

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON	§	Case No. 20-43597-399
CORPORATION, <i>et al.</i> ,	§	
	§	(Jointly Administered)
	§	
Debtors.	§	Hearing Date: 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 (I) AUTHORIZING DEBTORS TO
SURRENDER LIFE INSURANCE POLICIES AND (II) GRANTING RELATED RELIEF**

Briggs & Stratton Corporation (“**Briggs**”) 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. Following the closing of the sale of substantially all their assets, the Debtors are focused on confirmation of their Plan¹ (the hearing on which is current scheduled for December 18, 2020), resolving claims, and monetizing their remaining assets for the benefit of creditors. One group of such assets consists of nine life insurance policies that the Debtors purchased prepetition under an executive life insurance plan relating to former employees of the Debtors (the “**Executive Life Insurance Plan**”). These life insurance policies were excluded assets under the terms of the stock and asset purchase agreement between the Debtors and the Purchaser (the “**SAPA**”). See SAPA, § 1.1(j) (the “**Excluded Employee Plans**”). As set forth below, the Debtors believe that

¹ See Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors [Docket No. 1226]; Amended Disclosure Statement for Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors [Docket No. 1227].

they can recover almost \$1.3 million for the benefit of their creditors from monetizing the policies under the Executive Life Insurance Plan.

2. After reviewing the terms of the policies and agreements entered into between the Debtors and the relevant former employees (the “**Participants**”), the Debtors analyzed the Participants’ interest in the policies and believe they are entitled to take these actions without the Participants’ consent. Nevertheless, in filing this Motion, the Debtors are notifying the Participants of their intended actions with respect to the policies to give the Participants notice and an opportunity to raise any objections.

3. The Debtors submit that the relief sought in the Motion is in the best interests of their estates and creditors and protects the legal rights of Participants and should, therefore, be approved.

Background

4. 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. 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**”).

5. 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.

6. On the Petition Date, the Debtors filed their Bidding Procedures Motion.²

On August 19, 2020, the Court entered the Bidding Procedures Order³ that, among other things, (a) approved bidding procedures in connection with the sale of the Debtors' assets, (b) approved the designation of a stalking horse bidder and stalking horse bid, (c) scheduled an auction to take place on September 1, 2020, and (d) scheduled a sale hearing for September 15, 2020. On September 15, 2020, the Court entered the Sale Order⁴ authorizing the Debtors to sell substantially all of their assets (the "**Sale Transaction**") to Bucephalus Buyer, LLC (the "**Purchaser**"). On September 21, 2020, the Debtors closed the Sale Transaction (the "**Sale Closing**").⁵

7. Following the successful sale of substantially all of their assets, the Debtors have focused their efforts and resources on developing and filing a workable and confirmable chapter 11 plan of liquidation supported by the Creditors' Committee. On October 9, 2020, the Debtors filed the *Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* [Docket No. 1066] and the *Disclosure Statement for Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Docket No. 1067]. On November 9, 2020, the Debtors filed the *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* (the "**Amended Plan**") [Docket No. 1226] and the *Amended Disclosure*

² 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' Assets 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**").

³ 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**").

⁴ Order (I) Authorizing the Sale of the Assets 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] (the "**Sale Order**").

⁵ 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].

Statement for Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors [Docket No. 1227] (the “**Amended Disclosure Statement**”).⁶ On November 10, 2020, the Court entered an order approving the Amended Disclosure Statement and scheduled the hearing for confirmation of the Amended Plan for December 18, 2020.⁷

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

9. 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 Disclosure Statement and 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

10. 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

11. By this Motion, the Debtors seek entry of an order (the “**Proposed Order**”) pursuant to section 363 of the Bankruptcy Code (i) for authority to surrender the Life Insurance Policies, which are identified on **Exhibit A**, annexed hereto and (ii) granting related relief.

⁶ Capitalized terms used in this Motion, but not defined herein, shall have the meanings ascribed to such terms in the Amended Plan, the Amended Disclosure Statement, or the Ficks Declaration, as applicable.

⁷ See *Order (I) Approving Disclosure Statement; (II) Establishing Notice and Objection Procedures for Confirmation of Plan; (III) Approving Solicitation Packages and Procedures for Distribution Thereof; (IV) Approving the Form of Ballots and Establishing Procedures for Voting on the Plan; and (V) Granting Related Relief* [Docket No. 1233].

The Life Insurance Policies

A. Debtors' Employee Life Insurance Plans

12. Prior to these chapter 11 cases, the Debtors maintained various benefits, including medical, dental, and life insurance benefits, for a broad base of employees and retirees. As part of the Debtors' Basic Life and AD&D Insurance Plan, the Debtors provided life insurance to (active) salaried and hourly employees, equal to two times an employee's annual base pay (up to a maximum of \$500,000).⁸ The Debtors also provided a reduced life insurance benefit to employees who met certain eligibility requirements for retirement as part of the Group Insurance Plan for Retirees of Briggs & Stratton Corporation, Plan Number 502 (the "**Retiree Group Insurance Plan**"). Leading up to the Debtors' chapter 11 cases, on July 19, 2020, the Board of Directors of Briggs (the "**Board**") exercised Briggs's right to terminate the Retiree Group Insurance Plan. On August 24, 2020, this Court entered an order ratifying the termination of the Retiree Group Insurance Plan.⁹ The Debtors continued the Basic Life and AD&D Insurance Plan for active employees throughout these chapter 11 cases; however, once employees ceased to work for the Debtors, the Debtors ceased to provide life insurance benefits to those former employees.

13. Like the Basic Life and AD&D Insurance Plan, which the Debtors maintained for the benefit of rank and file salaried and hourly employees, Briggs historically maintained the Executive Life Insurance Plan¹⁰ to provide life insurance coverage to certain

⁸ See Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, and Other Obligations (B) Maintain Employee Benefit Programs, (C) Pay Related Administrative Obligations, (D) Pay Supplemental Workforce Obligations, and (E) Terminate Deferred Compensation Plans; and (II) Granting Related Relief [Docket No. 11], ¶ 75.

⁹ See Order (I) Confirming the Inapplicability of Section 1114 of the Bankruptcy Code to the Debtors' Prepetition Termination of Retiree Benefits; and (II) Granting Related Relief [Docket No. 567].

¹⁰ Life insurance coverage under the Executive Life Insurance Plan is provided by Northwestern Mutual Life Insurance Company ("**Northwestern**") and administered by Clary Executive Benefits LLC ("**Clary**"). Briggs is current on payment of all amounts, including premiums and administrative fees, owed on account of the life insurance policies maintained in connection with the Executive Life Insurance Plan.

eligible board-elected officers and key employees (*i.e.*, the Participants). Like the Basic Life and AD&D Insurance Plan, the Executive Life Insurance Plan provided coverage in an amount equal to two times the Participants' annual salary while the Participants were active employees.

14. The life insurance policies maintained pursuant to the Executive Life Insurance Plan (the "**Life Insurance Policies**")¹¹ were structured differently than those maintained pursuant to the Basic Life and AD&D Insurance Plan and the Retiree Group Insurance Plan. Although Briggs maintained the right to terminate the Executive Life Insurance Plan unilaterally, Briggs entered into split-dollar arrangements¹² with Participants that gave Participants certain interests (or contingent interests) in their individual Life Insurance Policies. Like many insurance policies, the Life Insurance Policies provided that the policies could be surrendered to the insurance companies in exchange for a certain payment amount (the "**Cash Surrender Value**").

15. Briggs purchased two forms of split dollar Life Insurance Policies: (i) collateral assignment policies (the "**Collateral Assignment Policies**") and (ii) endorsement policies, (the "**Endorsement Policies**"). The key difference between the two policy types is that Collateral Assignment Policies are structured so that the Participants own their respective Collateral Assignment Policy, while Briggs owns the Endorsement Policies. From the time Briggs initiated the Executive Life Insurance Plan until 2004, Briggs purchased strictly Collateral Assignment Policies. In 2004, in response to the 2002 enactment of the Sarbanes-Oxley Act, the Debtors changed the form of Life Insurance Policies provided under the Executive Life Insurance

¹¹ Although Briggs issued more than nine (9) life insurance policies pursuant to the Executive Life Insurance Plans, many of those have already been "rolled out" to Participants, prior to the Debtors' chapter 11 cases. As such, the term "Life Insurance Policies," as used throughout this Motion, will refer to the nine Life Insurance Policies that Briggs still maintains and has an interest in.

¹² A "split dollar" life insurance policy is a policy that an employer maintains for the benefit of an employee. In a split dollar arrangement, the employer and employee execute a written agreement that outlines termination provisions and how they will share the premium cost, cash value, and death benefit. Typically, the employer has a right to receive back the value of the premiums it paid.

Plan from Collateral Assignment Policies to Endorsement Policies.¹³ Since then, Briggs has purchased strictly Endorsement Policies under the Executive Life Insurance Plan.¹⁴

16. Outside of bankruptcy, the Collateral Assignment Policies and Endorsement Policies historically provided the same benefit to Participants. If a Participant died while the Participant was still an active employee of Briggs, Briggs was entitled to receive, from the insurer, the cumulative amount that Briggs paid in premiums towards the policy (the “**Premium Value**”) and the Participant’s beneficiary would receive the remaining death benefit value of the Life Insurance Policy. If a Participant did not die during his or her employment with Briggs, and, rather, qualified for “Retirement” pursuant to the terms of the Executive Life Insurance Plan, then, historically, the life insurance policy would “roll out” to the Participant. Pre-bankruptcy, the roll out process of the Collateral Assignment Policies and Endorsement Policies operated as follows: upon a Participant reaching “Retirement,” (i) Briggs received the Premium Value of the Life Insurance Policy from the insurer and then (ii) the Participant had the option either (a) to receive the remaining Cash Surrender Value of the Life Insurance Policy from the insurer or (b) to continue to maintain the Life Insurance Policy (as the sole owner of such Policy). If a Participant’s employment terminated prior to reaching Retirement, the rights of such Participant differed depending on whether the policy at issue was a Collateral Assignment Policy or Endorsement Policy. Participants in the Collateral Assignment Policies had the right to pay Briggs the Premium Value of such policy and then retain the whole Collateral Assignment Policy (in effect, the Participant would be “buying out” Briggs’s interest). On the other hand, if the

¹³ Collateral assignment policies were deemed loans to officers in violation of the Sarbanes-Oxley Act. For the avoidance of doubt, the Debtors purchased the Collateral Assignment Policies prior to the enactment of Sarbanes-Oxley.

¹⁴ In August 2010, Briggs restricted the post-retirement life insurance benefit to incumbent officers (so no Life Insurance Policies were sponsored for new employees as of that date).

employment of a Participant in an Endorsement Policy terminated prior to Retirement, then the Participant's rights to such policy ceased as of the date of termination (though Briggs may have offered such Participants the option to purchase their Endorsement Policy from Briggs for the Premium Value).

17. Because Briggs is in bankruptcy, Briggs has a fiduciary duty to maximize the value of its assets for its estate and creditors. In light of these circumstances, Briggs does not intend to forfeit to the Participants (via the roll out process, or otherwise) any value in the Life Insurance Policies to which Briggs is legally entitled. Rather, the Debtors determined, as an exercise of their business judgment, that surrendering the Life Insurance Policies to the insurance companies in exchange for the cash value to which Briggs is entitled upon surrender of such policies would maximize the values of the Debtors' estates and recoveries to creditors. Accordingly, on November 3, 2020, the Board exercised Briggs's right to terminate the Executive Life Insurance Plan, effective as of November 30, 2020, and to surrender the Life Insurance Policies, effective as of the date of the Bankruptcy Court's order approving this Motion (the "**Order Date**").¹⁵

18. As described below, the Debtors believe that Briggs's rights with respect to the Life Insurance Policies differ depending on (i) whether the policy at issue is an Endorsement Policy or Collateral Assignment Policy, and (ii) whether the Participant qualified for Retirement.

¹⁵ Briggs also maintained "key man" death benefit life insurance policies, which provided insurance to Briggs against the death of certain key personnel (the "**Key Employees**") Briggs employed and relied on for the successful operations of its business (the "**Key Man Policies**"). In light of the Sale Transaction and the winding down of the Debtors' estates, pursuant to the relief granted in the Insurance Order (as defined below), Briggs surrendered the Key Man Policies in exchange for their cash surrender value of approximately \$2,770,000, in the aggregate, effective as of November 30, 2020. *See Final Order (I) Authorizing Debtors to (A) Continue Insurance Policies and Programs, (B) Continue Surety Bond Program, (C) Pay All Insurance and Surety Obligations, (II) Lifting the Automatic Stay for Workers' Compensation Claims, Obligations, and (III) Granting Related Relief* [Docket No. 532] (the "**Insurance Order**").

B. Collateral Assignment Policies

19. Briggs has maintained three Collateral Assignment Policies.¹⁶ Collateral Assignment Policies are structured so that Participants own their respective Collateral Assignment Policies, but Briggs has a right to the Premium Value into those policies. Although the Collateral Assignment Policies (and all of the Life Insurance Policies) have a certain payout associated with the death of the Participant whose life such policy insures (the “**Death Benefit Value**”), Briggs has the unilateral right to surrender each Collateral Assignment Policy at any time prior to the death of the Participant and keep the Premium Value (or a portion of the Premium Value equal to the Cash Surrender Value if the Premium Value exceeds the Cash Surrender Value).¹⁷

20. If Briggs surrenders a Collateral Assignment Policy and recoups the Premium Value, the Participant is entitled to ownership of, and the remaining value (if any) in, the Collateral Assignment Policy, free and clear of any interest of Briggs.¹⁸ In that situation, the Participant may choose either (i) to collect the remaining Cash Surrender Value of the Collateral Assignment Policy or (ii) to continue to maintain the Collateral Assignment Policy by paying any premiums or other amounts that may be required to maintain such policy.¹⁹

¹⁶ Two of the Collateral Assignment Policies were purchased by Briggs as part of Briggs’s Executive Life Insurance Plan. The third Collateral Assignment Policy (the “**Simplicity Policy**”) was assumed by Briggs in its acquisition of Simplicity Manufacturing, Inc. (and so is not part of the Briggs Executive Life Insurance Plan). The Simplicity Policy is insured by the Pacific Life Insurance Company (“**Pacific Life**”). Nevertheless, the three Collateral Assignment Policies operate in the same fashion and Briggs is entitled to the Premium Value of each. Furthermore, all references to “Briggs” with respect to the Collateral Assignment Policies will include references to, and actions by, its predecessor in interest in the Simplicity Policy, Simplicity Manufacturing, Inc.

¹⁷ See Briggs & Stratton Corporation Executive Split Dollar Life Insurance Plan, §§ 6.3, 7.2.

¹⁸ Technically speaking, Participants must satisfy certain requirements for retirement in order to be entitled to the Collateral Assignment Policy (less the Premium Value). See Briggs & Stratton Corporation Executive Split Dollar Life Insurance Plan, §§ 6.3, 7.2. All three Participants met the requirements for retirement.

¹⁹ Upon surrender of each Collateral Assignment Policy, the applicable insurer will notify each Participant that the collateral assignment restriction has been satisfied and inform such Participant of his or her rights and any costs associated with maintaining the policy.

21. By this Motion, Briggs seeks to exercise its right to surrender the Collateral Assignment Policies and recoup its Premium Values in such policies. To help effectuate this process, and to ensure that the interests of Participants are not prejudiced, the Debtors will serve Participants in the Collateral Assignment Policies, concurrently with this Motion, a notice of Motion and the Participants' rights (the "**Notice to Participants**"), annexed hereto as **Exhibit B**. The Notice to Participants will notify Participants of (i) Briggs's decisions (a) to surrender each Collateral Assignment Policy and (b) to cease to pay premiums to maintain each Collateral Assignment Policy; and (ii) Participants' right either (a) to collect the remaining cash surrender value of their policy (if any) or (b) to continue to maintain their applicable Collateral Assignment Policy on their own.²⁰ Upon surrender of the Collateral Assignment Policies, the Participants will not have any claims against the Debtors' estates.²¹

C. Endorsement Policies

22. Briggs maintains six Endorsement Policies pursuant to the Executive Life Insurance Plan.

23. In contrast to the Collateral Assignment Policies, Briggs owns the Endorsement Policies and has the right to the entire Cash Surrender Value of such policies, subject to any vested contingent interests of the Participants. Whether a Participant's contingent interest in an Endorsement Policy has vested depends on whether such Participant has met the requirement for "Retirement" set forth in the accompanying agreement between Briggs and the Participant

²⁰ With respect to the Simplicity Policy, Briggs' Premium Value in such policy exceeds the Cash Surrender Value of such policy. Thus, after Briggs recovers (a portion of) its Premium Value from the Simplicity Policy, the Debtors expect there will be no remaining value left for Participant A (or Participant A's beneficiary) to receive. Participant A is identified in **Exhibit A** annexed to this Motion.

²¹ See Briggs & Stratton Corporation Executive Split Dollar Life Insurance Plan, § 8.

(together with any amendments, the “**Endorsement Agreement**”).²² The Endorsement Agreement provides that Briggs “may terminate this Agreement without the consent of Employee.” *See* Endorsement Agreement, ¶ 9.

24. Of the six Participants in the Endorsement Policies, the Debtors believe that two Participants may have vested interests in their respective Endorsement Policies (the “**Vested Participants**”), while the interests of the other four Participants (collectively, the “**Non-Vested Participants**”) have not vested.

25. Non-Vested Participants. The contingent interests of the Non-Vested Participants in their respective Endorsement Policies did not (and cannot) vest because, at the time of the Sale Closing, when all of the Non-Vested Participants became Transferred Employees, the Non-Vested Participants had not met the qualifications for Retirement.²³ In other words, the occurrence of the Sale Closing had the effect of terminating the Non-Vested Participants’ Endorsement Agreements and giving Briggs full and exclusive ownership rights in the Non-Vested Participants’ Endorsement Policies. *See* Endorsement Agreement, ¶¶ 6-7.²⁴

²² As explained in the Endorsement Agreement, Participants start with a *contingent* interest in the applicable Endorsement Policy. A Participant’s contingent interest only vests if the Participant reaches “Retirement.” A Participant reaches “Retirement” if the Participant (i) attains the age of 62 and has worked at Briggs for ten (10) years, or (ii) has worked at Briggs for thirty (30) years. “Retirement” means an “Employee’s Separation from Service (within the meaning of Code Section 409A and regulations thereunder) on or after the Employee’s qualification for an Unreduced Pension Benefit [earlier of age 62 with 10 years of service or 30 years of service with the Company] under the Briggs & Stratton Retirement Plan.” *See* Endorsement Agreement, ¶ 6. Although Briggs may terminate the Executive Life Insurance Plan and/or the Endorsement Agreement at any time without the applicable Participant’s consent, the Endorsement Agreement also states that if Briggs has not already surrendered the Endorsement Policy at the time of the Participant’s Retirement, Briggs will transfer the Endorsement Policy to the Participant. *Id.*

²³ The Endorsement Agreement provides that it automatically terminates on the first to occur of the following: a) the Participant’s termination of employment with Briggs for reasons other than death or Retirement or b) the date ownership of the Endorsement Policy is transferred to the Participant. Endorsement Agreement, ¶ 7. Pursuant to the terms of the SAPA, almost all then-active employees of the Debtors received and accepted offers of employment from the Purchaser (the “**Transferred Employees**”) and ended their employment with the Debtors as of September 21, 2020, the date of the Sale Closing, including all Participants who were employees of the Debtors immediately prior to the Sale Closing. *See* SAPA, § 6.3

²⁴ The Endorsement Agreement provides that upon termination of a Participant’s employment prior to death or retirement, the Participant’s rights (and those of the Participant’s designated beneficiaries) under the Endorsement

26. As such, Briggs is entitled to terminate the Non-Vested Participants' Endorsement Policies and collect the full Cash Surrender Value of such policies for the benefit of the Debtors' estates and creditors. The Debtors do not believe that the Non-Vested Participants are owed any amounts on account of their Endorsement Policies.

27. Accordingly, with respect to the Non-Vested Participants, the Debtors request that the Court authorize Briggs to surrender the Endorsement Policies, effective as of the Order Date.

28. Vested Participant. The Vested Participants, Participant B and Participant C, met the Retirement qualification at the time of the Sale Closing. Once a Participant reaches Retirement, historically, Briggs would (i) withdraw Briggs's Premium Value in the Endorsement Policy (and pay any policy indebtedness), then, (ii) transfer the Participant's Endorsement Policy to such Participant on the later of (a) seven months after the date of Retirement or (b) the end of the 15th year of the Endorsement Policy.²⁵ Briggs did not transfer the Endorsement Policies to the Vested Participants and Briggs is not required to make such transfers. The applicable time requirements for transfer have not been satisfied for either Vested Participant. Furthermore, the Vested Participants do not have an ownership interest or perfected security interest in their respective Endorsement Policies. Because Briggs is in bankruptcy, the Vested Participants' right to compel Briggs to transfer the Endorsement Policies to them is, at most, an unsecured obligation of Briggs. *See* Briggs Executive Supplemental Life Insurance Plan, § 9.2 ("Participants and their

Policy shall cease and Briggs shall have full and exclusive ownership rights in the policy. Endorsement Agreement, ¶ 7.

²⁵ Employer shall transfer the Policy to Employee following his or her Retirement . . . on the later of (i) the first day of the seventh month following the Employee's Retirement or (ii) the end of the 15th year of the Policy. Prior to any transfer of the Policy to Employee, Employer shall be entitled to withdraw funds from the Policy first by surrender of paid up additions, and then, at its discretion, through a policy loan or otherwise, receive payment or credit to such an extent that Employer has been repaid in full an amount equal to Employer's premiums paid less any Policy indebtedness or other indebtedness secured by the cash value of the Policy" Endorsement Agreement, ¶ 6.

Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of an Employer . . . an Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.”).

29. The Vested Participants will be served with notice of this Motion and will have an opportunity to object to the relief requested herein.

30. Accordingly, the Debtors request authority to surrender the Vested Participants' Endorsement Policies as of the Order Date and retain the full Cash Surrender Value of such policies for the benefit of the Debtors' estates and creditors, including the Vested Participants as general unsecured creditors to the extent they have allowed general unsecured claims.²⁶

Relief Requested Should Be Granted

A. Briggs Has the Right to Surrender Life Insurance Policies to Recover Cash Surrender Value and Premium Value And Participants' Interests Will Not Be Jeopardized By Such Termination

31. **Collateral Assignment Policies.** Briggs should be authorized to surrender the Collateral Assignment Policies and recover its Premium Values because, as explained above, under the policy documents, Briggs, rather than the Participant, has the “sole right to terminate the Plan” and the “sole right to surrender the Policy.”²⁷ Indeed, the Eighth Circuit Court of Appeals has focused on the language of the underlying policy in determining whether a debtor employer has the right to terminate the policy. *Cf. In re Racing Services, Inc.*, 744 F.3d 543, 545 (8th Cir.

²⁶ Participant B submitted a proof of claim on account of his interest in the Endorsement Policy (along with other amounts) at Claim No. 1524. Participant C submitted a proof of claim on account of his interest in the Endorsement Policy (along with other amounts) at Claim No. 1636. The claims filed by the Vested Participants will be resolved in the claims reconciliation process.

²⁷ See Briggs & Stratton Corporation Executive Split Dollar Life Insurance Plan, § 7.2; Collateral Assignment Agreement, § B.

2014) (finding employer did not have right to terminate or surrender collateral assignment policy where the agreement gave the employer only limited rights to cash surrender proceeds and provided that only the employee can surrender of the policy).

32. The Debtors submit that the proposed Notice to Participants adequately notifies such Participants of (i) Briggs's decision to exercise its right to surrender the Collateral Assignment Policies to recover its Premium Values and (ii) the Participants' rights to maintain their Collateral Assignment Policies or receive the remaining cash value (if any) of such policies.

33. As such, the Debtors submit that any claims or interests held by Participants of the Collateral Assignment Policies are no bar to Briggs receiving its Premium Value in such policies and the Debtors request authority to request authority to surrender such Collateral Assignment Policies to receive such amounts, effective as of the Order Date.

34. **Endorsement Policies.** Briggs should be authorized to surrender the Endorsement Policies because, as explained above, Briggs owns the Endorsement Policies and has the contractual right to terminate the Endorsement Agreements unilaterally.²⁸ The rights of the Non-Vested Participants will not be impacted by surrender of the Endorsement Policies. Although the Non-Vested Participants (and/or their beneficiaries) may have once had a contingent interest in the Endorsement Policies, the Non-Vested Participants will never meet the "Retirement" qualification necessary for such contingent interests to vest.²⁹ The Non-Vested Participants, thus, have no ownership or security interests in the Endorsement Policies themselves.

35. With respect to the Vested Participants, although such surrender may give rise to claims against Briggs, such claims would be unsecured claims. In a similar case involving a split-dollar agreement, where there was "no language" in the agreement indicating that a party

²⁸ See Endorsement Agreement, ¶ 9 ("Employer may terminate this Agreement without the consent of Employee.")

²⁹ See Endorsement Agreement, ¶ 6.

had “any interest –ownership, secured, or otherwise—in the policy itself,” the Bankruptcy Appellate Panel for the Eighth Circuit found that the remedy available to that party was an unsecured claim in the counterparty’s bankruptcy case. *Badami v. Sears (In re AFY)*, 461 B.R. 541, 548-49 (8th Cir. B.A.P. 2012). Like the unsecured claimant in that case, the Vested Participants have no ownership or security interest in the Endorsement Policy itself.³⁰ The Vested Participants only have a right under the Endorsement Agreement to have their respective Endorsement Policies transferred to them. Thus, any claim or interest the Vested Participants have in their Endorsement Policies will be treated appropriately during the claims reconciliation process.

36. As such, the Debtors submit that any claims or interests held by Participants of the Endorsement Policies should not prevent the surrender of such policies and respectfully request that the Court authorize surrender of the Endorsement Policies, effective as of the Order Date.

B. Surrender of the Life Insurance Policies Should Be Approved Under Section 363 of the Bankruptcy Code Because Such Termination is a Reasonable Exercise of Debtors’ Sound Business Judgment and in Best Interest of Debtors’ Estates

37. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Here, the Debtors seek to surrender the Life Insurance Policies in exchange for their Cash Surrender Value and Premium Value, as applicable. Section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate. Further, there is limited case law in the Eighth Circuit applying the provisions of the Bankruptcy Code to

³⁰ The Endorsement Agreement clearly states, “Employer shall be the sole Owner of the Policy” See Endorsement Agreement, ¶ 1.

the surrender of split-dollar life insurance policies for cash value. However, the Debtors submit that the Court should authorize Briggs's surrender of the Life Insurance Policies because such action is a sound exercise of the Debtors' business judgment. Courts in the Eighth Circuit routinely apply the "business judgment" standard to authorize sales of a debtor's assets, pursuant to section 363(b)(1).³¹

38. The business judgment standard "entails a determination that the transaction is in the best interest of the estate." *In re Noranda Aluminum, Inc.*, 549 B.R. 725, 728 (Bankr. E.D. Mo. 2016) (citing *Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997)); *Crystalin, L.L.C. v. Selma Props., Inc.*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003). The bankruptcy court "should not interfere with the trustee or debtor-in-possession's business judgment except on a finding of bad faith or gross abuse of their business discretion." *Noranda*, 549 B.R. at 728 (citing *Crystalin*, 293 B.R. at 464). Furthermore, in authorizing sales of debtors' assets outside the ordinary course of business, courts have found that a sound business purpose exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d. Cir. 1983); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that the paramount goal of any proposed sale of property of the estate is to maximize value).

39. Surrendering the Life Insurance Policies and recovering the Cash Surrender Value and Premium Value, as applicable, are a sound exercise of the Debtors' business judgment. Historically, Briggs maintained the Life Insurance Policies as an inducement and incentive to

³¹ *See, e.g., In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); *In re The Landing*, 156 B.R. 246, 249 (Bankr. E.D. Mo. 1993) (citing *In re George Walsh Chevrolet*, 118 B.R. 99, 102 (Bankr. E.D. Mo. 1990)); *see also In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3-4 (Bankr. W.D. Mo. 2010).

employees. In light of the Debtors' sale of substantially all of their assets to the Purchaser and termination of their relationship with all but one employee (who is not a Participant), this factor no longer supports maintaining the Life Insurance Policies. Rather, the Life Insurance Policies should be monetized as part of the wind-down of the Debtors' estates, for the benefit of the Debtors' creditors.

40. It is undoubtedly a reasonable exercise of the Debtors' business judgment to surrender the Collateral Assignment Policies now, as it would not maximize value for the estates to retain the Collateral Assignment Policies into the future.³²

41. The Debtors considered whether it would be economically rational for the Debtors to keep the Endorsement Policies if they could recover a greater value by waiting to receive the full "death benefit" value of the Endorsement Policies upon the death of the named Participant (which would require an expected value calculation based on the Participant's predicted date of death). However, the Debtors believe that it is in the best interests of the Debtors' estates to monetize these assets now to (i) minimize administrative expenses, (ii) avoid paying future premiums to maintain the policies, and (iii) allow for the proceeds to be distributed to creditors under the Plan in the near term. Furthermore, Participants' rights with respect to the Life Insurance Policies were either forfeited (in the case of the Non-Vested Participants) or, if not forfeited, may give rise to claims that will be handled in the claims reconciliation process. Thus, there is no reason to delay monetizing these remaining assets for the benefit of the estates.

³² Under the Collateral Assignment Policies, Briggs is only guaranteed to recover its Premium Value. If Briggs were to keep the policies, Briggs would have to pay premiums each year. Thus, there is no potential upside for Briggs to hold onto the Collateral Assignment Policies. If Briggs were to later surrender the policies (or receive its Premium Value upon the death of a Participant), Briggs would only recover the amount that Briggs would receive now, plus the additional premium value that Briggs paid in the future. Meanwhile, Briggs (or Briggs's creditors) would lose on interest that could accrue from investing such amounts (based on the theory of the time value of money).

42. For the reasons set forth herein, the Debtors respectfully request that the Court (i) authorize Briggs to surrender the Life Insurance Policies, as applicable, and (ii) grant related relief.

Reservation of Rights

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

Notice

44. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri (Attn: Sirena Wilson, Esq.); (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to 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) counsel for the Purchaser, Kirkland & Ellis LLP, 300 N. LaSalle, Chicago, IL 60654 (Attn: Chad Husnick, P.C., Esq. and Gregory F. Pesce, Esq.); (viii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; (ix) the Participants; (x) Northwestern; (xi) Clary; (xii) Pacific Life; 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

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

[Remainder of Page Left Intentionally Blank]

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 25 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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Exhibit A

Life Insurance Policies

Exhibit A

Life Insurance Policies

Collateral Assignment Policies							
Policy Number	Issue Date	15 Year Term	Participant	Value of Policy at Death	Cash Surrender Value	Premiums Paid	Net Cash / Net Death
Pacific Life: 1A23060330	1/1/1996	-	Frazier, Warner ¹	\$337,782 *value as of 5/30/2014	\$84,967	\$243,984	\$0 / \$93,798
15425667	7/1/2000	At DOT ²	Guy, John	\$248,551	\$121,248	\$81,764	\$39,484 / \$166,787
15425640	7/1/2000	At DOT	Hoch, Steven	\$200,329	\$67,591	\$49,658	\$17,933 / \$150,671
Endorsement Policies							
Policy Number	Issue Date	15 Year Term	Participant	Death Benefit Value of Policy	Cash Surrender Value	Premium Value	Net Cash / Net Death³
18820512	11/24/2009	11/24/2024	Carpenter, Randall ⁴	\$840,303	\$360,306	\$348,383	\$11,923 / \$491,920
17622191	8/8/2006	8/8/2021	Redman, Harold	\$986,442	\$152,797	\$137,043	\$15,754 / \$849,399
15081543	7/1/1999	At DOT	Reitman, William ⁵	\$375,254	\$129,325	\$102,389	\$26,936 / \$272,865
18025767	10/10/2007	10/10/2022	Rodgers, David	\$951,094	\$85,017	\$80,256	\$4,761 / \$870,838
15080645	7/1/1999	At DOT	Teske, Todd	\$485,604	\$48,475	\$40,876	\$7,599 / \$444,728
19202131	8/20/2010	8/20/2025	Teske, Todd	\$1,449,544	\$129,467	\$127,458	\$2,009 / \$1,322,086

¹ Participant Warner Frazier is identified in the Motion as “Participant A”.

² “DOT” means “date of termination” of employment. In other words, those Participants’ Life Insurance Policies are more than fifteen (15) years old.

³ The “Net Cash” amount represents the amount of the Cash Surrender Value minus the Premium Value. Participants in Collateral Assignment Policies may be entitled to the “Net Cash” amount. The “Net Death” amount represents the amount of the “Death Benefit Value of the Policy” less the Premium Value. In other words, the “Net Death” amount is the amount that a Participant’s beneficiary would receive upon their death, after Briggs recovered its Premium Value. The “Net Death” benefit is a reason Participants of the Collateral Assignment Policies may choose to continue such policies.

⁴ Participant Randall Carpenter is identified in the Motion as “Participant C.”

⁵ Participant William Reitman is identified in the Motion as “Participant B”.

Exhibit B

Notice to Participants

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON	§	Case No. 20-43597-399
CORPORATION, <i>et al.</i> ,	§	
	§	(Jointly Administered)
Debtors.	§	
	§	

NOTICE TO PARTICIPANTS OF RIGHTS
IN BRIGGS & STRATTON CORPORATION SPLIT
DOLLAR COLLATERAL ASSIGNMENT LIFE INSURANCE POLICY

You are receiving this notice (the “**Notice to Participants**”) because you have been identified as a former employee of Briggs & Stratton Corporation (“**Briggs**”)¹ who executed a split-dollar life insurance agreement with Briggs (the “**Assignment Agreement**”) and maintain a collateral assignment life insurance policy with Briggs (the “**Life Insurance Policy**”).

As you may know, Briggs has the right to surrender your Life Insurance Policy in order to receive the cumulative amount that Briggs has paid in premiums for the Life Insurance Policy (the “**Premium Value**”). Once Briggs receives the Premium Value, and pays any applicable fees to the Insurer² and/or the Administrator,³ you are entitled to the remaining value of your Life Insurance Policy, if any.

The board of directors of Briggs (the “**Board**”) exercised Briggs’s right to surrender the Life Insurance Policy, effective as of the Order Date (as defined below). In order to effectuate Briggs’s receipt of the Premium Value in the Life Insurance Policy, on November 25, 2020, the Debtors filed the *Motion of Debtors for Order (I) Authorizing Debtors to Surrender Life Insurance Policies and (II) Granting Related Relief* [Docket No. ●] (the “**Motion**”),⁴ which you have received contemporaneously herewith. Through the Motion, Briggs requested the Court’s authority to surrender the Life Insurance Policy to receive its Premium Value in such policy. **The hearing on the Motion is set for December 16, 2020. You have the right to object to the Motion. Objections to the Motion are due by December 9, 2020 at 5:00 p.m. (Central Time).**

If the Court enters an Order approving the Motion, then on the date of entry of such Order (the “**Order Date**”), the Court will authorize Briggs to surrender the Life Insurance Policy. Upon such surrender, the Insurer will transfer to Briggs the amount of Brigg’s Premium Value in

¹ All references to “Briggs” in this Notice to Collateral Assignment Policy Participants will include references to and actions by its predecessor in interest in the Simplicity CA Policy, Simplicity Manufacturing, Inc.

² The term “Insurer” refers to Northwestern Mutual Life Insurance Company or Pacific Life Insurance Company, as applicable

³ The term “Administrator” refers to Clary Executive Benefits LLC, the administrator of your Life Insurance Policy.

⁴ Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the Life Insurance Policy. Such transfer to Briggs will be deemed in full satisfaction of Briggs's entitlement to its Premium Value in your Life Insurance Policy. In other words, upon Briggs's receipt of the Premium Value from the Insurer, Briggs shall have no involvement whatsoever, direct or indirect, in your Life Insurance Policy.

After the Order Date, the Insurer will notify you that the collateral assignment restriction on your Life Insurance Policy has been satisfied. Thereafter, you will be entirely responsible for your Life Insurance Policy. For the avoidance of doubt, should you choose to continue your Life Insurance Policy, you will be responsible for all future premiums.

Unless you wish to object to the Motion, you are not required to take any action with respect to your Life Insurance Policy at this time.

If you have any questions about this Notice, please contact counsel for the Debtors (a) by mail at Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10053 (Attn: Elissabeth C. Berdini), (b) by email at Elissa.Berdini@weil.com or (c) by phone at 212-310-8008.

Dated: November 25, 2020
St. Louis, Missouri

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Annex 1

Briggs's Form Policies and Agreements