

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

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

FOURTH SUPPLEMENTAL DECLARATION OF PATRICK G. QUICK IN SUPPORT OF APPLICATION OF DEBTORS FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF FOLEY & LARDNER LLP AS SPECIAL COUNSEL FOR THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

I, Patrick G. Quick, declare, under penalty of perjury, that the following is true and correct to the best of my knowledge and belief:

1. I am a partner of the law firm of Foley & Lardner LLP (“**Foley**”), an international law firm with offices across the United States and in Brussels, Belgium; Tokyo, Japan; and Mexico City, Mexico. I am admitted, practicing, and a member in good standing of the bar of the State of Wisconsin. There are no disciplinary proceedings pending against me.

2. I submit this fourth supplemental declaration (this “**Fourth Supplemental Declaration**”) to supplement the disclosures contained in my (i) initial declaration, dated July 20, 2020 (the “**Initial Declaration**”), (ii) supplemental declaration, dated August 7, 2020 [Docket No. 328] (the “**Supplemental Declaration**”), (iii) second supplemental declaration, dated September 3, 2020 [Docket No. 726] (the “**Second Supplemental Declaration**”), and (iv) third supplemental declaration, dated September 25, 2020 [Docket No. 984] (the “**Third Supplemental Declaration**,” and together with the Initial Declaration, Supplemental Declaration, and Second Supplemental Declaration, the “**Previous Declarations**”) in support of the *Application of Debtors for an Order Authorizing the Retention and Employment of Foley & Lardner LLP as Special*



Counsel for the Debtors Effective as of the Petition Date (the “**Application**”) [Docket No. 33].¹

This Fourth Supplemental Declaration has been prepared in accordance with paragraph 14 of the Initial Declaration, which provides that Foley will supplement the disclosures in the Initial Declaration to the extent required if new relevant facts or relationships are discovered or arise during these Chapter 11 Cases.

3. Except as otherwise indicated, all facts set forth in this Fourth Supplemental Declaration are based upon my personal knowledge, information supplied to me by other Foley personnel, or my review of relevant documents.

Additional Specific Disclosures

4. In addition to the disclosures made in the Previous Declarations, I also believe that the following warrant disclosure:

- (a) On October 15, 2018, Sears Holdings Corporation and a number of its affiliates (collectively “**Sears**”) filed chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Southern District of New York (the “**Sears Court**”). The Sears cases are jointly administered under case number 18-23538.
- (b) At the time of Sears’ filing, the Debtors regularly sold various small engines, pressure washers, portable generators, and related parts and accessories to Sears.
- (c) Prior to the Petition Date, Foley was engaged by the Debtors to assist them, along with co-counsel Beck, Chaet, Bamberger & Polsky, S.C. (“**Beck**”), with filing a *Notice of Reclamation Demand* [Sears Docket No. 445] and *Motion of Briggs & Stratton Corporation for Allowance and Immediate Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(B)(9)* [Sears Docket No. 1374] with the Sears Court.
- (d) On August 30, 2019, ASK LLP, Sears’ preference counsel, sent a preference demand letter and proposed settlement to the Debtors regarding certain payments the Debtors allegedly received from Sears during Sears’ 90-day preference period (the “**Alleged Preferences**”). Foley assisted Beck with the analysis of the Alleged Preferences and various responses to the preference demand letter.
- (e) While negotiations with ASK LLP regarding the Alleged Preferences were ongoing, on April 1, 2020, Sears filed an adversary complaint against the Debtors

¹ Capitalized terms used but not defined herein have the meanings given to them in the Application.

[Sears Docket No. 7593] (the “**Complaint**”) in the Sears Court. ASK LLP agreed to an extension for the Debtors to answer the Complaint. Prior to the Debtors’ extended deadline for answering the Complaint, the Debtors filed these chapter 11 cases.

- (f) On October 15, 2019, the Sears Court entered an order confirming Sears’ chapter 11 plan (the “**Confirmation Order**”) [Sears Docket No. 5370]. The Confirmation Order approved an Administrative Expense Claims Consent Program, which, among other things, provided for the appointment of a representative for the holders of administrative expense claims (the “**Administrative Expense Claims Representative**”) and a restructuring committee (the “**Restructuring Committee**”). On March 13, 2020, Gary Polkowitz was appointed as the Administrative Expense Claims Representative [Sears Docket No. 7454]. Thereafter, the Administrative Expense Claims Representative engaged Foley as counsel.
- (g) On July 27 and 28, 2020, Sears asserted proofs of claim in these chapter 11 cases (the “**Sears Claims**”). The Sears Claims are based on the Alleged Preferences, as more particularly described and alleged in the Complaint.
- (h) After the Petition Date, Beck informed the Debtors that it was no longer able to represent the Debtors with respect to the Alleged Preferences. Due to Foley’s familiarity with the Alleged Preferences and Complaint, the Debtors requested that Foley handle negotiating the allowed amount of the Sears Claims. In connection therewith, Foley had been actively negotiating with ASK LLP to settle the allowed amount of the Sears Claims.
- (i) As of the date hereof, the Sears Claims have not been resolved. Given the possibility that any proposed resolution of the Sears Claims could be presented for ultimate review and approval to the Restructuring Committee and/or the Administrative Expense Claims Representative, out of an abundance of caution, Foley will no longer represent the Debtors with respect to the negotiation and handling of the Sears Claims. Foley informed the Debtors of the potential conflict and obtained the Debtors’ consent to transition the Sears Claims work to Carmody, which has agreed to handle all aspects of the Sears Claims on behalf of the Debtors.

5. Based on the conflicts search conducted to date and described herein or in the Previous Declarations, to the best of my knowledge, none of Foley or any partner, senior counsel, or associate thereof, insofar as I have been able to ascertain, represents or holds any interest adverse to the Debtors or their estates with respect to the matters on which Foley is employed, except as disclosed or otherwise described herein or in the Previous Declarations.

6. To the extent any information disclosed herein requires amendment, modification, or supplementation as additional relevant facts become available to Foley, a further supplemental declaration will be submitted to this Court reflecting such additional information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: November 16, 2020
Milwaukee, Wisconsin

/s/ Patrick G. Quick
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