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: December 16, 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 FOR ORDER AUTHORIZING AND APPROVING SETTLEMENT BETWEEN EXMARK MANUFACTURING COMPANY, INC. AND DEBTOR BRIGGS & STRATTON CORPORATION

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**").

Preliminary Statement

1. As described in more detail below, the Exmark Litigation (as defined below) is a complex patent infringement litigation commenced by Exmark Manufacturing Co., Inc. ("**Exmark**") against the Debtors that has spanned more than a decade, including multiple trials and appeals. Prior to the Petition Date (as defined below), the District Court of Nebraska (the "**District Court**") rendered a judgment against the Debtors in the amount of $34,724,235, and the Debtors appealed the decision to the Federal Circuit Court of appeals. As required in connection with the appeal, the Debtors posted an Appeal Bond (as defined below) in the amount of the judgment against Briggs, which entitles Exmark to the amount of such bond in the event the District Court's judgment is affirmed on a final basis.

2. Recently, the Federal Circuit rendered its decision, which affirmed the

District Court judgment against Briggs. Accordingly, Exmark is entitled to the entire amount of the Appeal Bond (as defined below) *unless* the Federal Circuit's decision is reversed. In an effort to reverse the decision, Briggs filed a Panel Rehearing Petition (as defined below); however, the Debtors recognize that such petitions rarely succeed. As such, in the interest of securing some value from the Appeal Bond for the benefit of the Debtors' estates and creditors, the Debtors have reached a settlement with Exmark.

3. Pursuant to the terms of the settlement agreement dated as of November 19, 2020 and entered into on November 20, 2020 by and between Briggs & Stratton Corporation and Exmark (the "**Settlement Agreement**"), in exchange for withdrawing their Panel Rehearing Petition and subject to this Court's approval, the Debtors will pay Exmark $33,650,000, which will result in a $1,074,235.48 gain for the Debtors' estates as compared to the amount of the Appeal Bond (although the Surety (as defined below) may assert a claim against a portion of such amount). Although this is only a fraction of the amount of the Appeal Bond, the Debtors believe such amount is a fair settlement due to the low likelihood of success of the Panel Rehearing Petition. The Creditors' Committee (as defined below) supports the settlement.

4. Accordingly, the Debtors request that this Court authorize entry into and approval of the Settlement Agreement.

Background

5. 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.

6. 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**").

7. On the Petition Date, the Debtors filed the Bidding Procedures Motion.[1] On August 19, 2020, the Court entered the Bidding Procedures Order[2] an order [Docket No. 505] that, among other things, approved bidding procedures in connection with the sale of the Debtors' assets, scheduled an auction to take place on September 1, 2020, and scheduled a sale hearing for September 15, 2020. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets, to Bucephalus Buyer, LLC (the "**Purchaser**").[3] On September 21, 2020, the Debtors closed the Sale Transaction.[4] In the Sale Transaction, the Purchaser assumed certain of the Debtors' liabilities, but did not assume any liabilities relating to the Exmark Litigation.

8. On November 9, 2020, the Debtors filed their *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* [Docket No. 1226] (the "**Plan**")

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[1] *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures; (II) Authorizing (A) Sale of Debtors' Asserts and Equity Interests Free and Clear of Liens Claims, Interests, and Encumbrances and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 53] (the "**Bidding Procedures Motion**").

[2] *Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures and Form and Manner of Notice of Assumption and Assignment and (II) Granting Related Relief* [Docket No. 505] (the "**Bidding Procedures Order**").

[3] *Order (I) Authorizing the Sale of the Asserts and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

[4] *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, And (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

and the *Amended Disclosure Statement for Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* [Docket No. 1227] (the "**Disclosure Statement**"). The Court approved the Disclosure Statement [Docket No. 1233] and scheduled the hearing for confirmation of the Plan for December 18, 2020.

9. The Debtors continue to honor their post-closing sale obligations, wind down their estates, pursue confirmation of the Plan, and otherwise work on concluding these chapter 11 cases.

10. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 51] (the "**Ficks Declaration**").

Jurisdiction

11. 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

12. Pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors respectfully request entry of an order (the "**Proposed Order**")[5] approving the Settlement Agreement attached hereto as **Exhibit A** and directing the Surety (as described below) to release the collateral securing the Surety to the Debtors upon the

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

Proposed Order being entered and becoming final and non-appealable.

The Exmark Litigation and Settlement Agreement

A. Initial Judgment in Favor of Exmark

13. On May 12, 2010, Exmark filed a lawsuit against Briggs & Stratton Power Products Group, LLC ("**BSPPG**") in 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.[6] 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**").

14. 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 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.[7] With respect to Briggs's older design, the jury found that the infringement had been willful and assessed damages in the amount

[6] 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].

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

of $24,280,330 for such infringement.[8] The District Court assessed BSPPG another $24,280,330 in enhanced damages for Briggs's willful infringement.

15. On August 1, 2016, BSPPG and Briggs entered into an indemnity agreement with Fidelity and Deposit Company of Maryland & Zurich American Insurance Company ("**Zurich**" or the "**Surety**") to obtain a supersedeas bond while the judgment was on appeal to the Federal Circuit (the "**Surety Indemnity Agreement**").[9] A supersedeas bond was posted by BSPPG on August 18, 2016 and approved by the Court on August 26, 2016.[10] 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, and (c) the District Court's enhanced damages award, and (ii) remanded for proceedings consistent with its decision. *See Exmark 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.[11]

16. 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

[8] *Id.*

[9] 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.

[10] *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].

[11] *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].

compensatory damages.[12] 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.[13] 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

17. 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.[14] 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 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.

18. 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.[15] The Surety

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

[13] 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.

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

[15] The Surety drew on the letter of credit and currently holds cash collateral from Briggs in the amount of $47,302,180.48, which also includes collateral for surety bonds issued by the Surety for other purposes, including relating to workers' compensation. *See also* Surety Indemnity Agreement, ¶ 4 ("Indemnitors agree to promptly deposit

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 should be returned to Briggs.

19. 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**"). Oral argument on the Exmark Appeal occurred on May 5, 2020.

20. 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 chapter 11 petitions, triggering the automatic stay. On August 21, 2020, the Debtors filed a motion to lift the automatic stay under section 362 of the Bankruptcy Code to continue the Exmark Appeal so that the Federal Circuit could issue a ruling in the Exmark Appeal.[16] On September 18, 2020, this Court granted the Debtors' request for relief from the automatic stay, enabling the Federal Circuit to render a decision.[17]

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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").

[16] *See Motion of Debtors to Lift the Automatic Stay Solely to Permit Appeals Court to Issue a Ruling in the Exmark Appeal* [ECF No. 549].

[17] *See Order Granting Limited Relief from the Automatic Stay Solely to Permit Appeals Court to Issue a Ruling in the Exmark Appeal* [ECF No. 941].

C. Federal Circuit Decision and Settlement Agreement

21. On October 6, 2020, the Federal Circuit ruled on the Exmark Appeal in favor of Exmark, affirming the lower court's decisions on infringement and the prejudgment interest award.[18] This decision, if not overturned, would entitle Exmark to the full value of the Appeal Bond, as well as an unsecured claim for post-judgment interest beyond the amount of the Appeal Bond.[19]

22. On November 5, 2020, Briggs filed a petition for panel rehearing (the "**Panel Rehearing Petition**") in the Federal Circuit.[20] Counsel for Briggs subsequently corresponded with counsel for Exmark about the possibility of settling the dispute, and the parties agreed to the terms as set forth in the Settlement Agreement. The Federal Circuit has not yet issued a ruling either denying the Panel Rehearing Petition or requesting further briefing from Exmark.

23. Pursuant to the Settlement Agreement, Briggs and Exmark agreed to settle the Exmark Litigation for the following terms:[21]

- Briggs agreed that immediately following the execution of the Settlement Agreement, it would move to withdraw its Panel Rehearing Petition and notify the Federal Circuit of the Settlement Agreement, which it did on November 20, 2020.

- Upon Court approval of the Settlement, Briggs shall set aside the amount of $33,650,000 (the "**Settlement Amount**"); upon the order approving the Settlement becoming final and nonappealable, Briggs shall pay the Settlement Amount to Exmark.

- When the Proposed Order becomes final and nonappealable and Exmark receives the Settlement Amount (the time at which both events have occurred, the "**Effective Time**"), the payment of the Settlement Amount

[18] See *Exmark Manufacturing Co., Inc. et al. v. Briggs & Stratton Corp. et al*., Case No. 19-1878 (Fed. Cir. 2020) [ECF No. 51].

[19] On October 7, 2020, Exmark filed a proof of claim [Claim No. 1607] for $34,840,336.

[20] See *Exmark Manufacturing Co., Inc. et al. v. Briggs & Stratton Corp. et al*., Case No. 19-1878 (Fed. Cir. 2020) [ECF No. 53].

[21] The following is a summary, which is qualified in all respects by the terms of the Settlement Agreement

shall be deemed to fully satisfy the judgment of the Federal Circuit, both Exmark and Briggs shall release all claims against the other party and its affiliates related to the Exmark Litigation.

- The Appeal Bond shall remain in full force and effect, provided that Exmark shall not seek to collect any amounts from the Surety as long as the Settlement Agreement is in effect. Within two (2) business days of the Effective Time, Exmark shall release the Appeal Bond.

- Exmark shall have the right to terminate the Settlement Agreement if: the Court does not approve the Proposed Order; the Proposed Order is vacated, modified or reversed in a manner that would deprive Exmark of the agreed Settlement Amount; or the Court has not entered the Proposed Order by December 31, 2020. Either party has the right to terminate the Settlement Agreement upon material breach thereof by the other party.

Settlement Agreement Should Be Approved

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

25. When assessing the reasonableness of a compromise, the court considers:

(i) the probability of success in the litigation;

(ii) the difficulties, if any, to be encountered in the matter of collection;

(iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;

(iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

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

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

27. The Court also may grant a debtor's request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code if that request is supported by sound business reasons. The business judgment rule is highly deferential to debtors and may be satisfied "'as long as the proposed action appears to enhance the debtor's estate.'" *Crystalin, LLC v. Selma Props. Inc*. (*In re Crystalin, LLC*), 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc.* (*In re Food Barn Stores, Inc*.), 107 F.3d 558, 566 n.16 (8th Cir. 1997)); see also *In re Farmland Indus. Inc*., 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) ("Under the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the best business

judgment in those circumstances.").

28. Here, the terms of the Settlement Agreement are fair and reasonable and in the best interest of the Debtors, their estates, and creditors, and the Settlement Agreement therefore should be approved based upon the factors considered by the Eighth Circuit.

29. ***First***, the Debtors have a low probability of success in pursuing the Panel Rehearing Petition. Panel rehearings are rarely granted, and even if the Federal Circuit granted a panel rehearing, the Debtors would still have to succeed in having the panel overturn the result already reached by the Federal Circuit. If the Debtors were unsuccessful in either attempt, the outcome would be payment in full of the Appeal Bond to Exmark, rather than the lower sum Exmark agreed to take in the Settlement Agreement, a difference of $1,074,235. In addition, Exmark would have a general unsecured claim for post-judgment interest, which they are waiving in connection with the Settlement.

30. ***Second***, the Exmark Litigation, which has been drawn out in multiple decisions and appeals over the course of the last decade, has been extremely expensive and time consuming for the Debtors, and all attempts to pursue the Exmark Litigation further in connection with a panel rehearing would likely be costly and futile, reducing recoveries for creditors dollar for dollar for each dollar spent on continued litigation.

31. ***Finally***, the Settlement Agreement is the result of good faith negotiations following a decade-long litigation process and is fully supported by the Creditors' Committee.

32. Based upon the foregoing, and under these circumstances, entry into and performance under the Settlement Agreement is in the best interests of the Debtors, their estates, and creditors, is fair and reasonable, and is the result of extensive cost, time, and negotiations. Therefore, the Debtors respectfully request that the Court approve the terms of the Settlement Agreement and authorize their performance thereunder.

Conclusion

33. For these reasons set forth above, the Settlement Agreement constitutes a valid exercise of the Debtors' reasonable business judgment and is in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should approve the Settlement Agreement and direct Zurich to remit to the Debtors the payment held as collateral for the Appeal Bond upon this Order becoming final and nonappealable.

Reservation of Rights

34. 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; or (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

Notice

35. Notice of this Motion will be provided 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: Oksana P. Lashko, Esq.), as counsel to the Creditors' Committee; (vii) the Counterparties; (viii) counsel for the Purchaser, Kirkland & Ellis LLP, 300 N. LaSalle, Chicago, IL 60654 (Attn: Chad Husnick, P.C., Esq. and Gregory F. Pesce, Esq.); (ix) any other party that has requested notice pursuant to Bankruptcy Rule 2002; (x) the Participants; (xi) the Insurer; (xii) Zurich; and (xiii) 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

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

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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: November 20, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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Exhibit A

Settlement Agreement

Settlement Agreement

This Settlement Agreement is entered into on November 19, 2020 by and between Exmark Manufacturing Co., Inc. ("Exmark") and Briggs & Stratton Corp. ("Briggs" and, together with Exmark, the "Parties") in order to fully and finally resolve the claims asserted in the lawsuit captioned *Exmark Mfg. Co. v. Briggs & Stratton Corp.*, No. 8:10-cv-00187-JFB (D. Neb.) and the related appeal captioned *Exmark Mfg. Co. v. Briggs & Stratton Corp.*, Appeal No. 19-1878 (Fed. Cir.) (collectively, the "Lawsuit").

Terms

1. Within three (3) hours of execution of this Settlement Agreement, Briggs shall move to withdraw its request for rehearing in the appeal and notify the Federal Circuit that the Parties have settled their controversy, and shall thereafter take no action to further participate in the appeal, prevent issuance of the Federal Circuit's mandate, or pursue further review of the judgment. Briggs's obligations under this paragraph 1 shall survive termination of this Settlement Agreement.

2. The Parties agree that, subject to the occurrence of the Effective Time (as defined below), all the claims by and between the Parties asserted in or arising out of the Lawsuit shall be fully and finally resolved and released through payment by Briggs to Exmark in the amount of $33,650,000.00 (the "Settlement Amount"). Within two (2) business days of the Approval Order becoming final and nonappealable, Briggs will pay to Exmark the amount of $33,650,000.00 via wire transfer to an account specified by Exmark.

3. Within four (4) business days of execution of this Settlement Agreement, Briggs shall file a motion with the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court") seeking entry of an order (in form and substance reasonably acceptable to Briggs and Exmark, with Exmark's approval not to be unreasonably withheld or delayed) (the "Approval Order") approving the terms of this settlement, including authorizing Briggs's payment of the Settlement Amount in accordance herewith. The Approval Order shall provide for, among other things, Briggs to reserve and set aside cash in an amount equal to the Settlement Amount pending payment of the Settlement Amount pursuant to the terms and conditions set forth in this Settlement Agreement, and prohibit such cash from being used for any other purpose.

4. Subject to and effective upon the occurrence of both (i) entry of the Approval Order by the Bankruptcy Court and such order becoming final and nonappealable, and (ii) Exmark's receipt of the Settlement Amount in accordance herewith (the time at which the events described in both (i) and (ii) have occurred, the "Effective Time"), the payment of the Settlement Amount shall be deemed by the Parties to fully satisfy the Final Judgment entered by the district court and affirmed on appeal and each Party and its affiliates shall release all claims against the other Party and its affiliates relating to the Lawsuit.

5. The Supersedeas Bond entered in the district court case is unchanged and remains in full force and effect; *provided*, that Exmark shall not seek to collect any amounts from the Surety on account of the Supersedeas Bond for so long as this Settlement Agreement is in effect and has not been terminated in accordance with paragraph 6 below. Within two (2) business days of occurrence of the Effective Time, Exmark shall release the Supersedeas Bond.

6. Either party may terminate this Agreement upon material breach by the other. Exmark shall have the right to terminate this Settlement Agreement upon written notice to Briggs and the occurrence of any of the following events: (i) the Bankruptcy Court denies entry of the Approval Order; (ii) entry of the Approval Order is vacated, modified, or reversed on appeal in a manner that would deprive Exmark of the agreed Settlement Amount; and (iii) the Bankruptcy Court has not issued a ruling concerning entry of the Approval Order by December 31, 2020. Following termination of this Settlement Agreement, Briggs shall not take any action to hinder, delay or otherwise prevent Exmark from seeking to recover any amounts from the Surety on account of the Supersedeas Bond.

Agreed to by:

Exmark Manufacturing Co., Inc.	Briggs & Stratton Corp.
By:_____	By: _____
Title: _____	Title: _____
Date and time: _____	Date and time: _____