending the Term of the Trust through and including July 31, 2012 (the “Extended Term”), and (ii) authorizing a final distribution to Interest Holders.

BACKGROUND

3. On October 15, 2001 (the “Petition Date”), Bethlehem Steel Corporation and its affiliated debtor companies (collectively, “Bethlehem Steel”) commenced cases under chapter 11, of title 11, of the United States Code (the “Chapter 11 Cases” and the “Bankruptcy Code,” respectively).

4. On October 22, 2003 (the “Effective Date”), this Court entered an Order, confirming the Bethlehem Steel Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (the “Plan”).

5. In anticipation of the establishment of the liquidating trust contemplated in the Plan (the “Trust”), Bethlehem Steel, the Official Committee of Unsecured Creditors (the “Committee”), and James A. Goodman entered into a letter agreement (the “Engagement Agreement”), on December 22, 2003, confirming the engagement of Mr. Goodman as the Liquidating Trustee (the “Trustee”), effective December 31, 2003. The Engagement Agreement further set forth the scope of the powers and authority, and the duties and responsibilities, of the

Trustee, including the day-to-day management of the affairs of the Trust upon the commencement of its operations.²

6. The Trust was established effective December 31, 2003, pursuant to a Liquidating Trust Agreement of even date, between Bethlehem Steel and the Trustee (the “Trust Agreement”), for the purpose, among other things, of taking any and all action that the Trustee deemed necessary for the continuation, protection and maximization of those assets to be transferred by Bethlehem Steel to the Trust, in accordance with the terms of the Plan (the “Liquidating Trust Assets”).

7. As defined in the Plan, the Liquidating Trust Assets consisted of: (i) certain shares of common stock of International Steel Group, Inc. (the “Consideration Shares”); (ii) the assets held by the Lukens Inc. Supplemental Retirement Trust (the “Lukens Trust Assets”); (iii) a Trustee Expense Fund; and (iv) the collections realized on the settlement or resolution of various avoidance actions commenced before or after the Effective Date of the Plan (the “Avoidance Assets”).

8. The Plan provides that the Trust remain in existence for a period of five years from the Effective Date, unless the purposes for which the Trust was established were discharged by an earlier date or, alternatively, the Bankruptcy Court determined to extend its operation. By Order, dated December 2, 2008, upon application of the Trustee, the Bankruptcy Court extended the term of the Trust through and including December 31, 2009. By Order, dated October 1, 2009, upon application of the Trustee, the Bankruptcy Court extended the term of the Trust through and including December 31, 2010. By Order, dated December 21, 2010, upon

² Pursuant to the Plan, Bethlehem Steel (as well as the Committee) were both dissolved as of December 31, 2003.

application of the Trustee, the Bankruptcy Court extended the Term of the Trust through and including December 31, 2011. By Order, dated June 13, 2011, the Bankruptcy Court extended the term of the Trust through and including February 29, 2012.

9. Pursuant to section 4.2 of the Trust Agreement, the Trustee is responsible for the liquidation of the Liquidating Trust Assets and making timely distributions of the proceeds thereof to the Interest Holders.

10. The Trustee has performed such duties as contemplated by the Trust Agreement and has fully disposed of the Consideration Shares, the Lukens Trust Assets, and substantially all of the assets constituting the Trustee Expense Fund, for the benefit of the Interest Holders.

11. As a result of the foregoing efforts, the Trust has made six (6) distributions to Interest Holders. Distributions were made on the following dates and in the following amounts:

Date of Distribution	Total Amount Distributed
December 23, 2004	\$23,205,063
December 23, 2005	\$4,193,000
December 15, 2006	\$4,170,000
November 5, 2007	\$1,389,000
October 3, 2008	\$2,778,000
May 18, 2009	\$1,389,000

12. As of the date hereof, the Trust has distributed an aggregate amount of \$37,124,063 to the Interest Holders and the value of the remaining Liquidating Trust Assets is approximately \$1.3 million.

**THE CHAPTER 11 CASES HAVE NOT BEEN
FULLY ADMINISTERED AND CANNOT BE CLOSED**

13. The Bankruptcy Code and Bankruptcy Rules require a bankruptcy court to close a chapter 11 case when the estate is “fully administered.” 11 U.S.C. § 350(a) (“After an estate is fully administered and the court has discharged the trustee, the court shall close the case.”); Fed. R. Bankr. P. 3022 (“After 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.”).

14. The term “fully administered” is not defined in either the Bankruptcy Code or the Bankruptcy Rules, *see Ericson v. IDC Servs. (In re IDC Servs.)*, Nos. 93B45992, 97 Civ. 3081, 1998 WL 547085, at *3 (S.D.N.Y. Aug. 27, 1998) (“The Bankruptcy Code does not define ‘fully administered’ and the Second Circuit has not defined the term.”); *see also In re Kliegl Bros. Universal Elec. Stage Lighting Co.*, 238 B.R. 531, 541 (Bankr. E.D.N.Y. 1999), but the Advisory Committee Note to Bankruptcy Rule 3022 (the “Advisory Note”) directs courts to apply six factors to determine whether a bankruptcy case has been “fully administered”:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) 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;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee Note (1991).

15. When deciding whether a bankruptcy case has been fully administered and thus should be closed, courts have generally applied the foregoing six factors, with a view that no single factor is dispositive. *See, e.g., IDC Servs.*, 1998 U.S. Dist. LEXIS 13449, at *9-10 (adopting the Advisory Note's factor-based approach when deciding whether to grant a Rule 3022 motion).

16. The Trustee respectfully submits that the state of the Chapter 11 Cases does not satisfy the third and sixth factors above in its determination of whether the Chapter 11 Cases have been "fully administered."

17. Accordingly, the Chapter 11 Cases cannot be closed by February 29, 2012, the date presently scheduled for the termination of the Trust.

CERTAIN ASSETS PROPOSED TO BE TRANSFERRED
BY THE PLAN HAVE YET TO BE TRANSFERRED

18. The third factor to be considered in a determination of whether a bankruptcy case is "fully administered" is whether property proposed by a plan to be transferred has, in fact, been transferred.

19. A transfer of the remaining Liquidating Trust Assets to Interest Holders has not yet been made, due in part to an outstanding claim of Swiss Reinsurance America Corporation ("Swiss Re"), which, until recently, remained unresolved.

20. By Order, dated January 17, 2012, this Court approved a stipulation of settlement (the "Swiss Re Stipulation") between the Trust and Swiss Re resolving a dispute arising out of a proof of claim filed by Swiss Re (the "Swiss Re Claim").

21. Prior to approval of the Swiss Re Stipulation, the Swiss Re Claim was unliquidated and, consequently, prevented the Trustee from determining the amount of the pro-rata distribution to be made, not only to Swiss Re, but also to all other Interest Holders.

22. The Swiss Re Stipulation liquidated the Swiss Re Claim, thereby enabling the Trustee to determine the amount of a final distribution of the Liquidating Trust Assets (the "Final Distribution") and the amount of the pro-rata distribution to each Interest Holder.

23. The Trustee anticipates making the Final Distribution within 30 days of entry of the Order requested herein in an amount which, together with the distributions made to date, will represent a recovery in excess of 0.7% of the total allowed claims of all Interest Holders.

24. In the event that a distribution to an Interest Holder is returned as undeliverable, Section 5.3 of the Plan provides Interest Holders to which distributions were made but not delivered a period of 90 days to make demand for the undeliverable distributions.

25. Consequently, the Trustee must, for a period of at least 90 days following the Final Distribution, maintain an account in which undeliverable distributions are deposited.

26. Accordingly, pursuant to section 8.1 of the Trust Agreement, the Trustee hereby seeks an extension of the term of the Trust through and including July 31, 2012.

THE PENDENCY OF TWO PROCEEDINGS PREVENTS
THE TRUSTEE FROM REQUESTING A FINAL DECREE

27. The sixth factor to be considered in a determination of whether a bankruptcy case has been "fully administered" is whether all motions, contested matters, and adversary proceedings have been finally resolved. There remains one motion and one adversary proceeding in which the Trust is a party in interest.

28. On December 10, 2010, the Trust commenced an adversary proceeding in this Court (the "Executive Life Adversary Proceeding") against the Insurance Commissioner of the State of California (the "Insurance Commissioner"), in his capacity as conservator, liquidator and rehabilitator of Executive Life Insurance Company ("Executive Life") (Adv. Pro. No.: 10-05414 (BRL)). In the Executive Life Adversary Proceeding, the Trustee sought the turnover of certain funds (the "Executive Life Escrow Proceeds") in connection with the Executive Life conservatorship proceedings (the "Conservatorship Proceeding") pending in the Superior Court of the State of California, styled Insurance Commissioner of the State of California v. Executive Life Company, No. BS 006912.

29. In response to the commencement of the Executive Life Adversary Proceeding, on or about March 9, 2011, the Insurance Commissioner filed a motion in the Superior Court of the State of California, in which the Conservatorship Proceeding was then and continues to be pending, for an Order for instructions to establish a procedure for determining the owner of the rights to payment of the Executive Life Escrow Proceeds (the "State Court Proceeding").

30. The parties to the State Court Proceeding include the Trust, ArcelorMittal USA LLC ("ArcelorMittal"), and Fidelity Management Trust Company ("FMTC").³

31. An initial hearing in the State Court Proceeding was held on May 19, 2011 and has been continued on several occasions. Presently, the next hearing in the State Court Proceeding is scheduled to be held on April 24, 2012.

³ The Insurance Commissioner made FMTC a party to the Conservatorship Proceeding because the records of Executive Life Insurance Company indicate that FMTC is the owner of record of the Executive Life Escrow Proceeds, as trustee under a trust agreement entered into with Bethlehem Steel Corporation, in its capacity as the sponsor of the "Savings Plan for Salaried Employees of Bethlehem Steel Corporation and Subsidiary Companies."

32. Pursuant to a Stipulation of Settlement (the “Stipulation of Settlement”), dated September 16, 2011, between the Trust and ArcelorMittal USA LLC (“ArcelorMittal”), the Trust released and relinquished its claims for, and acknowledged that ArcelorMittal is the sole owner of and/or is entitled to sole ownership of, the Executive Life Escrow Proceeds.

33. In addition, and pursuant to the Stipulation of Settlement, the Trust and ArcelorMittal jointly executed and filed a Stipulation which substituted ArcelorMittal in place of the Trust as plaintiff in the Executive Life Adversary Proceeding.

34. By Order, dated October 18, 2011, the Court approved the Stipulation of Settlement.

35. The Trust has been informed that settlement negotiations between and among the Insurance Commissioner, ArcelorMittal and FMTC, which are intended to resolve both the Executive Life Adversary Proceeding and the issues raised in the State Court Proceeding, have been progressing and are nearing completion (the “Executive Life Settlement”). The Trust has not been involved in the negotiations, having relinquished its rights in the Executive Life Escrow Proceeds to ArcelorMittal pursuant to the Stipulation of Settlement.

36. The Trust is informed that the Executive Life Settlement is contingent upon approval and a final order from the Bankruptcy Court in the Executive Life Adversary Proceeding and further provides for publication of a notice and a period for filing objections to the Executive Life Settlement (the “Notice and Objection Period”). The Executive Life Settlement also provides for dismissal of the State Court Proceeding after (a) a final order is obtained from the Bankruptcy Court approving the Executive Life Settlement, and (b) the Notice and Objection Period, plus 10 days, has expired.

37. The Trust has attempted to remove itself from the Conservatorship Proceeding and the State Court Proceeding. Recently, counsel for the Trust prepared and proposed to the Insurance Commissioner, ArcelorMittal and FMTC a stipulation dismissing the Trust as a party in interest from the Conservatorship Proceedings and the State Court Proceeding (the “Stipulation of Dismissal”).

38. The Stipulation of Dismissal was agreed to and executed by ArcelorMittal and FMTC. The Insurance Commissioner has refused to sign the Stipulation of Dismissal.

39. As a result of the Insurance Commissioner’s refusal to sign the Stipulation of Dismissal, the Trust is preparing a motion, to be filed in the Conservatorship Proceeding, requesting that the Trust be dismissed as a party in interest from the Conservatorship Proceeding and the State Court Proceeding.

40. The pendency of the State Court Proceeding and the Executive Life Adversary Proceeding bars the Trustee from seeking to close the Chapter 11 Cases and, accordingly, the Trust seeks an extension of the term of the Trust through the Extended Term.

NOTICE

41. This Motion, the accompanying Notice of Motion and the proposed Order attached hereto as Exhibit A, are being personally served on the United States Trustee’s Office and electronically on all parties who have elected to receive notice in the Chapter 11 Cases via the Court’s ECF system.

NO PRIOR REQUEST

42. No prior request for the relief sought herein has been made by the Trust to this or any other court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order (i) authorizing the Trustee to make a Final Distribution; (ii) extending the term of the Trust through and including July 31, 2012; and (iii) granting the Trust such other and further relief as is just and proper.

Dated: New York, New York
February 9, 2012

Respectfully submitted,

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EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:		Chapter 11 Case Nos.
	:		
BETHLEHEM STEEL CORPORATION,	:		01-15288 (BRL) through
et al.,	:		01-15302, and 01-15308
Debtors.	:		through 01-15315 (BRL)
	:		(Jointly Administered)
	:		

ORDER GRANTING MOTION OF BETHLEHEM STEEL CORPORATION LIQUIDATING TRUST TO EXTEND THE TERM OF THE LIQUIDATING TRUST THROUGH AND INCLUDING JULY 31, 2012 AND AUTHORIZING A FINAL DISTRIBUTION TO INTEREST HOLDERS

Upon the amended motion (the "Motion"¹) of Bethlehem Steel Corporation Liquidating Trust (the "Trust") for an Order extending the term of the Trust to July 31, 2012 and approving a Final Distribution to Interest Holders, and after a hearing having been held on February 28, 2012, regarding the Motion; and it appearing that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted, in its entirety; and it is further

ORDERED that the Trustee is authorized to make a Final Distribution to Interest Holders; and it is further

ORDERED that the term of the Trust is extended to July 31, 2012; and it is further

ORDERED that the Clerk of the Court shall immediately enter this Order.

¹ All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

IT IS SO ORDERED.

Dated: New York, New York
February __, 2012

BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE