UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

	§	**Chapter 11**
In re:	§	
	§	**Case No. 20-43597-399**
BRIGGS & STRATTON CORPORATION, *et al.*,	§	
	§	**(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 DEBTORS TO LIFT THE AUTOMATIC STAY SOLELY TO PERMIT APPEALS COURT TO ISSUE A RULING IN THE EXMARK APPEAL

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 (the "**Motion**"):

Background

1. On July 20, 2020 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (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 Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the "**Local Rules**").

2. 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.

3. 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**").[1]

Jurisdiction

4. The 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 Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

5. By this Motion, the Debtors seek entry of an order (the "**Proposed Order**")[2] pursuant to section 362(d)(1) of the Bankruptcy Code lifting the automatic stay for the limited purpose of permitting the United States Court of Appeals for the Federal Circuit (the "**Federal Circuit**") to issue a ruling in the Exmark Appeal (as defined below).

[1] 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.

[2] Copies of the Proposed Order will be made available on the Debtors' case information website at http://www.kccllc.net/Briggs.

The Exmark Litigation

6. The Exmark Litigation has been ongoing for over ten years.

A. Initial Judgment in Favor of Exmark

7. On May 12, 2010, Exmark Manufacturing Company, Inc. ("**Exmark**") filed a lawsuit against Briggs & Stratton Power Products Group, LLC ("**BSPPG**") in the District Court of Nebraska (the "**District Court**"), alleging that certain Ferris® and Snapper Pro® mower deck designs infringed an Exmark mower deck patent. Exmark sought damages relating to sales since May 2004, along with attorneys' fees and enhanced damages. BSPPG subsequently merged into Debtor Briggs & Stratton Corporation ("**Briggs**"), and Briggs was substituted for BSPPG as named defendant in the action.[3] The lawsuit is styled as *Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.) (the initial action, together with subsequent proceedings and appeals arising therefrom, the "**Exmark Litigation**").

8. The Exmark Litigation has a long and complicated procedural history. Shortly after Exmark filed suit, Briggs sought reexamination of Exmark's patent at the United States Patent and Trademark Office ("**USPTO**"). The USPTO initially found Exmark's patent invalid. On appeal in 2014, the USPTO reversed its decision. The USPTO's reexamination of the validity of Exmark's patent necessitated a two year stay of the proceedings before the District Court. After the stay was lifted, and following extensive discovery, each of BSPPG and Exmark filed several motions for summary judgment in the District Court, which were decided on July 28, 2015. The District Court found as a matter of law that Exmark's patent was valid and that Briggs's older mower deck designs infringed Exmark's patent, leaving for trial the issues of (i) the damages

[3] BSPPG merged into Briggs on January 1, 2017. By order dated April 13, 2018, Briggs was substituted for BSPPG as the defendant in the action. *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), Order to Substitute Parties, Release Security and Amend Case Caption [ECF No. 714].

arising from the infringement by the older designs, (ii) whether that infringement was willful, (iii) whether Briggs's redesigned mower decks infringed the patent, (iv) if the redesigned decks infringed, the damages arising from that infringement, and (v) if the redesigned decks infringed, whether that infringement was willful.

9. The action was initially tried before a jury from September 8 through September 17, 2015. After an eight day trial, the jury found that Briggs's redesigned mower deck did not infringe Exmark's patent.[4] With respect to Briggs's older design, the jury found that the infringement had been willful and assessed damages in the amount of $24,280,330 for such infringement.[5] The District Court assessed BSPPG another $24,280,330 in enhanced damages for Briggs's willful infringement.

10. On August 1, 2016, BSPPG and Briggs entered into an indemnity agreement with Fidelity and Deposit Company of Maryland & Zurich American Insurance Company (the "**Surety**" and the "**Surety Indemnity Agreement**") to obtain a supersedeas bond while the judgment was on appeal to the Federal Circuit.[6] A supersedeas bond was posted by BSPPG on August 18, 2016 and approved by the Court on August 26, 2016.[7] On January 12, 2018, the Federal Circuit issued an opinion, in which it (i) vacated (a) the District Court's summary judgment finding of no invalidity, (b) the jury's damages award, (c) the District Court's enhanced damages award and (ii) remanded for proceedings consistent with its decision. *See Exmark*

[4] *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), First Trial Verdict, [ECF No. 599].

[5] *Id*.

[6] The Surety Indemnity Agreement covers any cash collateral, deposits, or other amounts of money related to the Exmark Litigation, whether issued before or after the Surety Indemnity Agreement. As such, the terms of the Surety Indemnity Agreement applied to both the initial bond posted on August 18, 2016, and the Appeal Bond (as defined below) posted on August 7, 2019.

[7] *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), Order to Substitute Parties, Release Security and Amend Case Caption [ECF No. 714].

Manufacturing Co., Inc. et al. v. Briggs & Stratton Power Products Group, LLC, Case No. 16-2197 (Fed. Cir. 2018). On April 13, 2018, in light of the Federal Circuit's January 12, 2018 ruling, the District Court ordered the release of the supersedeas bond.[8]

11. After remand from the Federal Circuit, but prior to the second trial, the District Court decided the issue of the validity of Exmark's patent at the summary judgment stage, deeming it valid. Briggs was never given the opportunity to try the issue of the validity of Exmark's patent to a jury. The issue of damages was retried on remand from the Federal Circuit. After the retrial on damages, the jury found Briggs liable for approximately $14.4 million in compensatory damages.[9] Exmark sought enhanced damages under 35 U.S.C. § 284. On December 20, 2018, the District Court entered a judgment in favor of Exmark in the amount of $14.4 million in compensatory damages and $14.4 million in enhanced damages.[10] The District Court further awarded approximately $6 million in pre-judgment interest as well as post-judgment interest after December 19, 2018 and costs to be determined.

B. Federal Circuit Appeal & Appeal Bond

12. On August 7, 2019 Briggs and the Surety posted a supersedeas bond in the amount of $34,724,235 with the District Court (the "**Appeal Bond**"), as approved by the court in an order dated August 16, 2019.[11] Pursuant to the Appeal Bond, the Company and the Surety are jointly and severally liable for the total amount of the final judgment (whether affirmed or modified

[8] *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), Order to Substitute Parties, Release Security and Amend Case Caption [ECF No. 714].

[9] *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), Second Trial Verdict, [ECF No. 914].

[10] On April 15, 2019, the district court denied the Company's post-trial motions seeking a modification of the jury's damages award and a new trial.

[11] *See Exmark Manufacturing Co., Inc. v. Briggs & Stratton Corporation*, Civ. Action No. 8:10CV187-JFB-TDT (D. Neb.), Order, [ECF No. 971].

on appeal) plus any additional post-judgment interest accrued since entry of the final judgment and any costs or other amounts awarded to Exmark on appeal, up to the amount of the Appeal Bond. The Appeal Bond states that if the judgment is "vacated or otherwise set aside in its entirety, then this obligation shall be void." Appeal Bond, ¶ 5.

13. Pursuant to the terms of the Surety Indemnity Agreement, Briggs deposited cash collateral and letters of credit with the Surety on account of the value of the Appeal Bond, totaling approximately $34,727,235, which have been held by the Surety as collateral and may be used by the Surety to pay any amounts deemed to be owed to Exmark on appeal.[12] The Surety Indemnity Agreement provides that "any remaining funds held by Surety after payment of all sums due to Surety under this Agreement shall be returned upon the complete release and/or discharge of Surety's liability under all bonds." Surety Indemnity Agreement, ¶ 4. Thus, once the Federal Circuit renders a decision and the Surety pays any amounts owed to Exmark, any remaining amounts held by the Surety on account of the Appeal Bond will be returned to Briggs.

14. The Company filed a notice of appeal on May 14, 2019 and appealed to the Federal Circuit the following decisions of the District Court: (i) the construction of certain claim limitations of Exmark's patent, (ii) the grant of summary judgment motions filed by Exmark, and (iii) the pre-judgment interest rate following the second trial. The appeal is styled as *Exmark Manufacturing Co., Inc. et al. v. Briggs & Stratton Corp. et al*., Case No. 19-1878 (Fed. Cir.) (the "**Exmark Appeal**"). The Exmark Appeal has been fully briefed by the parties, oral argument on

[12] The Surety holds cash collateral from Briggs in the amount of $11,075,545. Briggs also provided a letter of credit, dated November 1, 2019, in the amount of $23,648,690, which is held by JPMorgan Chase Bank, N.A., in favor of the Surety. *See also* Surety Indemnity Agreement, ¶ 4 ("Indemnitors agree to promptly deposit with Surety, on demand, any amount of money that Surety determines is sufficient to fund any liability or Loss. Such funds may be used by Surety to pay Loss or may be held by Surety as collateral against potential future Loss").

the Exmark Appeal occurred on May 5, 2020, and the parties are currently awaiting a decision from the Federal Circuit.

15. On July 27, 2020, Exmark filed the *Notice of Bankruptcy Filing of Briggs & Stratton Corporation*, Case No. 19-1878 (Fed. Cir.) [ECF No. 46], advising the Federal Circuit that the Debtors filed for chapter 11 protection, triggering the automatic stay. On July 28, 2020, the Debtors contacted counsel for Exmark, proposing to jointly stipulate to lifting the automatic stay. The Debtors and Exmark exchanged additional communications, but Exmark has yet to agree to jointly stipulate to lifting the automatic stay. As such, the Debtors seek relief from the automatic stay through this Motion.

Relief Requested Should Be Granted

I. The Court Should Lift the Automatic Stay to Allow the Debtors to Continue the Exmark Appeal Because it is in the Best Interest of the Debtors' Estates and Creditors

16. Pursuant to section 362(a)(1) of the Bankruptcy Code, the filing of a petition for bankruptcy operates as a stay of, among other things, "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . . or to recover a claim against the debtor that arose before the commencement of the case . . . ." 11 U.S.C. § 362(a)(1). The automatic stay operates as "a bar to all collection efforts against a debtor or debtor's property in an effort to determine creditor's rights and allow the orderly administration of a debtor's assets, free from creditor's interference." *In re ContinentalAFA Dispensing Co.*, 403 B.R. 653, 659 (Bankr. E.D. Mo. 2009). In other words, the purpose of the automatic stay is to preserve and protect the debtor's estate, by giving the debtor "a breathing spell from his creditors." *Farley v. Henson*, 2 F.3d 273, 275 (8th Cir. 1993).

17. Whether a particular action is subject to the automatic stay is "determined from an examination of the debtor's status at the initial proceeding." *Farley v. Henson*, 2 F.3d 273, 275 (8th Cir. 1993). The automatic stay "does not apply to a proceeding brought by the debtor that inures to the benefit of the debtor's estate, although, an appeal brought by a debtor from a judgment obtained against the debtor as a defendant is subject to the automatic stay. *Farley*, 2 F.3d at 275. In making this distinction with respect to appeals, the Eighth Circuit reasoned that even though a debtor may bring an appeal to escape or mitigate an adverse judgment, the "policies underlying the automatic stay are implicated" in such instance because "the estate has an interest in the outcome of the appeal." *Farley*, 2 F.3d at 275. As such, "the bankruptcy court should ensure that the debtor is adequately represented in the appeal." *Farley*, 2 F.3d at 275 (citing *Sheldon v. Munford, Inc.*, 902 F.2d 7 (7th Cir. 1990)). In the context of lifting the stay to allow a debtor to pursue an appeal in which the debtor had posted a supersedeas bond, the Seventh Circuit opined: "[p]resumably [the bankruptcy court] will lift the stay (at least to the extent that the stay prevents this appeal from going forward) as soon as it is satisfied that [the debtor] is adequately represented in this court; for [the debtor] is the appellant and if it wins its creditors will be better off." *Munford*, 902 F. 2d at 9.

18. Consistent with the purpose of the automatic stay and the views espoused by the Eighth Circuit and Seventh Circuit in *Farely* and *Sheldon*, respectively, the automatic stay should be lifted to allow the Debtors to continue the Exmark Appeal because it is in the best interests of the Debtors' estates and creditors. As explained in *Farely*, the automatic stay only applies to appeals by debtors to ensure that creditors that would benefit from a positive outcome in the appeal have their interests protected; this threshold can be satisfied by assuring that the debtor is adequately represented by counsel. Here, the automatic stay should be lifted to continue

the Exmark Appeal because the debtors were adequately represented by counsel, Arnold & Porter Kaye Scholer LLP, throughout the Exmark Litigation and allowing the Federal Circuit's decision to be rendered can only benefit the Debtors' estates and creditors. A favorable outcome will result in any or all portions of the approximately $35 million Appeal Bond being released by the District Court and the security posted to the Surety being released by the Surety and made available to the Debtors' estates and creditors. Any litigation remanded to the District Court by the Federal Circuit would remain subject to the automatic stay, and Exmark would be free to file a proof of claim for damages for amounts that Exmark believed it was owed, although the Debtors would have the right to object to that proof of claim. Although Exmark has an unsecured claim against the Debtors, Exmark's claim, while unresolved, affects the Debtors' estates the same way that a secured, disputed claim would, due to the relationship between the Debtors, the Surety, and Exmark. Specifically, the Surety is obligated to pay any amounts that are upheld as being owed to Exmark, as determined by the outcome of the Exmark Appeal.[13] The Surety has rights to approximately $35 million in collateral from Briggs, representing the amount of the Appeal Bond. Thus, a favorable decision from the Federal Circuit could make available up to $35 million to the Debtors' estates because it would allow Briggs to access the collateral being held by the Surety; any amount the Surety did not have to pay to Exmark would be returned to Briggs. On the other hand, an unfavorable decision would have no impact on the assets available to the Debtors' estates and their creditors throughout the duration of the case; if Briggs loses on appeal, Briggs would lose the $35 million in collateral (or a portion thereof); however, without a judgment from the Federal Circuit, Briggs and its creditors are unable to access Briggs' $35 million being held by the Surety as collateral anyway.

[13] The Surety is only obligated to pay Exmark up to the amount of the Appeal Bond.

II. There is Cause to Lift the Automatic Stay

19. Section 362(d)(1) of the Bankruptcy Code provides relief from the automatic stay upon a showing of "cause." 11 U.S.C. §362(d)(1). The Debtors submit that there is "cause" to lift the automatic stay and proceed with the Exmark Appeal. "Although Congress did not define cause, it intended that the automatic stay could be lifted to allow litigation involving the debtor to continue in a nonbankruptcy forum under certain circumstances." *Blan v. Nachogdoches County Hosp.* (*In re Blan*), 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999) (citing H.R. Rep. No. 95-595, at 341 (1977); S. Rep. No. 95-989, at 50 (1978)) ("It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere."); *see also Bergman v. Wintroub (In re Wintroub)*, 283 B.R. 743,745 (B.A.P. 8th Cir. 2002); *Wiley v. Hartzler* (*In re Wiley*), 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003).

20. "In making the determination of whether to grant relief from the stay, the court must balance the potential prejudice to the Debtor, to the bankruptcy estate, and to the other creditors against the hardship to the moving party if it is not allowed to proceed in state court." *In re Blan*, 237 B.R. at 739. Although the Eighth Circuit has not imposed a firm standard for determining whether cause exists to lift the automatic stay to permit an action to proceed in another forum, the Bankruptcy Appellate Panel for the Eighth Circuit and other courts in the Eighth Circuit have balanced the following five factors when making this assessment:

(1) judicial economy;

(2) trial readiness;

(3) resolution of preliminary bankruptcy issues;

(4) the movant's chance of success on the merits; and

(5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

See In re Blan, 237 B.R. at 739; *In re Wiley*, 288 B.R. at 822; *In re Wintroub*, 283 B.R. at 745; *Bee Jay's Hairstyling Acad., Inc. v. Yarbrough*, 540 B.R. 647, 662 (Bankr. E.D. Ark. 2015); *In re Living Hope Southeast, LLC*, 505 B.R. 237, 243 (Bankr. E.D. Ark. 2014); *QA3 Fin. Corp. v. Catlin Specialty Ins. Co*., 2012 WL 297150 (D. Neb. 2012); *In re Tovar*, 2012 Bankr. LEXIS 4777 at *8 (Bakr. N.D. Iowa 2012).

21. Not all factors will be relevant in every case, it is not necessary that all factors be found in favor of the movant, and the factors need not be assigned equal weight. *In re Living Hope Southeast, LLC*, 505 B.R. at 243 (citing *In re Anton*, 145 B.R. 767, 770 (Bankr. E.D.N.Y. 1992); *Smith v. Tricare Rehabilitation Systems, Inc*., 181 B.R. 569, 577 (Bankr. N.D. Ala. 1994)).

A. *Blan* Factors 1 & 2: As the Debtors are currently awaiting a decision from the Federal Circuit, the factors of judicial economy and trial readiness weigh in favor of lifting the automatic stay.

22. Judicial economy is best served by allowing the Exmark Appeal to proceed. The Exmark Appeal has already been argued before the Federal Circuit, which hears patent cases on appeal from all jurisdictions. Judicial resources would be most efficiently utilized by allowing the Federal Circuit to proceed with its decision, as opposed to prolonging the process. That court is currently well-attuned to the facts and circumstances of the case, having heard oral arguments just a few months ago. Forcing the Federal Circuit to postpone its decision until the end of the Debtors' chapter 11 cases would risk that court having to duplicate efforts of the work that it has already completed. Also given the nature here of Exmark being (essentially) a secured creditor in light of the Appeal Bond, this case is distinguishable from other litigations where the purpose of

the litigation is to liquidate a claim against the debtor. Here, the purpose is to try to reverse a judgment against the Debtors and obtain the release of collateral, which will inure to the benefit of the Debtors' estates.

23. With respect to the second factor, not only is the Exmark Appeal "ready" for trial, but a jury trial at the District Court level has already occurred, a judgment has been rendered, and the judgment has been appealed. On appeal, the issues have been fully briefed and oral arguments have been heard. There is no preparation left for the parties to the Exmark Appeal to undergo; they are simply awaiting a decision from the Federal Circuit.

B. *Blan* Factor 3: Proceeding with the Exmark Appeal will help resolve preliminary bankruptcy issues.

24. The third factor weighs in favor of lifting the automatic stay because a decision by the appellate court will resolve the preliminary bankruptcy issues of (i) the existence and amount of secured claims by Exmark and the Surety against the Debtors, and (ii) whether any portion (or all of) the approximately $35,000,000 Appeal Bond can be reduced and the collateral underlying it become property of the estate.

25. Exmark currently has a disputed, unliquidated claim against Briggs on account of the judgment it received against Briggs in the Exmark Litigation. Because of the Appeal Bond, that claim is effectively secured up to $35,000,000. Under the Surety Indemnity Agreement, the Surety currently has a contingent, unliquidated claim against Briggs for any amounts that the Surety may be obligated to pay to Exmark, as determined by the outcome of the Exmark Appeal. The Surety holds approximately $35,000,000 in collateral from Briggs to secure Briggs's contingent obligations to it on account of the Appeal Bond.

26. The appellate decision will also determine whether any portion (or all of) the approximately $35,000,000 Appeal Bond can be reduced or eliminated, resulting in Briggs's

obligations under the Surety Indemnity Agreement being reduced and collateral being released. As articulated by the Seventh Circuit in a similar scenario:

> If the debtor wins the case on appeal and the [plaintiff's] claim is thrown out, [the debtor] will be entitled to the return of the security it pledged to [the surety]. Or if before the appeal is decided, [the debtor] settles with the [plaintiff] for less than [the amount of the supersedeas bond], the part of the security not needed to compensate the surety for ponying up the money for the settlement will revert to [the debtor].

Sheldon v. Munford, Inc., 902 F.2d 7, 8 (7th Cir. 1990).

27. The value of the Appeal Bond is significant and finality with respect to the obligations with respect to that bond (*i.e.*, if any of those amounts will return to the Debtors) will help inform the Debtors' business decisions, negotiations with creditors, and ultimately, plan formulation and distributions thereunder. If the automatic stay is not lifted, the Exmark Appeal will be left to be decided after confirmation of the Debtors' plan. In that circumstance, if the Debtors receive a favorable result when the decision is ultimately rendered, there is a risk of a post-effective date scramble amongst creditors for the additional assets, and re-calculations of distributions. The Debtors would avoid these issues if they are able to receive a decision from the Federal Circuit during the pendency of their chapter 11 cases, and thus know the value of the assets available for distribution.

C. *Blan* Factors 4 & 5: The fourth and fifth factors weigh in favor of lifting the stay because continuing with the Exmark Appeal can only bring more value to the Debtors' estates, without risking value loss.

28. The Debtors believe that they will succeed on the Exmark Appeal, just as BSPPG succeeded in the first appeal to the Federal Circuit. However, even if the probability of success is deemed "neutral" or less than neutral (which it is not), the Debtors have nothing to lose from the Exmark Appeal and significant amounts to gain. The Debtors lost the trial against Exmark and have a judgment against them for approximately $35,000,000. The Exmark Appeal

has been briefed and argued, leaving only a decision to be rendered. In other words, the Debtors have already expended all costs associated with the Exmark Appeal and will probably not incur additional costs of defense if the stay is lifted for purposes of rendering the appeal decision.

29. If the stay is lifted, and the Federal Circuit renders a decision favorable to Briggs, the Appeal Bond will be returned (in full or in part) to Briggs by the Surety. Although Exmark could, in theory, appeal the decision to the Supreme Court, any amounts recovered by the plaintiff in a subsequent appeal would be general unsecured claims, without a third-party guarantor backing such recoveries through an appeal bond. The Federal Circuit could also remand the case back to the District Court, but the Debtors believe that in such an event, the Appeal Bond would be released and the stay would apply to the remanded proceeding. The automatic stay would apply to any attempt by Exmark to litigate the remanded case in the District Court, and Exmark would have the ability to file a proof of claim. Should the Federal Circuit render a decision unfavorable to Briggs, the status quo would be maintained, in that Briggs would not have access to the value of the Appeal Bond (albeit permanently, in the event of an unfavorable judgment). Overall, the Debtors have much to gain and nothing to lose should the Exmark Appeal proceed.

30. For the foregoing reasons, lifting the automatic stay for the limited purpose of continuing the Exmark Appeal is necessary, appropriate, and in the best interests of the Debtors, their estates, their creditors, and all other parties in interest in these cases. Accordingly, the Court should lift the automatic stay for the limited purpose of continuing the Exmark Appeal, as well as any steps the Debtors might take if the Federal Circuit affirms the judgment, including to (i) appeal any decision that may be rendered in the Exmark Appeal, (ii) file a motion for en banc review, and (iii) file a motion for reconsideration.

Reservation of Rights

31. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, including any claims filed by Exmark (which the Debtors reserve all rights to object to), (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

32. Notice of this Motion will be provided, pursuant to Local Rule 4001-1 of the Local Rules of the Bankruptcy Court for the Eastern District of Missouri, to (i) the Office of the United States Trustee for the Eastern District of Missouri; (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 JPMorgan 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) Brown Rudnick LLP (Attn: Osaka P. Lashko, Esq.), as counsel to the Creditors' Committee; (vii) Lathrop GPM

LLP (Attn: Raymond J. Urbanik and Wendi Alper-Pressman, Esq.), as counsel to Exmark; (viii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (ix) any other party entitled to notice pursuant to Local Rule 9013-3(E) (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

33. 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 the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: August 21, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

Robert E. Eggmann, #37374MO
Christopher J. Lawhorn, #45713MO
Thomas H. Riske, #61838MO
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
Email: ree@carmodymacdonald.com
cjl@carmodymacdonald.com
thr@carmodymacdonald.com

Proposed Local Counsel to the Debtors and Debtors in Possession

-and-

WEIL, GOTSHAL & MANGES LLP
Ronit J. Berkovich (admitted *pro hac vice*)
Debora A. Hoehne (admitted *pro hac vice*)
Martha E. Martir (admitted *pro hac vice*)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Ronit.Berkovich@weil.com
Debora.Hoehne@weil.com
Martha.Martir@weil.com

Proposed Counsel to the Debtors and Debtors in Possession