

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON	§	Case No. 20-43597-399
CORPORATION, <i>et al.</i> ,	§	
	§	(Jointly Administered)
Debtors.	§	
	§	Hearing Date: September 17, 2020
	§	Hearing Time: 10:00 a.m. (Central Time)
	§	Hearing Location: Courtroom 5 North
	§	111 S. 10th St., St. Louis, MO 63102

**MOTION OF THE DEBTORS FOR ORDER AUTHORIZING  
AND APPROVING THE PARTIAL CLOSING AGREEMENT BETWEEN  
BRIGGS & STRATTON CORPORATION AND THE UNITED STEEL, PAPER AND  
FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND  
SERVICE WORKERS INTERNATIONAL UNION, ON BEHALF OF LOCAL 2-232**

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (“**Motion**”):

**Preliminary Statement**

1. As part of the Debtors’ prepetition efforts to consolidate various segments of the business, reduce costs, and improve financial flexibility, debtor Briggs & Stratton Corporation (“**Briggs**”) decided in March 2020 to terminate operation of the Residential Turf Products and Home Maintenance Operations lines at the Burleigh manufacturing facility in Milwaukee, Wisconsin (the “**Burleigh Facility**”) and consolidate these operations in their New York facilities or transfer production to a third party, as set forth in further detail below. Residential Turf products include lawn and garden care equipment, such as tractors, residential zero turn lawnmowers, snow blowers, and attachments to those products. Home Maintenance products include pressure washers. The termination of the Residential Turf Products and Home



Maintenance Operations at the Burleigh Facility will enable the Debtors to simplify and consolidate their product portfolio, reposition that portfolio for higher profitability, and reduce the costs associated with maintaining the Burleigh Facility. This reduction of costs is also essential to the Debtors' business plan and asset sale strategy (the "**Sale Strategy**"). The Debtors commenced these chapter 11 cases to implement the Sale Strategy, which is critical to maximizing recoveries for all creditors and preserving thousands of jobs.

2. Many of Briggs' hourly-paid employees located at the Burleigh Facility are represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of Local 2-232 (the "**Union**"). As part of Briggs' plan to terminate the Residential Turf Products and Home Maintenance Operations at the Burleigh Facility, Briggs engaged in "effects bargaining," which is required by the National Labor Relations Act and related case law, with the Union to negotiate the impact of the termination on Union employees. On July 23, 2020, Briggs and the Union reached a tentative agreement (the "**USW Partial Closing Agreement**"), subject to approval of this Court.

3. By this Motion, the Debtors seek approval of the USW Partial Closing Agreement. As described in further detail below, the key elements of the USW Partial Closing Agreement are:

- i. The Union irrevocably waives all rights, and covenants not to encourage or sponsor any others to file or pursue, any and all claims, grievances, unfair labor practice charges, or causes of action of any kind, whether known or unknown, against Briggs & Stratton Corporation or any related or affiliated entity arising out of or related in any manner to Briggs & Stratton Corporation's decision to transfer work from its Milwaukee, Wisconsin facility to other facilities and partially close its Milwaukee operations.
- ii. Briggs & Stratton Corporation agrees to offer continuation of employment to certain current non-probationary bargaining unit employees, and to offer to those current non-probationary bargaining unit employees whose employment will not be continued

a severance program whereby eligible employees shall be entitled to (a) a lump sum payment of between one and eight weeks' pay, depending on the employee's years of service to the company as of August 28, 2020; (b) pay for unused but accrued vacation time for the 2020 vacation year; and (c) pay that is prorated at the rate of 5/12 for unused but accrued vacation time for the 2021 vacation year.

4. The USW Partial Closing Agreement is the product of two days of thoughtful negotiations between Briggs and the Union, along with their respective advisors. The USW Partial Closing Agreement resolves any disputes, including grievances or unfair labor practice charges, between the Debtors and the Union regarding the impact of the termination of the Residential Turf Products and Home Maintenance Operations.

5. Therefore, the USW Partial Closing Agreement is a proper exercise of the Debtors' business judgment, satisfies the requirements for approval under the Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and should be approved.

#### **Jurisdiction**

6. The Bankruptcy 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 is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Relief Requested**

7. By this Motion, the Debtors seek entry of an order (the "**Proposed Order**"), pursuant to sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and Bankruptcy Rule 9019(a), authorizing Briggs' entry into and approving the USW Partial Closing Agreement, attached as **Exhibit A** to the Declaration of Rachele Lehr filed contemporaneously herewith (the "**Lehr Declaration**").

**Facts Relevant to the USW Partial Closing Agreement**

*A. The Debtors' Chapter 11 Cases*

8. On July 20, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors' Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

9. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world's largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company's products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations.

10. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation*, in

*Support of the Debtors' Chapter 11 Petitions and First Day Relief*, [Docket No. 51] (the “**Ficks Declaration**”).<sup>1</sup>

*B. The Debtors' Sale Strategy and Termination of Business Lines at the Burleigh Facility*

11. As set forth in the Lehr Declaration, the Debtors operate several manufacturing facilities in the United States. One such facility is the Burleigh Facility, located near Milwaukee, Wisconsin. Lehr Declaration ¶ 4. The Burleigh Facility houses, among other things, Briggs' Residential Turf Products and Home Maintenance Operations manufacturing lines. *Id.* As a result of the Debtors' prepetition efforts to consolidate various segments of the business, reduce costs, and improve financial flexibility, as well as decreased demand that resulted in excess manufacturing capacity and high costs associated with maintaining the Burleigh Facility, Briggs determined prepetition in its business judgment that closure of the Residential Turf Products and Home Maintenance Operations lines at the Burleigh Facility is the best course of action for the business. *Id.* ¶ 5.

12. The Residential Turf Products lines will be transferred to Briggs' facilities in Sherrill, New York, and Munnsville, New York (the “**New York Facilities**”), where Briggs already is manufacturing similar products, or has in the past manufactured similar products, and has capacity to increase that production. *Id.* ¶ 6. The Home Maintenance Operations pressure washers will be outsourced to a strategic supplier, as part of a simplification of the Debtors' portfolio to focus on their core products. *Id.* ¶ 7. The transfer of both the Residential Turf Products and Home Maintenance Operations manufacturing lines from the Burleigh Facility also will allow

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

the Debtors or the purchaser of their assets to sell the Burleigh Facility and lease back only the south half of the facility to reduce costs. *Id.* ¶ 8.

13. The termination of the Residential Turf Products and Home Maintenance Operations manufacturing lines at the Burleigh Facility is part of the Debtors' overall business plan and Sale Strategy, which business plan has been provided to the Stalking Horse Bidder and all potential purchasers. The Stalking Horse Bidder has agreed to the termination of the Residential Turf Products and Home Maintenance Operations manufacturing lines at the Burleigh Facility. *Id.* ¶ 9.

*C. The Debtors Engage in Effects Bargaining with the Union*

14. Briggs and the Union were parties to a collective bargaining agreement dated October 30, 2013, which continued in full force and effect through July 31, 2017. The CBA applied to Briggs' hourly-paid employees (excluding office employees, guards, technical and professional employees, Layout Inspectors, Motorsports Technicians, Die Cast Technicians, and monthly-paid Facilitators) located in the State of Wisconsin. Following the expiration of the CBA, Briggs and the Union bargained to impasse. On April 17, 2018, Briggs made a final offer to the Union (the "**Final Implemented Offer**"). In May 2018, Briggs implemented the terms of the Final Implemented Offer, and the parties continue to operate under those terms and conditions. *Id.* ¶ 10. The Union represents approximately 330 employees at the Burleigh Facility, and Briggs will terminate the employment of approximately 185 of those employees as a result of the partial closing. *Id.* ¶ 11. Historically, the Debtors and the Union have engaged in similar effects bargaining upon the closure of other facilities and entered into similar settlement agreements. *Id.* ¶ 13.

15. On June 26, 2020, Briggs notified the Union of the plan to terminate the Residential Turf Products and Home Maintenance Operations lines and provided sixty (60) days' notice to employees under the federal Worker Adjustment and Retraining Notification Act (WARN) and a similar Wisconsin statute. *Id.* ¶ 12. On July 22 and 23, 2020, Briggs engaged in effects bargaining with the Union regarding the treatment of Union-represented employees at the Burleigh Facility. On July 23, 2020, Briggs and the Union agreed to the USW Partial Closing Agreement, subject to approval of this Court. *Id.* ¶ 13.

16. The USW Partial Closing Agreement's terms are set forth as follows:<sup>2</sup>

- i. Briggs & Stratton Corporation agrees to offer to certain current non-probationary bargaining unit employees in affected job titles, both within and outside of the Residential Turf Products and Home Maintenance Operations manufacturing lines, the option to volunteer for termination of employment, which termination will include severance and vacation pay.
- ii. If more employees volunteer for termination and receipt of severance pay than are necessary to effectuate the termination of the Residential Turf Products and Home Maintenance Operations manufacturing lines, employees will be selected by seniority, with the most senior employees allowed to select termination with severance and vacation pay. If fewer employees volunteer than are necessary for the termination of the lines, employees with the least seniority will be selected for involuntary termination. Employees involuntarily selected for termination also will be offered severance and vacation pay in accordance with the agreement.
- iii. Briggs & Stratton Corporation agrees to offer to those current non-probationary bargaining unit employees whose employment will be terminated, whether voluntarily or involuntarily, a severance program whereby eligible employees shall be entitled to (a) a lump sum payment of between one and eight weeks' pay, depending on the employee's years of service to the company as of August 28, 2020; (b) pay for unused but accrued vacation time for the 2020 vacation year; and (c) pay that is prorated at the rate of 5/12 for unused but accrued vacation time for the 2021 vacation year.

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<sup>2</sup> To the extent there is an inconsistency between this summary and the USW Partial Closing Agreement, the USW Partial Closing Agreement shall govern. Capitalized terms used but not defined in this summary shall have the meaning ascribed to it in the USW Partial Closing Agreement.

Subject to this Court's approval, payments will be made within two pay periods following termination of employment.

- iv. The Union irrevocably waives all rights, and covenants not to encourage or sponsor any others to file or pursue, any and all claims, grievances, unfair labor practice charges, or causes of action of any kind, whether known or unknown, against Briggs & Stratton Corporation or any related or affiliated entity arising out of or related in any manner to Briggs & Stratton Corporation's decision to transfer work from its Milwaukee, Wisconsin facility to other facilities and partially close its Milwaukee operations.

17. Employees will be provided notice of the USW Partial Closing Agreement and given fourteen (14) days to indicate whether they are volunteering for termination. Lehr Declaration ¶ 14. Most of the employees affected will be terminated by September 30, 2020.

18. At the time Briggs issued the WARN notices, Briggs believed that it would terminate the employment of most of the employees on August 28, 2020. Lehr Declaration ¶ 12. Under the terms of the Stalking Horse PSA, the severance and vacation pay provided for under the USW Partial Closing Agreement are to be paid by the Debtors with respect to those employees who are terminated before the close of the sale.

19. As a result of supply chain delays and the impact of COVID-19, the Debtors, with the consent of the Stalking Horse Bidder, are now postponing the transfer of the manufacturing lines and the related employee terminations until approximately September 30, 2020. *Id.* Therefore, the employee terminations now may occur after the close of the sale. The Stalking Horse Bidder has agreed to pay the severance and vacation pay provided for in the USW Partial Closing Agreement to those employees who become Transferred Employees and are terminated after the close of the sale pursuant to section 363 of the Bankruptcy Code, *provided*, that the Stalking Horse Bidder shall be reimbursed for those severance and vacation payments by the Debtors' estates in accordance with a forthcoming amendment to the Stalking Horse PSA. *Id.* ¶ 17.



20. The Debtors have estimated the potential severance and vacation pay at approximately \$910,000 in the aggregate, although the total payments could range from \$500,000 to \$1,100,000. The precise dollar value of the USW Partial Closing Agreement will depend on the number and seniority of employees who volunteer for termination and will not be ascertainable until the employees indicate their interest in participating in the voluntary termination program. *Id.* ¶ 15. For example, the total cost of the USW Partial Closing Agreement will be greater if a large number of employees with greater seniority volunteer for termination; in contrast, if few employees volunteer and the employees with the lowest seniority are selected for termination, then the cost of the USW Partial Closing Agreement will be lower. The Debtors' estimate of \$910,000 assumes that half of the employees terminated are volunteers with greater seniority and half of the employees terminated are involuntarily selected and have lower seniority. *Id.*

21. The total payment to each employee will range from approximately \$1,700 to \$13,300, depending on that employee's seniority and accrued vacation. Most employees at the Burleigh Facility who may be terminated will be eligible for less than \$5,000 total severance and vacation pay. Consistent with the *Motion of Debtors For Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, and Other Obligations, (B) Maintain Employee Benefit Programs, (C) Pay Related Administrative Obligations, (D) Pay Supplemental Workforce Obligations, and (E) Terminate Deferred Compensation Plans; and (II) Granting Related Relief* [Docket No. 11] (the "**Wages Motion**"), no Union employees will receive on account of wages, including vacation and severance pursuant to the USW Partial Closing Agreement, and contributions to an employee benefit plan earned

within 180 days before the Petition Date, an amount in excess of \$13,650 (the “**\$13,650 Cap**”).<sup>3</sup>  
*Id.* ¶ 16.

22. The severance and vacation payments agreed to under the USW Partial Closing Agreement are in line with the Debtors’ historic practice regarding negotiated severance for terminated union employees in other facilities where they have effectuated reductions in force or closures. *Id.* ¶ 18. In connection with the closing of a different facility in 2019, Briggs and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of Local Union 3944, entered into an agreement, dated August 6, 2019, whereby affected employees would receive lump sum severance payments in amounts ranging from four (4) to nine (9) weeks of pay, depending on the employee’s years of service to the Company.<sup>4</sup> *Id.* ¶ 19. Under the USW Partial Closing Agreement, the Union employees would receive lump sum severance payments in amounts ranging from one (1) to eight (8) weeks’ of pay, depending on the employee’s years of service to the Company. Thus, the severance payments negotiated under the USW Partial Closing Agreement reflect a slight reduction from the Debtors’ prepetition practices, in that the payment scale set forth in the USW Partial Closing Agreement employs both a lower minimum and lower maximum number of weeks of pay, as compared to the Briggs’ 2019 closing agreement with the same union. Historically, the

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<sup>3</sup> Through the Wages Motion, the Debtors sought authority to pay each Employee up to \$13,650, in the aggregate, on account of wages, salaries, or commissions, including vacation and severance, or contributions to an employee benefit plan earned within 180 days before the Petition Date. The Court granted the Wages Motion on a final basis at a hearing on August 18, 2020. *See Final Order (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, and Other Obligations, (B) Maintain Employee Benefit Programs, (C) Pay Related Administrative Obligations, (D) Pay Supplemental Workforce Obligations, and (E) Terminate Deferred Compensation Plans; and (II) Granting Related Relief* [Docket No. 529].

<sup>4</sup> The Debtors agreed to this same four to nine week severance payout scale in a partial closing agreement, dated July 18, 2014, with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of Local Union 3944. Lehr Declaration ¶ 20.

Debtors have paid all hourly employees for any accrued but unused vacation leave upon termination. *Id.* ¶ 18.

**The USW Partial Closing Agreement Should Be Approved**

23. The USW Partial Closing Agreement is in the best interests of the Debtors and their stakeholders, including their dedicated employees, is consistent with the purpose and objectives of chapter 11, and, therefore, should be approved.

24. Bankruptcy Rule 9019(a) provides that on motion and after notice and a hearing, “the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). In granting a motion pursuant to Bankruptcy Rule 9019(a), a Court must find that the proposed settlement is “‘fair and equitable’ and ‘in the best interests of the estate.’” *In re Apex Oil Co.*, 92 B.R. 847, 866-67 (Bankr. E.D. Mo. 1988) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)); *see also In re Cockhren*, 468 B.R. 838, 845-46 (8th Cir. 2012). “The purpose of a compromise is to allow the trustee and creditors to avoid the expenses and burdens associated with litigating . . . .” *In re Cockhren*, 468 B.R. at 846 (citation omitted). To amount to a fair and equitable compromise, the agreement need only fall within a range of reasonable compromise alternatives; it need not be the best compromise. *Id.*

25. When assessing the reasonableness of a compromise, the court considers:
- i. the probability of success in the litigation;
  - ii. the difficulties, if any, to be encountered in the matter of collection;
  - iii. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
  - iv. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*Ritchie Capital Mgmt., LLC v. Kelley*, 785 F.3d 273, 278-79 (8th Cir. 2015).

26. The Court is “not required to conduct an extensive investigation of the claims in order to approve the settlement.” *Id.* (citing *Martin v. Cox (In re Martin)*, 212 B.R. 316, 319 (8th Cir. BAP 1997)). The Court may give weight to the informed judgment of a debtor that a compromise is fair and equitable. *See In re Purofied Down Products Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993); *In re Ashford Hotels Ltd.*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998) (“Significantly, that test does not contemplate that [the Court] substitute [its] judgment for the Trustee’s, but only that [the Court] test [its] choice for reasonableness . . . . If the Trustee chooses one of two reasonable choices, [the Court] must approve that choice, even if, all things being equal, [the Court] would have selected the other.”). The Court examines a proposed settlement and determines only whether it “fall[s] below the lowest point in the range of reasonableness.” *In re Petters Co., Inc.*, 455 B.R. 166, 168 (8th Cir. 2011).

27. The Court also may grant a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code if that request is supported by sound business reasons. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). In addition, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997)); *see also In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (“Under the business judgment standard, the question is whether the [proposed

action] is in the Debtors' best economic interests, based on the best business judgment in those circumstances.").

28. Here, Briggs was required under the National Labor Relations Act to bargain with the Union regarding the effects of the decision to terminate the Residential Turf Products and Home Maintenance Operations lines. *See NLRB v. Transmarine Nav. Corp.*, 380 F.2d 933 (9th Cir. 1967); *Transmarine Nav. Corp.*, 170 NLRB No. 43 (1968). Refusal to bargain with the Union could have resulted in an unfair labor practice charge, grievances filed by Union employees, or other claims.

29. The Debtors and their advisors carefully analyzed the costs, benefits, and risks of the available alternatives to entering into the USW Partial Closing Agreement, and collectively determined that agreeing to the terms set forth in the USW Partial Closing Agreement presents the best available option.

30. First, as explained above, the USW Partial Closing Agreement provides for severance and vacation pay, in accordance with the Debtors' prepetition practices, to resolve all potential disputes with the Union relating to the termination of the Residential Turf Products and Home Maintenance Operations lines.

31. Second, the costs associated with an unfair labor practice charge or grievance by the Union would be far greater than the less than \$910,000 the Debtors anticipate paying under the voluntary termination program.

32. Third, as discussed above, the severance and vacation pay for most employees will be less than \$5,000 per employee, which is slightly less than the severance pay employees could argue they were entitled to under the Debtors' prepetition practices. All amounts owed to individual Union employees pursuant to the USW Partial Closing Agreement are less than

the \$13,650 Cap. Furthermore, a portion of the amounts the Debtors seek to pay Union employees constitute priority claims under section 507(a)(4) of the Bankruptcy Code. Another portion of those amounts constitute administrative expenses under section 503(b)(1) of the Bankruptcy Code. The Debtors' obligations to Union employees that fall under sections 507(a)(4) and 503(b)(1) of the Bankruptcy Code are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied. Thus, the USW Partial Closing Agreement is a reasonable and efficient fulfillment of the Debtors' legal obligation to bargain with the Union.

33. The USW Partial Closing Agreement has been achieved in good faith after extensive bargaining. All parties to the USW Partial Closing Agreement had to answer to their respective constituency on issues to which each constituency ascribed importance.

34. Throughout the process of negotiating the USW Partial Closing Agreement, each party was advised by competent and experienced counsel and other professionals familiar with the issues, well versed in nuances of the facts and law in dispute, and with a clear understanding of the implications that an unfair labor practice charge or grievance could have on the Debtors' operations, the Sale Strategy, and the Debtors' estates.

35. The USW Partial Closing Agreement is a result of the Debtors' informed business judgment that will inure to the benefit of the Debtors and all of their Stakeholders, including employees represented by the Union, as well as other stakeholders whose recovery in these chapter 11 cases will be maximized by the efficient and reasonable resolution, rather than a protracted, expensive dispute with the Union.

### **Conclusion**

36. For these reasons, the USW Partial Closing Agreement constitutes a valid exercise of the Debtors' reasonable business judgment and is in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize

Briggs & Stratton Corporation to enter into, and should approve, the USW Partial Closing Agreement.

**Waiver of Bankruptcy Rule 6004(h) Requirement**

37. To implement the foregoing successfully, the Debtors request that the Court waive the fourteen (14) day period under Bankruptcy Rule 6004(h). As explained above, the relief requested herein is necessary for the Debtors to expeditiously consummate the USW Partial Closing Agreement and realize the benefits thereunder. Accordingly, ample cause exists to justify granting a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

**Notice**

38. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri (Attn: Sirena T. Wilson, Esq.); (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JP Morgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the United States Attorney's Office for the Eastern District of Missouri; (vi) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of its Local 2-232; (vii) Brown Rudnick LLP (Attn: Osaka P. Lashko, Esq.), as counsel to the Creditors' Committee; and (viii) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(E)(1).

**No Previous Request**

39. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.



WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Bankruptcy Court may deem just and appropriate.

Dated: August 21, 2020  
New York, New York

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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-and-

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*Proposed Counsel to the Debtors  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
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BRIGGS & STRATTON	§	Case No. 20-43597-399
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	§	(Jointly Administered)
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DECLARATION OF RACHELE LEHR IN SUPPORT  
OF THE MOTION OF THE DEBTORS FOR ORDER AUTHORIZING  
AND APPROVING THE PARTIAL CLOSING AGREEMENT BETWEEN  
BRIGGS & STRATTON CORPORATION AND THE UNITED STEEL, PAPER AND  
FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND  
SERVICE WORKERS INTERNATIONAL UNION, ON BEHALF OF LOCAL 2-232

I, Rachele Lehr, make this declaration (the “**Declaration**”) under 28 U.S.C. § 1746:

1. I am the Senior Vice President Corporate Systems and Human Capital. I was elected to my current position effective July 13, 2020. I previously served as the Vice President Human Resources (an executive officer position) from September 2018 through June 2020. Prior to that, I served as Vice President Human Resources from July 2015 through September 2018, as Human Resources Senior Director from March 2015 through June 2015, as Human Resources Director from June 2013 through February 2015, and as Controller from April 2010 through May 2013.

2. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors or the Debtors’ legal and financial advisors, or my opinion based upon

my experience, knowledge, and information concerning the Debtors' operations. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. This Declaration is submitted in support of the *Motion of the Debtors for Order Authorizing and Approving the Partial Closing Agreement Between Briggs & Stratton Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on Behalf of Local 2-232* (the "**Motion**").<sup>1</sup>

I am authorized to submit this Declaration on behalf of the Debtors.

4. The Debtors operate several manufacturing facilities in the United States. One such facility is the Burleigh Facility, located near Milwaukee, Wisconsin. The Burleigh Facility houses, among other things, Briggs' Residential Turf Products and Home Maintenance Operations manufacturing lines. Residential Turf products include lawn and garden care equipment, such as tractors, residential zero turn lawnmowers, snow blowers, and attachments to those products. Home Maintenance products include pressure washers.

5. As part of the Debtors' prepetition efforts to consolidate various segments of the business, reduce costs, and improve financial flexibility, Briggs decided in March 2020 to terminate operation of the Residential Turf Products and Home Maintenance Operations lines at the Burleigh Facility.

6. The Residential Turf Products lines will be transferred to Briggs' facilities in Sherrill, New York, and Munnsville, New York, where Briggs already is manufacturing similar products, or has in the past manufactured similar products, and has capacity to increase that production.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

7. The Home Maintenance Operations pressure washers will be outsourced to a strategic supplier, as part of a simplification of the Debtors' portfolio to focus on their core products.

8. The transfer of both the Residential Turf Products and Home Maintenance Operations manufacturing lines from the Burleigh Facility also will allow for the sale of the Burleigh Facility and the subsequent lease back of only the south half of the facility to reduce costs.

9. The Stalking Horse Bidder has agreed to the termination of the Residential Turf Products and Home Maintenance Operations manufacturing lines at the Burleigh Facility.

10. Briggs and the Union were parties to a collective bargaining agreement dated October 30, 2013, which continued in full force and effect through July 31, 2017. The CBA applied to Briggs' hourly-paid employees (excluding office employees, guards, technical and professional employees, Layout Inspectors, Motorsports Technicians, Die Cast Technicians, and monthly-paid Facilitators) located in the State of Wisconsin. Following the expiration of the CBA, Briggs and the Union bargained to impasse. On April 17, 2018, Briggs made the Final Implemented Offer. In May 2018, Briggs implemented the terms of the Final Implemented Offer, and the parties continue to operate under those terms and conditions.

11. The Union represents approximately 330 employees at the Burleigh Facility. Briggs will terminate the employment of approximately 185 of those employees as a result of the partial closing.

12. On June 26, 2020, Briggs notified the Union of the plan to terminate the Residential Turf Products and Home Maintenance Operations lines and provided sixty (60) days' notice to employees under the federal Worker Adjustment and Retraining Notification Act

(WARN) and a similar Wisconsin statute. At the time it issued the WARN notices, Briggs believed that it would terminate the employment of most of the employees on August 28, 2020. As a result of supply chain delays and the impact of COVID-19, the Debtors, with the consent of the Stalking Horse Bidder, are now postponing the transfer of the manufacturing lines and the related employee terminations until approximately September 30, 2020.

13. On July 22 and 23, 2020, Briggs engaged in effects bargaining with the Union regarding the treatment of Union-represented employees at the Burleigh Facility. Historically, the Debtors and the Union have engaged in similar effects bargaining upon the closure of other facilities and entered into similar settlement agreements. On July 23, 2020, Briggs and the Union agreed to the USW Partial Closing Agreement, subject to approval of this Court. A true and accurate copy of the USW Partial Closing Agreement is attached hereto as **Exhibit A**.

14. Employees will be provided notice of the USW Partial Closing Agreement and given fourteen (14) days to indicate whether they are volunteering for termination.

15. The precise dollar value of the USW Partial Closing Agreement will depend on the number and seniority of employees who volunteer for termination and will not be ascertainable until the employees indicate their interest in participating in the voluntary termination program. The Debtors estimate the potential severance and vacation pay at approximately \$910,000 in the aggregate, although the total payments could range from \$500,000 to \$1,100,000. The estimate of \$910,000 assumes that half of the employees terminated are volunteers with greater seniority and half of the employees terminated are involuntarily selected and have little seniority.

16. The total payment to each employee will range from approximately \$1,700 to \$13,300, depending on that employee's seniority and accrued vacation. Most employees at the Burleigh Facility who may be terminated will be eligible for less than \$5,000 total severance and vacation pay. No employees will receive on account of wages, including vacation and severance pursuant to the USW Partial Closing Agreement, and contributions to an employee benefit plan earned within 180 days before the Petition Date, an amount in excess of \$13,650.

17. The Stalking Horse Bidder has agreed to pay the severance and vacation pay provided for in the USW Partial Closing Agreement to those employees who become Transferred Employees and are terminated after the close of the sale pursuant to section 363 of the Bankruptcy Code, *provided*, that the Stalking Horse Bidder shall be reimbursed for those severance and vacation payments by the Debtors' estates in accordance with a forthcoming amendment to the Stalking Horse PSA.

18. The severance and vacation payments agreed to under the USW Partial Closing Agreement are in line with the Debtors' past practice regarding negotiated severance for terminated union employees in other facilities where they have effectuated reductions in force or closures. Historically, the Debtors have paid all hourly employees for any accrued but unused vacation leave upon termination.

19. In connection with the closing of a different facility in 2019, Briggs and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of Local Union 3944, entered into an agreement, dated August 6, 2019, whereby affected employees would receive lump sum severance payments

in amounts ranging from four (4) to nine (9) weeks of pay, depending on the employee's years of service to the Company.

20. The Debtors agreed to this same four (4) to nine (9) week severance payout scale in a partial closing agreement, dated July 18, 2014, with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of Local Union 3944.

21. I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 21st day of August, 2020

/s/ Rachele Lehr  
Rachele Lehr  
on Behalf of the Debtors and Debtors-in-Possession

## EXHIBIT A



July 23, 2020

### **PARTIAL CLOSING AGREEMENT**

The Parties, Briggs & Stratton Corporation, its successors or assigns, hereinafter referred to as "Company" and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of its Local 2-232 AFL-CIO, CLC hereinafter collectively referred to as "Union" desire to enter into this Partial Closing Agreement setting forth the terms and conditions which the parties have agreed will be applicable to the termination of Turf Products and Home Maintenance Operations. In consideration for the mutual promises set forth below, the Parties agree as follows:

1. All current non-probationary bargaining unit employees employed in the Labor Grades, Classifications and Job Numbers set forth on Exhibit A, on the date this Partial Closing Agreement is signed by both parties, will be offered one of the following:
  - a. Continuation of employment in the remaining positions at the corresponding job classifications and rates of pay, subject to the bumping process outlined in the Final Implemented Offer,
  - b. Voluntary termination of employment and receipt of the Severance Pay set forth in paragraph 3 below.

Employees who continue their employment in the remaining positions will not be eligible for Severance Pay.

2. Employees with seniority in the Labor Grade, Classification and Job Number who are scheduled for elimination will be eligible for Severance Pay.

The selection process shall be as follows:

On August 3, 2020, all eligible employees in the same Labor Grades, Classifications, Job Numbers scheduled for elimination as set forth on Exhibit A (excluding Machine Operators), shall be offered by seniority the option of accepting Severance Pay. Employees must submit the request to HR no later than August 14, 2020. Any employee that has not submitted a request by this date shall be deemed to have rejected the Severance Pay.

The maximum number of individuals that will be offered Severance Pay will be set forth on Exhibit A and will be limited / reduced as necessary to fill other vacancies within the operation, or as otherwise necessary to meet business needs.

If the number of voluntary requests is less than required, then employees by lowest seniority in the Labor Grade, Classification, Job Number, after filling all other vacancies, if seniority permits, will be bumped into another position for

which they are qualified pursuant to the terms of the Final Implemented Offer, or involuntarily terminated and receive Severance Pay.

In the event that parts of the impacted operations need to run beyond August 28, 2020, due to demand or other unanticipated needs, terminations in the areas not affected will proceed as scheduled and there will not be interim bumping.

3. All current non-probationary bargaining unit employees who do not continue their employment in the remaining positions and are employed on the date this Partial Closing Agreement is signed by both parties and who work through the last day of their assignment and further provided, that the employee shall properly and efficiently perform the duties of their employment through the balance of the assignment will receive the following:

- a. Severance Pay based upon every full year of seniority as of August 28, 2020

1 year or less	1 week
2-3 years	2 weeks
4-5 years	3 weeks
6-7 years	4 weeks
8-9 years	5 weeks
10-11 years	6 weeks
12-13 years	7 weeks
14+ years	8 weeks

Payment will be made in a lump sum on a non-allocated basis within two (2) pay periods after their last day of assignment. One week of pay will be paid at forty (40) hours times the employee's current hourly rate of pay minus the usual applicable taxes, contributions, and deductions\*.

\*subject to any necessary approvals.

- b. Pay out of earned but unused vacation for the 2020 vacation year will be paid in one lump sum distribution, on an unallocated basis, minus the usual applicable taxes, contributions, and deductions within two (2) pay periods after their last day of assignment.

- c. Pay out of pro-rata 2021 vacation, at the rate of 5/12, based on an April through August accrual period, will be paid in one lump sum distribution, on an unallocated basis, minus the usual applicable taxes, contributions, and deductions within two (2) pay periods after their last day of assignment.
4. Employees will be terminated in inverse seniority order within their job classification after the bumping process has been completed. Anyone so terminated will be eligible for the Severance Pay.
5. In case of conflict, duplication or overlap, this Partial Closing Agreement shall control and fully supersede all prior or other discussions, agreements, provisions, understanding, the Current Labor Agreement or Final Implemented Offer between the Parties, and any and all obligations or rights between the Company, Union, and Bargaining Unit employees arising out of or regarding this partial plant closing including all effects of the partial plant closing are contained exclusively in this Agreement.
6. The Union, on its own behalf hereby irrevocably and forever waives, and will not encourage or sponsor any others to file or pursue, any and all claims, grievances, unfair labor practices, prohibited practices, and/or causes of action of any kind, whether known or unknown, it may have against the Company or any related or affiliated entity arising out of or related in any manner to the Company's decision to transfer work from its Milwaukee, Wisconsin facility to other facilities and partially close its Milwaukee operations, and any effect that decision has on bargaining unit employees or the Union. This provision does not preclude the Union from filing a grievance over any alleged violation of the terms of the Collective Bargaining Agreement or current Implemented Final Offer.
7. Employees who work through the last date of their assignment and who receive Severance Pay will no longer retain any recall, rehire, or other seniority based rights under the Collective Bargaining Agreement or Final Implemented Offer. It is also understood that any/all employees that accept Severance Pay have voluntarily separated all employment ties with the Company. This is a complete and permanent separation of employment.
8. This Agreement becomes effective upon signing by both parties.
9. This Agreement is subject to the approval of both (i) the Bankruptcy Court for the Eastern District of Missouri, in which the Company's chapter 11 case is pending and (ii) Bucephalus Buyer, LLC, the purchaser in that certain Stock and Asset Purchase Agreement, filed in the Company's chapter 11 case at docket number 53.

If this Agreement is not accepted in writing by the union by July 30, 2020, it will become null and void and will be automatically withdrawn.

The Company and the Union, by their duly empowered and authorized agents, hereby sign and agree to be bound by the terms of this Agreement.

For the Company:

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Teri A. Zielski  
Manager Human Resources

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Julia Arnold  
Employment Counsel

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Vincent Clark  
Plant Manager

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Carlee Paulsen  
Human Resources Business Partner

For the International Union:

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Brad Dorff  
Staff Representative

For the Local Union 2-232

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Jesse Edwards  
President

EXHIBIT A		
Job Title	Pay Scale Group	Count
Assembler I	Labor Grade 23B ML	55
Fabrication Operator	Labor Grade 25 ML	3
Finish Operator I	Labor Grade 25 ML	7
Gauge Control Specialist	Labor Grade 14 ML	2
Group Lead Assembly	Labor Grade 10 ML	6
Group Lead Fabrication-Weld	Labor Grade 10 ML	3
Group Lead Finishing	Labor Grade 10 ML	1
Group Lead Shipping	Labor Grade 11 ML	5
Lead Dispatcher	Labor Grade 13 ML	3
Machine Operator	Labor Grade 18 ML	7
Material Handler - ML	Labor Grade 21 ML	29
Powder Coat Painter I	Labor Grade 21 ML	6
Quality Coordinator	Labor Grade 15 ML	9
Repair Technician	Labor Grade 15 ML	1
Repair Technician Helper	Labor Grade 18 ML	1
Setup Technician - Assembly	Labor Grade 13 ML	6
Setup Technician - Fabrication	Labor Grade 13 ML	2
Setup Technician Helper - Assembly	Labor Grade 17 ML	11
Setup Technician Helper - Fabricatio	Labor Grade 17 ML	1
Setup Technician Helper - Finishing	Labor Grade 17 ML	4
Tester	Labor Grade 21 ML	13
Warehouse Attendant - ML	Labor Grade 18 ML	9