

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

IN RE: . Case No. 20-43597 (BSS)
. .
. .
BRIGGS & STRATTON .
CORPORATION, .
. Thomas F. Eagleton U.S.
. Courthouse
. 111 South Tenth Street
Debtor. . St. Louis, MO 63102
. .
. September 15, 2020
. . 9:25 a.m.
.

TRANSCRIPT OF MOTION HEARING OF DEBTORS FOR ENTRY OF AN ORDER,
AUTHORIZATION OF SALE, AND GRANTING RELATED RELIEF
[DOCKET NO. 53]

BEFORE HONORABLE BARRY S. SCHERMER
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Carmody MacDonald, P.C.
By: ROBERT E. EGGMANN, ESQ.
CHRISTOPHER J. LAWHORN, ESQ.
120 South Central Avenue, Suite 1800
St. Louis, MO 63105

For KPS Capital: Armstrong Teasdale LLP
Partners, LP By: RICHARD W. ENGEL, JR. ESQ.
770 Forsyth Boulevard; Suite 1800
St. Louis, MO 63105

Audio Operator: Jeduthan Bain

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599



2043597200916000000000004

APPEARANCES (CONT'D):

TELEPHONIC APPEARANCES:

For the Debtor:

Weil, Gotshal & Manges LLP
By: RONIT BERKOVICH, ESQ.
767 Fifth Avenue
New York, NY 10153

Carmody MacDonald, P.C.
By: THOMAS RISKE, ESQ.
120 South Central Avenue; Suite 1800
St. Louis, MO 63105

For KPS Capital:
Partners, LP

Kirkland & Ellis LLP
By: GREGORY F. PESCE, ESQ.
CHAD J. HUSNICK, ESQ.
300 North LaSalle Street
Chicago, IL 60654

For Deere & Company:

Albin Law
By: SETH ALBIN, ESQ.
7710 Carondelet Avenue
Clayton, MO 63105

Gensburg Calandriello & Kanter, P.C.
By: MATTHEW T. GENSBURG, ESQ.
200 West Adams Street
Chicago, IL 60606

For Ace American
Insurance Company,
Illinois Union
Insurance Indemnity and
Ace Federal:

Lewis Rice
By: LARRY E. PARRES, ESQ.
500 North Broadway
Suite 2000
St. Louis, MO 63102

For Infor (US), Inc.:

Blank Rome
By: VICTORIA A. GUILFOYLE, ESQ.
1201 North Market Street
Wilmington, DE 19801

For Century Indemnity:

Crowell & Moring, LLP
By: MARK PLEVIN, ESQ.
3 Embarcadero Center
San Francisco, CA 94111

APPEARANCES (CONT):

For PBGC: Pension Benefit Guaranty Corporation
By: JOHN A. MENKE, ESQ.
1200 K Street, NW
Washington, DC 20005

For Jones Plastic, Summers Compton Wells
Ataco Steel Products, By: BRIAN J. LAFLAMME, ESQ.
Davis Tool & Die Company 8909 Ladue Road
and Poplar Bluff Tool St. Louis, MO 63124
& Die Company:

- - -

1 COURT CLERK: The United States Bankruptcy Court for
2 the Eastern District of Missouri is now in session, The
3 Honorable Barry S. Schermer presiding.

4 THE COURT: Please be seated and good morning.

5 ATTORNEYS: Good morning.

6 THE COURT: Today is September 15th, and we have a
7 Briggs & Stratton calendar. Mr. Eggmann and Mr. Lawhorn
8 represent the Carmody MacDonald team, working with Weil
9 Gotshal, led by Ms. Berkovich.

10 MR. EGGMANN: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. EGGMANN: If it pleases the Court, I would like
13 to just make a quick statement on the settlement reached with
14 the Committee, then let Mr. Willard make a statement as well
15 before we turn it over to Ms. Berkovich and Mr. Stark.

16 So, Your Honor, as we reported to Ms. McCoy, who,
17 again, by the way, was available at any time of the day, all
18 weekend long and all evening long, which we thank her for,
19 thank the Court for, the Creditors' Committee and the debtors
20 have reached a settlement with regard to the sale motion.

21 Like you, Your Honor, I like to make baseball
22 analogies. So, this is the home run. But not just any home
23 run, Judge. This is the 1985 NLCS top of the ninth Jack Clark
24 home run for all parties involved.

25 And like that home run changed the game and changed

1 that series, I think this settlement changes today's hearing,
2 obviously, but also the course of this case, because you're
3 going to see the Creditors' Committee and the debtors work
4 together for the common goal of producing a greater dividend to
5 the unsecured creditors in this case.

6 The work was really tireless, and primarily,
7 obviously, the lead counsel, Weil, and I think the deal reached
8 is -- well, I know it's certainly the best thing for the
9 bankruptcy estate.

10 I'd like Mr. Willard to join me, and I'll step away
11 for social distancing, before we turn it over to Ms. Berkovich.

12 THE COURT: Good morning.

13 MR. WILLARD: Good morning, Your Honor. May it
14 please the Court. Greg Willard on behalf of the Official
15 Unsecured Creditors Committee.

16 I would echo Mr. Eggmann's comments. I think,
17 perhaps, the analogy I would use, given the -- the location of
18 our colleagues in this case, I would use Ken Boyer's grand slam
19 in the '64 series against the Yankees.

20 THE COURT: Four to three.

21 MR. WILLARD: Yeah. As Mr. Eggmann indicated, the
22 Committee and the debtors and the purchaser and other
23 constituents have worked very hard and have reached a
24 consensual resolution.

25 Mr. Stark will explain to the Court for the record as

1 to how the Committee evaluated the transaction, negotiated
2 certain additional provisions, and how we reached the
3 conclusion that we reached.

4 When he makes his presentation, he will have some
5 demonstrative exhibits, which I have provided to chambers in
6 advance, that will help, I think, the Court understand how we
7 as a committee reached the decision that we did, Judge.

8 So, with that, I'll turn the podium back over to Mr.
9 Eggmann.

10 THE COURT: Thank you.

11 MR. WILLARD: Thank you.

12 MR. EGGMANN: Thank you, Mr. Willard.

13 Well, I thought I was going back a while, 35 years;
14 56 years for Mr. Willard. That's good. So, with that, Your
15 Honor, I'm going to turn it over to lead counsel, Ronit
16 Berkovich, and she is going to walk through kind of where we
17 stand now today.

18 THE COURT: Thank you. Ms. Berkovich, good morning.

19 MS. BERKOVICH: Good morning, Your Honor. Ronit
20 Berkovich, Weil, Gotshal & Manges for the Briggs & Stratton
21 debtors.

22 Am I heard in the Court?

23 THE COURT: Yes. Yes, you are.

24 MS. BERKOVICH: Once again, on behalf of the debtors,
25 I would like to thank the Court for holding this hearing

1 virtually. I'm joined and supported this morning by additional
2 colleagues from Weil on WebEx, as well as the Carmody team in
3 the courtroom. We have representatives from each of Houlihan
4 Lokey, which is our investment banker, Ernst & Young, our
5 financial advisor in the virtual courtroom, as are members of
6 our management team.

7 There's only one item on the agenda today. The
8 debtors move for approval for sale of all of our assets at
9 Docket No. 53.

10 I set forth in our papers, the debtors did not
11 receive (indiscernible) for their assets, so we canceled the
12 auction and are moving forward with the sale to our stalking
13 horse bidder, an affiliate of private equity firm KPS.

14 First and foremost, we are pleased to report that we
15 have reached the global settlement referenced earlier with the
16 Creditors' Committee. Our largest creditor, which is the
17 Pension Benefit Guaranty Corporation, the purchaser, and the
18 ADL lenders. And this resolves all litigable issues in
19 connection with today's sale.

20 So, effectively, we are proceeding with the sale
21 transaction uncontested. Several parties did file limited
22 objections to the sale, which I will get to, and most of those
23 are contract objections. But no one outright opposes the sale
24 transaction, which is great news.

25 The (indiscernible) global settlement, Your Honor,

1 are embodied in the sale order that we filed yesterday in
2 connection with our reply and those are summarized in the
3 reply.

4 Mr. Stark asked me if he could be the one to walk the
5 Court through the specific terms of the global settlement and
6 explain why this caused the Committee to support the sale
7 transaction.

8 So, if it's acceptable to the Court, I will turn it
9 over to Mr. Stark to do that after my brief introduction.

10 THE COURT: Yes.

11 MS. BERKOVICH: Okay. After Mr. Stark's
12 presentation, I will present evidence and a short legal
13 argument, if that's acceptable.

14 Your Honor, what the debtors have achieved in a short
15 period of time, since the bidding procedures hearing, is
16 effectively global peace, which is, if I can say so, a
17 remarkable accomplishment, and one that was achieved with
18 significant effort to the debtors and their advisor team over
19 the past several weeks.

20 This tremendous result also could not have happened
21 without the great and cooperative work with the Committee, KPS
22 and its advisors, and the ADL lenders and their advisors.

23 At the first day hearing, exactly eight weeks ago
24 today, I told the Court that our primary goals in this case
25 were to enter into a value maximizing transaction to transfer

1 the going concern business and to work consensually with as
2 many parties as possible, including the to-be-appointed
3 Creditors Committee towards avoiding litigation and minimizing
4 administrative expenses. Those two goals would serve the
5 ultimate purpose of maximizing recovery of unsecured creditors.

6 We also explained at the outset of the cases that,
7 based on the assumptions at the time, there wasn't expected to
8 be any recovery for unsecured creditors, yet today, we are
9 pleased to inform the Court that we expect distribution to
10 unsecured creditors in the tens of millions of dollars.

11 This remarkable change in circumstances from nothing
12 to a meaningful distribution was made possible due to a variety
13 of factors. First is the continued improved performance of the
14 debtors' business, which was made possible by the hard work of
15 the debtors' employees and it's exceeded expectations.

16 Second is the ability to close the transaction
17 earlier, due to the receipt of various regulatory approvals.
18 And third, of course, is the collective efforts of the key
19 parties in reaching this settlement that we're announcing
20 today.

21 You know, I initially thought we could say we hit a
22 home run here, and I don't want to take away from the great
23 analogies used by counsel earlier, but, you know, it's not
24 quite a home run, right? In the Chapter 11 case, the creditors
25 are not being paid in full, and shareholders are not receiving

1 a distribution. In a Chapter 11, it's always painful for
2 certain stakeholders, and this case is no exception.

3 But I would say that, given the conditions that we
4 faced at the beginning of the case and where we were before you
5 last month in intense litigation with the Creditors' Committee,
6 that we at least hit a solid double to win the game.

7 We've accomplished the goals I mentioned earlier.
8 We've reached what is really a very good result for creditors,
9 even if there's not a great baseball analogy to describe it.

10 Briggs & Stratton is a storied American corporation
11 with thousands of employees who work in plants, many of them,
12 making products that most Americans have used for generations.
13 We are pleased today to have this transaction before you that's
14 essentially consensual to provide for the going concern sale of
15 the business and maximizing the value for the benefit of the
16 debtors' creditors.

17 So I will now turn it over to Mr. Stark for his
18 presentation. I'm sure he'll be more entertaining than I was.
19 And then I will resume with my evidentiary legal presentation.

20 THE COURT: Thank you, Ms. Berkovich.

21 Mr. Stark, good morning.

22 MR. STARK: Good morning, Your Honor. Can you hear
23 me okay?

24 THE COURT: Yes, I can.

25 MR. STARK: Perfect. Thank you. And I'm not more

1 entertaining than Ms. Berkovich, but I appreciate the
2 compliment.

3 We do have a demonstrative that I'm hopeful will make
4 things very easy. And I don't -- I don't perceive it will take
5 very long. If I may just refer to my partner, Oksana Lashko,
6 to see whether or not we are able to get this up on the screen
7 so that everyone can see it.

8 Is Your Honor able to see it now?

9 THE COURT: Yes, plus I have a hard copy.

10 MR. STARK: Oh, terrific. Okay. I want to make sure
11 that everybody else has the ability to see this, because part
12 of my very small presentation, Your Honor, is not only to
13 explain to Your Honor why the settlement is the way we want to
14 proceed with this case, but also, to all of the unsecured
15 creditors that may be listening to me speak now and understand
16 why the Committee made the decision that it did.

17 So the hope in making this presentation in an open
18 way for those who are dialing in is to understand a little bit.
19 So, with that, if we could turn to this first slide, please.

20 The terms of the deal are actually quite simple.
21 We're assuming that we're going to close -- and that's actually
22 a very important part of the deal -- we're going to close this
23 transaction very, very swiftly. If we don't get it done by
24 September 27th, all parties revert to the status quo ante. And
25 that will become clear in a minute as to why it has to move as

1 quickly as it does.

2 The recovery pool for unsecured creditors, as Ms.
3 Berkovich just mentioned, is estimated to now be between 35 and
4 45 million in cash. I have seen some estimates that push the
5 boundaries a little higher to a five handle, but, obviously,
6 Murphy's Law tends to apply, and we want to be conservative.

7 But this will yield -- and I'll show it at the end
8 with the presentation -- around a 7 to 9 percent yield to
9 unsecured creditors, excluding the PBGC, maybe we get to a
10 dime. It is paid in cash.

11 The PBGC, as a separate category of unsecured
12 creditors, have made a different trade, and they've made
13 important contributions here that need to be recognized. There
14 are two legacy ERISA plans. One is called the cash balance
15 retirement plan; the second is generally the pension plan. One
16 is -- one covers more present employees than legacy past
17 employees.

18 The retirement plan is the one that would be assumed
19 by KPS. Under the prior deal, KPS would be rejecting both
20 plans. Now KPS will take the one plan going forward. And
21 there is an under funding amount of \$1.6 million. That's going
22 to be a purchase price reduction, but as the bottom of the page
23 yields, the ADL lenders are contributing half of that shortfall
24 in exchange for a settlement of all challenge actions that the
25 Committee may otherwise bring. Okay.

1 The other plan will be consensually terminated. The
2 PBGC is going to waive its control group claims that it may
3 have against non-debtor affiliates. You've seen some motion
4 practice, Your Honor, about how the debtor wants to leave as
5 part of this transaction a resolution of the PBGC's ability to
6 go extraterritorial with non -- with control group, a non-
7 debtor affiliate. That will be resolved consensually as part
8 of this deal.

9 The PBGC also will cap its unsecured claim at \$225
10 million. There is new language that I think will be added, if
11 it hasn't already been added, to the sale order to say that the
12 PBGC unsecured claim will not be any greater than \$225 million.
13 And there is the PDGC recovery contribution.

14 If you view that \$225 million number pro rata with
15 all other unsecured creditors, they would receive a fairly
16 significant portion of that 35, 45 million dollar distributable
17 pool. And what the PDGC has agreed to do is take that first \$5
18 million of recovery and rededicate it to all other unsecured
19 creditors and, in effect, void up the recoveries for other
20 unsecured creditors here for around that time that we talked
21 about before.

22 There is also the waiver or relief of general
23 unsecured -- Chapter 5 causes of action against all parties,
24 not just general unsecured creditors, but obviously were
25 focused on recoveries to unsecured creditors. This was very

1 problematic, because under the sale agreement, KPS was
2 purchasing preference claims against trade and other unsecured
3 creditors. Frankly, they were all avoidance claims, and that
4 was something that we wanted to be fixed in the settlement and
5 the clause.

6 And as I mentioned earlier, the last bullet, the ADL
7 lenders are contributing half of the offset for the under
8 funding amount in exchange for resolution of the challenges.

9 Okay. With that, unless Your Honor has any questions
10 about the terms, we can go to the next slide.

11 THE COURT: Yes, please.

12 MR. STARK: Okay. I'm not going to use a baseball
13 analogy, although I am a fanatically Yankees fan. I thought I
14 was treading in St. Louis sorely when I came as a Yankees fan.
15 So I'm not going to go baseball, but I will use other
16 colloquial analogies.

17 This is what informs our thinking about doing this
18 settlement. First, in the first box, a call for cash burn
19 risk. Ms. Berkovich alluded to this earlier. She alluded to
20 it at a prior hearing. This company is not generating cash to
21 cover its bankruptcy costs.

22 So if we delay, we run a risk of the purchase price
23 adjustment, the working capital adjustment, which today yields
24 35 to 45 million, again, subject on both sides, upside and
25 downside risks, that distributable value will erode, according

1 to the company's projections, but very, very, very quickly.

2 On the next slide -- and I'll go through it very
3 briefly in a minute -- it shows how quickly that pool rapidly
4 goes down. In a matter of weeks, we're down to 1 to 3 percent.
5 We're zero by early November. So if we want to do a deal and
6 we want to get it done and we want to close it, it has to
7 happen quickly.

8 But if we continue to litigate -- and I'll mention it
9 in a minute, Your Honor -- we loved our litigation. It was
10 going to be complicated. It was going to take some time.
11 That's for the Committee to present opportunity costs. Real
12 money now versus litigation option.

13 The second consideration is what I call the dog that
14 caught the ball one. So you win the litigation. You blow up
15 the sale. What next? It's not so far assured that in that
16 stalemate that happens next KPS or the ADL lenders will agree
17 to a greater settlement amount with the general unsecured
18 creditors.

19 We are, in effect, at a stalemate, but they still
20 hold, you know, significant leverage. There's a DIP default
21 that will happen almost immediately with \$500 million plus,
22 immediately due, administrative payable, and we are not aware
23 of any liquidity source for that DIP refinancing or any
24 liquidity bridge to take us to a next exit solution. That's
25 the nature of the problem as a practical matter.

1 Third is what I call the quantum versus currency
2 dilemma. Okay. Let's just presume for the sake of discussion
3 that in the stalemate, we win in the stalemate, and that yields
4 additional distributable value, because KPS and/or the ADL
5 lenders look at us and say, okay, now we have a collective
6 problem. We know we need to give you more settlement value in
7 order to get you to withdraw your objection to go along with
8 the deal, but we have a company that needs liquidity. This is
9 not a cash excess scenario. Okay.

10 And, again, we have that defaulting DIP scenario, and
11 need liquidity for bridge. So cash is not very likely to be
12 the currency that would be available for extra value. And
13 usually, it's been my experience, in those types of stalemate
14 scenarios, you're really bargaining for any liquid stock or a
15 warrant package with a private equity company. Those are a
16 form of currency that perhaps more specifically to our trade in
17 retiree unsecured creditors, it is very sub-optimal, and they
18 would much prefer cash. Currency will be of some importance to
19 them.

20 Fourth is the PBGC-related considerations. Without a
21 settlement, if we tried our case and we lost and Your Honor
22 approved the KPS sale, both pension plans would be terminated.
23 Under that scenario, the PBGC presumptively will have a much
24 larger unsecured, uncapped claim, and they would not be
25 willing, under that scenario, because they're not incentivized

1 to redistribute the first 5 million of recoveries to other
2 general unsecured creditors.

3 And then there is finally what I call the add insult
4 to injury risk, and that's focused primarily for trade
5 creditors, absent the settlement, and if the KPS sale is
6 approved and closed, KPS is embodying the Chapter 5 avoidance
7 actions.

8 Those trade creditors who tendered their unsecured
9 claim and presumptively will not get very much for it will
10 either A, the 502D offset argument, you're getting nothing,
11 because we've got a preference payment against you, or even
12 further, they might get sued for preference and have to give
13 over their recovery of pre-petition payments to KPS. And that
14 was an untenable scenario for us.

15 That takes us to the next slide, please. I mentioned
16 earlier, Your Honor, how quickly the settlement pool erodes if
17 we have an elongated trial process. And you can see it here in
18 a very simplified format. The proceeds as forecasted, it's
19 three columns -- three rows below the illustrative recoveries
20 of various sell post dates goes from 40 million down to 2
21 million between the end of September and November 6th.

22 So ice cubes melt. This one is melting very fast.
23 Okay. So the risk of not taking the deal at hand is
24 substantial.

25 And that takes us to the final slide, Your Honor,

1 which is sort of showing a little bit how the range of recovery
2 pools, there's a sensitivity analysis on the top that shows if
3 the unsecured creditor pool is 675 down to 575, how the net
4 proceeds -- if we were pro rata, if there wasn't the PBGC
5 settlement, the range is up to \$40 million, mid number runs
6 from about 6 percent to 7 percent, so not a huge delta there.
7 But see how it gets redistributed from the PBGC settlement by
8 that 5 million redistribution in the two charts below, okay.
9 For general unsecured creditors, 7 cents, 8.4 cents, and the
10 PBGC goes from 3.7 cents to 4.7 cents.

11 Again, if we are higher in our recovery, if we move
12 quicker, costs are held lower, professionals are not dedicating
13 a lot of time to depositions and litigation prep, and we get
14 perhaps a high 40 million, even to the 50's, we're looking at
15 more like 8 cents to a dime for unsecured creditors, and the
16 PBGC goes from 4 cents to 5.6 cents.

17 Now, they're doing this in part because they're being
18 a good committee participant. They're also doing it for their
19 economic benefit in that in the preservation of one plan going
20 with KPS. But make no bones about it, PBGC is giving her a lot
21 for unsecured creditors, and we're very appreciative of the
22 support they are giving to make this deal happen.

23 Just in very quick closing before I ask if Your Honor
24 has any questions for me, I don't actually agree -- I
25 absolutely respect Mr. Eggmann, don't get me wrong, but I don't

1 agree with the analogy of a home run. I don't even really
2 agree with an analogy of a double.

3 Unsecured creditors here are not getting huge return.
4 Okay. And this will not go down as a case that I look back and
5 say, My goodness, the unsecured creditors achieved a massive
6 return. You know, hopefully, they'll get a dime.

7 But this is an important moment because this
8 committee -- and I've done my fair share of official and
9 unofficial creditors committees, Your Honor -- I'm privileged
10 to work with this committee, because this committee is a very
11 thoughtful committee. And it is advised on an individual
12 basis, not only by its committee professionals, but committee
13 members have themselves very sophisticated counsel as well.

14 And, of course, we are very privileged to work with
15 Mr. Willard and getting his counsel as well. We have carefully
16 considered the risk/rewards. We have spent a lot of time
17 evaluating, synthesizing, looking at the litigation, and I do
18 very much believe in our litigation, and I think it is an
19 important case to litigate and would have had a very
20 interesting case quorum dialectic.

21 But 35 to 45, perhaps even more, million dollars cash
22 is a very real money pod situation. It is not easily exchanged
23 for litigation option value. And at these levels, this
24 committee thought that discretion was the better part of valor.
25 And I feel fairly confident I can speak for Mr. Willard, but

1 I'll certainly speak for myself, I think that's the right
2 decision here. And, Your Honor, that's how we came to that
3 conclusion.

4 Does Your Honor have any questions for me? I'd like
5 to answer it.

6 THE COURT: Mr. Stark, as usual, your presentation
7 was on point and excellent.

8 MR. STARK: Thank you.

9 THE COURT: And I want to thank the Committee, PBGC,
10 and KPS for keeping your eye on the ball, which was maximizing
11 your return.

12 So, Ms. McCoy didn't think I could use this word, but
13 I'm going to use it. So what you did, you got the best result
14 out of a sub-optimal situation. Good for you. You did very
15 well, and you were thoughtful, and you kept your eye on the
16 ball.

17 MR. STARK: Thank you, Your Honor.

18 THE COURT: Ms. Berkovich, I want to know if I should
19 hear from KPS or PBGC before I go back to you. Where is Ms.
20 Berkovich?

21 MS. BERKOVICH: Yes, Your Honor. I'm here.

22 I was going to go through the evidentiary record and
23 the legal arguments. Perhaps that's best before they speak up.
24 Okay.

25 Your Honor, we're prepared to present our evidence

1 and make an offer of proof with respect to the standard being
2 met in this case for approval of the sale transaction. Your
3 Honor, we filed the second supplemental declaration of William
4 Peluchiwski in support of the sale transaction at Docket 876.

5 I would like to move for admission of that
6 declaration into evidence. Mr. Peluchiwski is available
7 virtually for cross-examination.

8 THE COURT: Without opposition, it is received into
9 evidence.

10 MS. BERKOVICH: Thank you, Your Honor. We also rely
11 on the declarations filed earlier in the case with our motion
12 and with our bidding procedures papers from Reid Snellenbarger,
13 Docket 53, Jeffrey Lewis, Docket 36, William Peluchiwski,
14 Docket 459, and Jeffrey Ficks at Docket 460. These were
15 previously submitted into evidence, and the witnesses were
16 subject to cross-examination.

17 Your Honor, a number of other documents have been
18 filed on a docket with respect to this motion and are part of
19 the record in support of the sale. On August 19th, the Court
20 entered the bidding procedures order as Docket 505. The
21 debtors filed a notice of sale, bidding procedures, auction and
22 sale hearing on August 20th, Docket No. 527. And we served
23 that on the proper notice parties on August 21st. Those are
24 Docket Nos. 572 and 589. The notice was published in the Wall
25 Street Journal. We have a certificate of publication at Docket

1 699.

2 On August 19th and August 21st, we filed a notice of
3 surplus and proposed assumption and assignment of executory
4 contracts. Those are Dockets 513 through 516 and 537. And we
5 filed an amended notice yesterday at Docket 879.

6 On August 31st, we filed a notice at Docket No. 679
7 announcing the conclusion of the bidding process, the
8 cancellation of the auction, and declaring the stalking horse
9 bidder the successful bidder. And the certificate of service
10 for that is at Docket 689 [sic].

11 And then yesterday we filed our omnibus reply brief
12 at Docket 878, and then that will include two charts outlining
13 the status of various objections. We attached a black line of
14 the revised proposed sale order.

15 Now turning to the legal standard. I will keep this
16 very short, as it is covered by our motion, and these factors
17 are not contested.

18 Your Honor, there is no question here that the
19 debtors have provided ample business justification for the sale
20 transaction today, that the sale of the debtors' business to
21 the stalking horse purchaser is the highest and best offer
22 received, that the sale transaction yields a fair and
23 reasonable price, and that the parties have proceeded in good
24 faith in connection with the sale.

25 The evidence is robust that the debtors ran an

1 extensive process for the sale of their assets, and no one
2 offered anything even close to what KPS is prepared to pay, not
3 pre-petition, not prior to the bidding procedures hearing, and
4 not since then. Mr. Peluchowski's declaration goes through
5 additional detail.

6 The proposed transaction provides \$550 million in
7 cash, subject to the assumption of hundreds of millions of
8 dollars of liabilities, the continued operation of the debtors'
9 business, the preservation of the global operation, the
10 continuation of thousands of jobs, including two plants right
11 there in Missouri, and the long-term contract counter-parties
12 for the debtors' vendors.

13 The remainder of the sale proceeds after satisfaction
14 of the DIP will fund the administration of the estate, and then
15 the remainder will be left over for unsecured creditors.

16 As I said at the very first hearing, ultimately, for
17 these Chapter 11 cases to conclude as a true success, the
18 debtors will require continued cooperation from all of their
19 stakeholders to minimize the cost of administration. We've
20 done that here. Now we're reaching a deal.

21 We'll look forward to continuing to work
22 constructively Mr. Stark's committee to propose a Chapter 11
23 plan in short order. We've already started discussions. We
24 hope that will deliver the greatest recovery possible to
25 general unsecured creditors sooner rather than later and then

1 provide for the orderly wind-down of the estate.

2 And another key point, as Mr. Stark described, is
3 that the sale close quickly. There is substantial evidence
4 that supports the need for a quick closing. A delay will have
5 a direct and negative impact on creditor recovery. So the
6 expectation and the hope is that the sale transaction closes
7 next week.

8 Turning to the objections briefly, Your Honor, many
9 of them have been resolved through changes to the sale order.
10 As we indicated in our reply, we divided the objections into
11 two categories. First is outright sale objections in Exhibit
12 A. And, second, most of them are contract objections in
13 Exhibit B.

14 Turning first to Exhibit A, there were a few sale
15 objections related to insurance policies. Those have all been
16 resolved. We have no more of those objections. The only other
17 true sale objections that were named are those concerning the
18 purported sale of assets free and clear of certain statutory
19 liens. We believe that those have been addressed in our reply.
20 We've conceded that if those liens are valid liens and they're
21 statutory liens, then they will be permitted liens. And we're
22 not selling assets free and clear of permitted liens. And we
23 make that very clear throughout the sale order.

24 The remaining objections are contract objections.
25 These are in Exhibit D to our reply. Most of these, we are

1 adjourning to the October hearing. We resolved a lot of them,
2 and we'll continue to work with the parties to resolve sure
3 costs. The debtor had literally thousands -- I think tens of
4 thousands of contracts here, and we've been, you know,
5 successful so far in resolving a lot of them. That will give
6 us more time to continue to work with the contract counter-
7 parties.

8 The main contract objection going forward today
9 concern requests for adequate assurance of future performance.
10 That objection was made by a few contract counsel parties. On
11 this point, Your Honor, the declaration of William Peluchowski
12 goes through the adequate assurance information that was
13 provided to bidders.

14 In short, you know, KPS is a very well funded private
15 equity company with billions of dollars under management. They
16 have -- the purchaser has committed capital of approximately
17 \$800 million from KPS, as well as from a syndicate of banks.
18 And there is ample evidence that the purchaser will be able to
19 continue to perform under these contracts. There really is no
20 evidence to the contrary or valid concerns that have been
21 raised about KPS as a contract counter-party.

22 Before I conclude, Your Honor, I just want to spend a
23 minute on the sale order. You know, we had the initial version
24 that was attached to the initial motion, and then we filed
25 yesterday a black line with changes since then. You know,

1 among those changes are the provisions of the global deal.

2 There have been a few additional changes since
3 yesterday. Most of them are fairly minor. I understand that
4 the Carmody team in court has copies of a black line. I can go
5 through all of the major changes or just the ones that have
6 been filed -- that have been made since yesterday, however Your
7 -- or none of them, however Your Honor would like.

8 THE COURT: Ms. Berkovich, I was going to, at the
9 end, ask each constituent group if they received and reviewed
10 the proposed order. If they have, then I don't think there is
11 a need to review the content of it.

12 MS. BERKOVICH: Yes, Your Honor. That makes a lot of
13 sense. So unless Your Honor has any questions for me, I'm
14 happy to cede the podium to others who wish to speak.

15 THE COURT: Well, I appreciate that -- the way you
16 want to handle the motion. I would feel more comfortable
17 calling each of the objections in Schedule A, just to make sure
18 that their needs have been taken care of and that they've been
19 heard.

20 MS. BERKOVICH: Yes, Your Honor.

21 THE COURT: So, before I do that, we heard a summary
22 of the settlement and then a detail of it from Mr. Stark, and
23 we've read it before today in the supplemental brief. But let
24 me ask KPS if it wishes to comment on the agreed settlement.

25 MR. PESCE: Thank you, Your Honor. It's Gregory

1 Pesce, Kirkland & Ellis, on behalf of KPS.

2 Can you hear me?

3 THE COURT: Yes, sir.

4 MR. PESCE: Thank you, Your Honor. I'm joined in the
5 virtual courtroom today by my partner, Chad Husnick, and
6 several members of the KPS team are on the phone as well,
7 listening in.

8 And if it may please the Court, we wanted just to
9 make a couple of quick remarks. Obviously, Briggs & Stratton
10 is an iconic American company. And at the outset of the
11 company's investment process last summer, KPS recognized its
12 value, yet it also recognized the challenges and obstacles to a
13 sale.

14 There was the overhang of the PBGC's claims. There
15 was the need for a resolution with the steel workers. The
16 company also required significant financing to run a value
17 maximizing process.

18 KPS has been firm in its commitment to Briggs, its
19 employees, its vendors, and its customers as it worked
20 diligently with its management team and its advisors to
21 literally mow down these challenges. And for their cooperation
22 and their support and their assistance, we are greatly
23 appreciative.

24 I also wanted to thank Mr. Stark and Mr. Lashko for
25 their help, as well as with many people at the PBGC in recent

1 weeks who have helped reach the global resolution that was read
2 into the record earlier in the hearing.

3 And as Ms. Berkovich noted, we recognize the need for
4 speed here as well, and we are working with the company to
5 close as expeditiously as possible with -- we're targeting next
6 Monday or Tuesday.

7 Again, we also wish to thank the Court for its
8 indulgence and accommodations in this case, and particularly
9 with all of the ease its let us participate from outside of St.
10 Louis.

11 So, unless the Court has any questions, we would just
12 thank Your Honor and the other constituents, and we can address
13 any questions as well.

14 THE COURT: Thank you very much and thank you for
15 your flexibility and your client's contribution.

16 Lastly, we have PBGC. Is that Mr. -- or Ms. Khalsa,
17 or does anyone wish to be heard on behalf of PBGC? I suppose
18 not, then.

19 MR. MENKE: Oh, I'm sorry. I'm unmuted thank you.

20 This is John Menke from PBGC.

21 THE COURT: Mr. Menke, thank you, and I can't hear
22 you.

23 MR. MENKE: Thank you. I appreciate that, Your
24 Honor. I apologize for my fumbling efforts to use the
25 technology here. I'm still working on that.

1 Your Honor, I am John Menke, assistant general
2 counsel at the Pension Benefit Guaranty Corporation and leader
3 of the case team. On the phone with me, as you've mentioned,
4 is Mr. Kartar Khalsa, who is my boss, the PBGC deputy general
5 counsel, who is -- oversees the group I work in, as well as
6 several other of the PBGC attorneys who have been working on
7 this -- this case since its inception.

8 I'm not going to use a baseball analogy because, if I
9 did, I would have to say that what this bankruptcy represents
10 is Briggs & Stratton losing the game. But, like baseball -- so
11 I guess I am using a baseball analogy -- the Bankruptcy Code
12 gives them a chance to restructure, reorganize, and try to play
13 again tomorrow.

14 And we certainly appreciate that right. We think,
15 you know, its employees appreciate the opportunity to continue
16 working, keep their jobs, particularly in this environment.
17 And we at PBGC value that outcome very highly.

18 You heard Mr. Stark describe the terms of our
19 settlement. He did so accurately, and we appreciate his kind
20 words for our contributions to this case. We are not wildly
21 happy about this settlement, but after a lifetime practicing in
22 the bankruptcy arena, we at PBGC understand that there is never
23 enough money to go around. That is more or less the definition
24 of bankruptcy. And a settlement where we get something is
25 better than a settlement where we get nothing.

1 So, Your Honor, we thank you for the opportunity. We
2 thank all the parties for working together in this case to get
3 a resolution that was if not happy, acceptable. And we wish
4 Briggs & Stratton, and KPS as well, the best of luck going
5 forward and hope that their businesses resume success.

6 And with that, Your Honor, I will turn it back,
7 unless you have any questions for me.

8 THE COURT: No. Thank you, Mr. Menke, and I
9 apologize for not recognizing your representation earlier.

10 MR. MENKE: And I apologize for not being able to get
11 unmuted as quickly as I should have.

12 THE COURT: That's all right.

13 Ms. Berkovich, I'm looking at Exhibit A to, I think,
14 a supplemental response, and I thought I'd just go through the
15 objectors and give them an opportunity to be heard or consent
16 to their treatment.

17 We'll start with Jones Plastic & Engineering Company.

18 MR. LAFLAMME: Your Honor, Brian Laflamme on behalf
19 of Jones Plastic.

20 THE COURT: Good morning.

21 MR. LAFLAMME: Good morning. Also, if you want, I'm
22 also here on Ataco Steel Products, Davis Tool & Die Company,
23 and Poplar Bluff Tool & Die Company, which I think all three
24 follow one after the other on Exhibit A.

25 THE COURT: Thank you.

1 MR. LAFLAMME: There's differences between all three.
2 So Poplar Bluff Tool & Die and Davis Tool & Die are affiliated
3 entities, so even though I've got four, I'm going to refer to
4 them as three, just for my own sanity.

5 So each one has different circumstances, Your Honor,
6 but I think because they have all basically possessory lien
7 claimant creditors, that there are several overriding or over-
8 arching factors that bind them together.

9 We do not believe that the reply addresses our
10 concerns at all. There is so much more needed. The permitted
11 new language we think is ambiguous, number one, for two
12 reasons. One, we don't know for certain that we're, quote,
13 included for the terms. Debtors' counsel has indicated, "Oh,
14 we will include you in that," but there is also a question of
15 whether it applies to new liens going forward or for past due
16 amounts.

17 And so what we are wanting is to actually clarify the
18 permitted liens statute or definition in the sale order to
19 include either specifically my three clients or to include --
20 make specific reference to statutory possessory liens, common
21 law/artisan possessory liens so that it's 100 percent clear
22 that our clients are -- do fall in the permitted lien category
23 and also make clear that the amounts that they've had -- pre-
24 petition and the amounts that they've incurred post-petition,
25 and not just going forward, are also included as a permitted

1 lien. So that's our one problem, has to do with the definition
2 of lien.

3 The other problem is permitted liens ride through.
4 That's a problem, because it's helpful post-petition, it's
5 helpful post-sale, because it protects us going forward. But
6 ride through doesn't get us paid for pre-petition and post-
7 petition defaults.

8 I think there was language in the amended -- or in
9 the updated sale order that says that a post-petition in the
10 ordinary course, but you can't pay ordinary course in something
11 that's already in default. If you have to assign a contract,
12 and you're going to assume and assign it, you have to cure it.

13 So we have this problem that a ride through isn't
14 enough. Just including this as a permitted lien isn't enough.
15 We need to be a permitted lien going forward to cover any, you
16 know, amounts due after assumption.

17 It also ties into -- but then also we have payment of
18 what's due either on assumption and assignment or rejection,
19 because we still have liens. So whether it is rejected or
20 whether this is assumed and assigned, both require payment.
21 And both, honestly, require payment at or before closing.
22 Rejection would be at closing, because we are a lien creditor,
23 no different than any other lien creditor, so there is no
24 reason why we shouldn't get paid.

25 And for assignment, we're supposed to be cured before

1 it's assigned. And at a minimum on the sale closing date as
2 well. So we think that we need payment of all cure amounts
3 pre, post, and as an indicator or as an element of post, we
4 also have our contracts, and they speak differently, but they
5 generally require the creditors to purchase raw materials, to
6 start work in process, and do all those types of things.

7 And so they are constantly having to buy goods that
8 are only applicable to Briggs or whoever buys Briggs' assets
9 going forward, so we can't just go ahead and sell them to
10 somebody else.

11 So we have all these sums due that a permitted lien
12 doesn't simply solve the problem. So we're asking that the
13 permitted lien definition be revised to explicitly include the
14 possessory statutory and common law liens, but also that it be
15 100 percent clear that we're paid either before or at closing,
16 whether or not it's assumed or rejected, because we have a lien
17 now.

18 Another element that isn't resolved by the permitted
19 liens is the sale order requires turnover of assets of the
20 debtor. Well, we have possessory liens the minute we turn
21 over, quote, assets of the debtor, for instance, a mold, we've
22 just been stripped of our lien going forward.

23 So our argument is that you can't strip us of our
24 lien going forward. We have to retain possession. So another
25 element is we can't turn over these molds or tools --

1 THE COURT: But if you're paid in full --

2 MR. LAFLAMME: Well, if we're paid in --

3 THE COURT: -- at closing.

4 MR. LAFLAMME: Because going forward and still we
5 need to have possession of these molds going forward. So
6 assumption and paid in full and turn over possession, now we've
7 gone from a secured creditor who got paid to date to an
8 unsecured creditor when, if it was assigned in particular --
9 they're supposed to, you know, take on not just the monetary
10 obligations, but the non-monetary obligations and everything,
11 which is another issue.

12 We're not 100 percent clear that the sale order is --
13 mandates -- and maybe it doesn't have to, but we think it does
14 -- that it mandates that -- it makes clear that non-monetary
15 obligations as well as monetary obligations under the contracts
16 are, in fact, assigned and assumed by the purchaser, or the
17 assignee, I'll say.

18 So those are the primary issues. Oh, we also, in
19 Poplar Davis, we also have a bailment issue, and that was set
20 out in the --

21 THE COURT: Objection.

22 MR. LAFLAMME: -- in the objection. But, basically,
23 these aren't even subject to sale. So, it's not even the
24 possession issue. It's these are ours, not debtors'. So the
25 identified equipment and assets that are listed in the

1 objection are explicitly -- to be explicitly excluded from sale
2 so there is no confusion that we one day go to pick up our
3 assets and all the sudden, oops, so and so has it because of
4 the sale.

5 So those are our primary sale issues. We believe the
6 cure amounts -- I know you're going to want to separate the
7 two, but we believe they're intertwined here, because what we
8 have is cure amounts and the cure notice saying that if you
9 don't assert, you know, a cure, you're waiving.

10 The problem we have is, again, we have pre-petition,
11 we have post-petition, and we have different elements of post-
12 petition. And then the post-petition number is constantly
13 changing, because we're still working.

14 So there is no process in here. There is no date of
15 assumption. There is no mechanism by which we true up. At
16 some point, you're going to have to agree to a number. But
17 according to the documents, you agree to that number, and
18 you've just waived everything else. But that can't be, because
19 we're still entitled to going forward. It leaves the post-
20 petition some to do. And I know that's a cure issue, but it's
21 also a sale issue, because it has to do with when we're getting
22 paid under our lien and whether we're waiving our rights going
23 forward.

24 So, we try to keep most of the cure arguments -- and
25 let me side note here for one second. It looks like most of

1 the cure arguments have been adjourned. However, none of my
2 three clients that I'm discussing right now, plus an additional
3 fourth one, nobody agreed to an adjournment on our side. And
4 I've been instructed to proceed forward to the extent possible
5 with cure arguments as well. So I just want to give you an
6 update of what's to come.

7 But essentially, I think the problems can be solved
8 with modifying the sale order. So we're not objecting to the
9 sale, as was indicated, but I guess if our clients are being
10 left out to try by the current terms, we need to retain our
11 lien and retain possession and we need to be paid before or at
12 closing. There needs to be some kind of provision that doesn't
13 allow for a waiver of future post-petition amounts.

14 And again, as I said, a statement that they're going
15 to pay, the buyers are going to pay post-petition amounts in
16 the ordinary course doesn't apply until the buyer actually has
17 the contract and we're performing for the buyer instead of the
18 debtor. We're already past due. Ordinary course is gone.

19 So, I mean, there's a lot of cracks that we fall
20 through because of our possessory liens that many other
21 creditors don't fall through. And I think that's what we need
22 to shore up in the sale order.

23 THE COURT: Thank you, Mr. LaFlamme. If you would
24 just stay at the podium while we hear from Ms. Berkovich.

25 But before we do, let me suggest this. Ms.

1 Berkovich, you can hear me, can't you?

2 MS. BERKOVICH: Yes, Your Honor.

3 THE COURT: And Mr. LaFlamme, it's not my intention
4 to put more chefs in the kitchen so that there's a greater
5 chance that we won't agree to the language of the sale order,
6 which now is at 48 pages.

7 But I think that if I hear from Ms. Berkovich, I
8 think it's not disputed that I can interpret my own orders.
9 And I understand your concerns. I'm not going to ask
10 Berkovich, though, to invite you to change the language
11 necessarily, but explain its meaning so that I can interpret it
12 as the parties intend it to be.

13 Ms. Berkovich, when will the true update be, and when
14 will payment be made to these three creditors?

15 MS. BERKOVICH: Your Honor, if their contracts stay
16 on the assumed contract list, their payment will be made
17 shortly after we either reconcile the cure amounts or Your
18 Honor cures the arguments before that in October.

19 Like if they have valid cures, those will be paid. I
20 mean, period. I mean, that's what the order says, and the
21 order couldn't be more clear about that.

22 The lien issue is if they have valid liens, which
23 we're not conceding, then those liens are permitted liens. And
24 we're stating that here. And I think the language is very
25 clear and the sale agreement -- it's like almost a full page of

1 the sale agreement is either statutory liens or permitted
2 liens. And then they will have every right to be paid as a
3 lien holder.

4 THE COURT: Are you --

5 MS. BERKOVICH: So it really is about --

6 THE COURT: Are you acknowledging that they do have
7 statutory liens?

8 MS. BERKOVICH: If they are valid, the liens that
9 they have asserted are statutory liens and will be permitted
10 liens.

11 THE COURT: I'll take that as a yes. And do you have
12 a date after sale that the true up will take place? I know you
13 have --

14 MS. BERKOVICH: And I just --

15 THE COURT: I'm sorry.

16 MS. BERKOVICH: Sorry. The answer is no, because we
17 don't agree with them on the amount. As soon as we agree on
18 the amount, we will pay them. Or, if we haven't agreed -- I
19 believe it's October 17th that we've scheduled before this
20 court, and they will have their day in court. I mean, they
21 will be paid, both for pre-petition amounts, for amounts that
22 are, you know, incurred during the Chapter 11 cases.

23 We and KPS will pay them, and I think the sale order
24 is clear on this point. And I'm also stating it on the record.

25 THE COURT: Mr. LaFlamme, I know that you raised at

1 least four issues. I believe I understand the intent is to
2 have a -- assume an assign and payment in full of the amount
3 that's due you.

4 MR. LAFLAMME: And retention of lead.

5 THE COURT: And retention of lead. I get it. And
6 that's as far as we can go today -- as far as I'm willing to go
7 today.

8 MR. LAFLAMME: So you're understanding my position,
9 but we're not addressing it in the sale order?

10 THE COURT: I think the sale order does address it
11 and does not need to be changed.

12 MR. LAFLAMME: What about possession?

13 THE COURT: Whatever your statutory rights are.

14 MR. LAFLAMME: So even though the sale order says all
15 parties have to turn over property to the debtor -- to the
16 buyer, we don't?

17 THE COURT: Ms. Berkovich, the sale order -- proposed
18 sale order doesn't specify with respect to statutory liens, the
19 turnover consequence. But you don't envision a turnover of the
20 molds or dies, do you?

21 MS. BERKOVICH: Correct. And we're not trying to
22 override any state law that would allow them to retain
23 possession.

24 MR. LAFLAMME: Could we do this? Could we present
25 language so I know it's already -- you said it, a very long

1 sale order. If we could tweak a little bit and present
2 language so the debtor's counsel doesn't have to do the work,
3 and it's minimalistic to achieve the goals that I've set here?
4 Would Your Honor be open to that?

5 THE COURT: Well, I've got -- I have three pages or
6 four pages of folks. Let me think about it and I'll get back
7 to you. I just don't want to slow the process up, because
8 anything that is changed now has to go through committee, PBGC,
9 and KPS, and I'd like to move this along. But I think I
10 understand the intent of the parties.

11 The next matter is Century Indemnity Company,
12 transportation Insurance Company, Continental Casualty Company.
13 Are they present, and do they wish to be heard?

14 MR. PLEVIN: Your Honor, this is Mark Plevin on
15 behalf of Century Indemnity Company.

16 THE COURT: Yes, sir.

17 MR. PLEVIN: The language in Exhibit A to the
18 debtors' reply brief, which was also reproduced in the sale
19 order, is acceptable to my client and to the other insurers
20 with whom we joined in an objection.

21 THE COURT: Thank you very much, sir. And that
22 includes Nationwide and Employers Insurance of Wausau. I
23 believe that the --

24 MR. PLEVIN: And Continental as well.

25 THE COURT: Thank you for that supplement.

1 And we're going to move on to the individual Craigs,
2 which I believe that was withdrawn, so there is no need to
3 spend any time on that.

4 Ace American Insurance Company, Illinois Union
5 Insurance Indemnity, Ace Federal. Do you wish to be heard?
6 There you are, Mr. Parres. Good morning.

7 MR. PARRES: Good morning, Your Honor. Larry Parres
8 on behalf of the firm Lewis Rice and England -- it's not
9 England anymore -- Lewis Rice, acting as local counsel for
10 Duane Morris.

11 We have come to an agreement, Your Honor, as to the
12 language that is in the order, and I believe our objections are
13 -- have been resolved.

14 THE COURT: Thank you, Mr. Parres.

15 Mark Zimmerman. Mark Zimmerman.

16 MS. BERKOVICH: Your Honor, I'll just note that Mr.
17 Zimmerman did not file an objection. He just sent us an email
18 stating that he was not happy with the results of the sale
19 transaction. He's a shareholder.

20 You know, we gave him an extension of the time to
21 file an objection, but we didn't think it was fair to him to
22 include his objection here, and, if necessary, we ask the Court
23 to overrule it.

24 THE COURT: Thank you. And I believe that, then,
25 concludes Exhibit A. So here's what we're going to do with Mr.

1 LaFlamme, now that I know the scope of those who are involved
2 in objecting and their status.

3 Send proposed language to Ms. Berkovich, this morning
4 if you can, and we'll see if we can't accommodate clarity.

5 MR. LAFLAMME: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Ms. Berkovich, have I called everyone who has
8 objected to the sale one way or the other?

9 MS. BERKOVICH: Yes, I believe so. I mean, we
10 categorize everything else as an objection to the assignment of
11 contract. So the answer is yes.

12 THE COURT: Okay. Then one last opportunity. Does
13 anyone wish to be heard in respect of the proposed sale order?
14 Mr. LaFlamme is still --

15 MR. GENSBURG: Good morning.

16 THE COURT: And who are we --

17 MR. GENSBURG: Good morning, Your Honor. Matthew
18 Gensburg and Seth Albin on behalf of John Deere, Deere &
19 Company.

20 We filed an objection which was Docket No. 858. It
21 is an objection to the assumption, Your Honor, so I guess
22 technically we fall within -- within Exhibit B. And it's been
23 requested that it be adjourned, and we have no objection to
24 that.

25 The reason why I speak up now, Your Honor, is just to

1 point out that John Deere is a party to a supply agreement to
2 Briggs & Stratton. And pursuant to that supply agreement,
3 there is warranty obligations and indemnity obligations that
4 relate to products that have been sold pre-petition, which are
5 wait and inchoate. In other words, we just don't know what
6 they are right now.

7 Under the sale, obligation that pre-existed the sale
8 are not being assumed, is our understanding. And to the extent
9 that the sale goes forward, we just don't want that order to
10 prejudice our ability to make the appropriate arguments with
11 respect to the supply agreement in October that you can't
12 assume something and try to free yourself from inchoate or
13 warranty or indemnity claims that may exist.

14 And as long as that's understood, Your Honor, then
15 I'll be quiet and allow us to be heard. On the adjourn date,
16 oh, I think we're probably going to reach an amicable
17 resolution with counsel.

18 THE COURT: Thank you.

19 Ms. Berkovich, when do you anticipate submitting a
20 proposed final order that would allow you to have a short
21 discussion with Mr. LaFlamme to soothe those troubled waters?

22 MS. BERKOVICH: The order is otherwise, I believe,
23 ready and signed off on by all parties. I will check with my
24 team. There are a couple of contract counter-parties that
25 we've been talking to that have asked for additional language,

1 even as of this morning. But I will look at Mr. LaFlamme's
2 language and we hope to get you an order by the early afternoon
3 at the latest.

4 THE COURT: All right. And do I -- do I understand
5 that Ms. Guilfoyle wishes to be heard?

6 MS. GUILFOYLE: Yes, Your Honor. Victoria Guilfoyle
7 of Blank Rome on behalf of Infor (US), Inc.

8 We are one of those contract counter-parties who is
9 currently negotiating language for the proposed sale order.
10 And I just want to note, you know, in the chance that we don't
11 get to an agreement on the language that resolves in force
12 objection to the assumption and assignment of its sell for
13 license agreement, which I think and I hope that we do, but
14 Infor's primary concern is that if the contract is not assumed
15 and assigned pursuant to a separate agreement between Infor and
16 the purchaser that the purchaser not have the ability or, you
17 know, claim to have the ability to access or use the software
18 pursuant to any kind of transition services agreement that
19 might be entered into between the purchaser and the debtor.

20 And, you know, we've approved language to that point,
21 and I'm just waiting to hear back from the parties as to
22 whether that language is acceptable. And, you know, I just
23 wanted to raise that on the record. That way it's clear that
24 that's one of the primary concerns that Infor has is that there
25 is not a backdoor, kind of, around the anti-assignment

1 revisions and its software license agreement, that the
2 purchaser or the debtor somehow end up using the Infor software
3 for the benefit of the purchaser when there isn't an agreement
4 for the purchaser to have access or the use of Infor software.

5 THE COURT: I believe you said that the ball is in
6 the court of Weil. So I'm sure you'll hear back from Ms.
7 Berkovich this morning, because she would like to submit the
8 proposed order with your suggested changes and those of Mr.
9 LaFlamme by early to mid-afternoon so we can get this entered
10 today.

11 MS. GUILFOYLE: I'm ready and waiting, Your Honor.

12 MS. BERKOVICH: Yes, Your Honor. My colleagues also
13 reminded me, we do need to get the order to the U.S. Trustee's
14 office as well in the matter of the final, so we'll do that and
15 have them sign off, too.

16 THE COURT: Thank you all. And you will hear from
17 Ms. Berkovich, but send her what you want as soon as you can
18 this morning.

19 MR. LAFLAMME: Your Honor, are you going to call
20 anything on Exhibit B or no? Everything seems to be adjourned,
21 but my clients do not want me to adjourn.

22 THE COURT: Are you talking about the cure issues? I
23 think you raised the cure issues.

24 MR. LAFLAMME: Like I say, there is a lot of
25 interplay. That's why I wasn't --

1 THE COURT: It was not my intent to go through
2 Exhibit -- the next exhibit, which was the cures, because I
3 think that everyone falls into the same bracket, when will it
4 happen, and how is it going to happen?

5 And I heard from Ms. Berkovich that it will happen in
6 the first two weeks of October; is that correct?

7 MS. BERKOVICH: The exact date is October -- somebody
8 else could -- I'm looking -- I believe it's the 13th. Whenever
9 the next omnibus hearing is.

10 THE COURT: And I deem that to be as prompt as
11 possible under the circumstances.

12 MR. LAFLAMME: Thank you, Your Honor.

13 THE COURT: So what I'm going to do -- and not that
14 you're interested in what I did in preparation for today -- but
15 not knowing there was going to be a settlement, we were faced
16 with the issue of reasonable business judgment. Two issues,
17 what is the standard, and I just articulated it, and number
18 two, was it met?

19 And, of course, I could not anticipate what Mr. Stark
20 would put on as opposition. But I went through the
21 declarations to assess whether the process resulted in
22 reasonable business judgment.

23 I think that's basically what you've tried to do
24 here, or what you have done, so I am going to conclude, as the
25 proposed order does, that reasonable business judgment standard

1 has been met, as well as the standard under 363(e). And I'll
2 anticipate the final draft of the proposed order by mid-
3 afternoon, Ms. Berkovich.

4 MS. BERKOVICH: Yes, Your Honor.

5 MR. STARK: Your Honor, may I be heard just a moment,
6 please? I don't mean to interrupt.

7 THE COURT: Mr. Stark.

8 MR. STARK: Thank you, Your Honor. I just wanted to
9 remind the Court that if the settlement -- if the order does
10 not yield to a closing by September 27th, the parties revert to
11 the status quo ante, which means the very lengthy set of briefs
12 and evidentiary submissions that we otherwise intended to put
13 before Your Honor, including on such things as the standard, we
14 would reset on that.

15 And so I only wanted to respond -- and forgive me,
16 Your Honor, I didn't want to interrupt your flow or interrupt
17 Your Honor as you were rendering your ruling. But if we do
18 find ourselves, you know, what I suspect is a very low
19 likelihood possibility, that we have to reset, I am hoping that
20 Your Honor will allow us the opportunity to discuss further the
21 standard and the evidence and that for purposes of advancing on
22 today, it's just for today, Your Honor's ruling about standard
23 is, and the evidentiary submissions are only for purposes of
24 approving a settlement and that we do, in fact, resume to the
25 status quo ante.

1 THE COURT: You know I can't resist a baseball
2 analogy, but I can only do today what is for today. You know,
3 I can't get to second base without touching first base.

4 But it is my understanding, which I think was
5 articulated very early in today's hearing, that if closing
6 doesn't take place by the date specified, then we revert to the
7 status quo ante, as Mr. Stark denominated it, and we start over
8 again.

9 MR. STARK: Thank you, Your Honor. I'm very
10 comfortable with that.

11 THE COURT: Okay. Ms. Berkovich, what else can I do
12 for you today?

13 MS. BERKOVICH: That's all, Your Honor. One point
14 for the record, I am not a Yankees fan like Mr. Stark. I'm a
15 Mets fan. Just in case that's relevant to anything. I don't
16 know if it's good or bad, but probably bad for me. But,
17 anyway, thank you very much.

18 We'll do our best to work out language with Mr.
19 LaFlamme. If we cannot, we'll submit an order with the
20 language that we believe appropriately addresses his objections
21 and we'll copy him, and we will let you know that the language
22 is not agreed upon.

23 THE COURT: Thank you. Mr. Willard or Mr. Stark, is
24 there anything further we can do for the Committee today?

25 MR. WILLARD: No, Your Honor. Thank you.

1 THE COURT: Thank you, Mr. Willard.

2 Is there any other party who wishes to be heard
3 today?

4 Ms. McCoy, has anybody raised their hand?

5 COURTROOM DEPUTY: No, Your Honor.

6 THE COURT: Thank you. We are adjourned.

7

8 * * * * *

9

10 **C E R T I F I C A T I O N**

11 I, LORI A. KNOLLMEYER, court approved transcriber,
12 certify that the foregoing is a correct transcript from the
13 official electronic sound recording of the proceedings in the
14 above-entitled matter, and to the best of my ability.

15

16 /s/ Lori A. Knollmeyer

17 LORI A. KNOLLMEYER

18 J&J COURT TRANSCRIBERS, INC. DATE: September 16, 2020

19

20

21

22

23

24

25