

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

BRIGGS & STRATTON
CORPORATION, *et al.*,
Debtors.

Chapter 11

Case No. 20-43597-659

(Jointly Administered)

ALAN D. HALPERIN, solely as Plan
Administrator of the Wind-Down Estates of
Briggs & Stratton Corporation,

Plaintiff,

Adversary No. _____

v.

STATE OF NEBRASKA, NEBRASKA
WORKERS' COMPENSATION COURT and
ZURICH-AMERICAN INSURANCE
COMPANY,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Alan D. Halperin, solely as Plan Administrator (the "Plan Administrator") under the *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors*, dated November 9, 2020 [Docket No. 1226] (the "Plan"),¹ by and through undersigned counsel, files this Complaint for Declaratory Relief (this "Complaint") against the state of Nebraska, Nebraska Workers' Compensation Court, and Zurich-American Insurance Company, and alleges as follows:

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.



PARTIES

1. Plaintiff is Alan D. Halperin, solely in his capacity as Plan Administrator of the Debtors' Wind-Down Estates.

2. Defendant is the state of Nebraska.

3. Defendant is the Nebraska Workers' Compensation Court (the "NE WCC"). The NE WCC is a statutorily created court designed to have jurisdiction over all injuries within the scope of the Nebraska Workers' Compensation Act (the "NWCA").

4. Defendant is the Zurich-American Insurance Company ("Zurich"), the entity that issued the bond from Briggs & Stratton Corporation for the benefit of the state of Nebraska under the NWCA and which is fully-cash collateralized with property of the Debtor's estate.

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Eastern District of Missouri (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Court retained jurisdiction over the subject matter of this adversary proceeding pursuant to the Section 11.1 of the *Second Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors*, dated December 16, 2020 (the "Plan", Docket No. 1434).

6. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with these statutes and Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory basis for the relief sought herein are sections 105 and 541 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 7001(a) and (i) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and applicable Nebraska law.

BACKGROUND

9. On the Petition Date, the Debtors each commenced with this Court a voluntary case under title 11 of the Bankruptcy Code. The Debtors were 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.

10. 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 was been appointed in these chapter 11 cases.

11. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets² to Bucephalus Buyer, LLC (the “Purchaser”), and on September 21, 2020 the Debtors closed the Sale Transaction.³ On December 16, 2020, the Debtors filed the Plan, which was confirmed by the *Findings of Fact, Conclusions of Law, and Order Confirming the Plan* on December 18, 2020 [Docket No. 1485] (the “Confirmation Order”).

12. The Effective Date of the Plan occurred on January 6, 2021 and the *Notice of Entry of Order Confirming the Plan and Occurrence of the Effective Date* [Docket No. 1538] was filed, at which time the Committee was relieved of its duties and the Plan Administrator took over the administration of the Wind-Down Estates. The Wind-Down Estates continue to honor their post-closing sale obligations, wind down the estates, and otherwise work on concluding these chapter 11 cases.

² *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].

³ *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].

GENERAL ALLEGATIONS

13. From June 1, 2016 until July 20, 2020 (the “Petition Date”), one of the Debtors, Allmand Bros., Inc. (“Allmand Bros.”), participated in the state of Nebraska’s workers’ compensation program, governed by the NE WCC. In accordance with applicable state law, the Debtors elected to self-insure their workers’ compensation liabilities in the state of Nebraska.

14. As part of the Nebraska self-insured program, on June 16, 2016, the Debtors arranged to have a surety bond posted to cover the workers’ compensation claims of Allmand Bros. in the event it became insolvent or otherwise failed to honor its obligations under the NWCA (the “Bond”). Under the terms of the Bond, Allmand Bros. was to fully cash collateralize the Bond, which it did. At issue is cash collateral in the possession of Zurich in the amount of approximately \$681,599.82 (the “Cash Collateral”).

15. Under Nebraska Law, when a self-insured employer becomes unable to satisfy its workers’ compensation obligations, the NE WCC is authorized to obtain possession of posted security in amounts necessary to satisfy employee claims. Additionally, the NE WCC may reduce or release the security held on behalf of a self-insured employer two years after the last payment to or on behalf of the employer.

16. To this point, the NE WCC has used that Bond to pay workers’ compensation obligations as they become due, even post-petition. However, now, as the Debtors have stopped operating since the sale of substantially all of their assets in September 2020, the amount of the Debtors’ outstanding and incoming workers’ compensation liabilities is nonexistent, the amount of the security remains exceedingly large. The Plan Administrator was able to negotiate a consensual resolution and release of the workers’ compensation collateral outstanding in every other state, except for Nebraska. Unfortunately, despite numerous requests, the NE WCC has been

unwilling to allow Zurich to release any portion of the Cash Collateral. Indeed, the NE WCC has not needed to pay a claim of workers' compensation due on behalf of the Debtors in over two years yet continues to hold a surplus amount of security.⁴

17. The loss payments made during the applicable time period in which the NE WCC was required to pay the Debtors' workers compensation obligation out of the Bond principal, a mere three employee claims were active. Now, none remain open.

18. Pursuant to an order dated August 24, 2020 (the "General Bar Date Order") [Docket No. 564], this Court established October 7, 2020 (the "General Bar Date") as the last day for non-governmental entities to file pre-petition claims against the Debtors and their estates.

19. There can no longer be any potential workers' compensation obligations as the General Bar Date has long passed, the statute of limitations for worker compensation claims has passed,⁵ as has the deadline for pending workers' compensation claims in Nebraska.

20. The initial bond amount was used to secure the workers' compensation obligations of a manufacturing business with more than 130 employees. Without question, with zero present employees and the expiration of the General Bar Date, the risk of any future payment obligations has been greatly reduced, if not completely extinguished.

21. In or around November 2022, counsel to the Plan Administrator reached out to counsel to the NE WCC in order to facilitate a reduction or release of the Bond. After lengthy communication between counsel, the NE WCC indicated it was unwilling to reduce the amount of

⁴ Eligible claims have been *de minimis* for many years. For example, when Zurich took over the administration of the Bond in 2020, the cash collateral totaled \$754,239.00. From 2020-2023 there were only three (3) total loss payment claims, collectively totaling \$40,739.18 (with administrative costs of approximately 80% of these claim amounts, i.e. \$31,900) and there have now been no claim amounts at all for more than two (2) years.

⁵ Nebraska Revised Statute § 48-137 provides for a two-year statute of limitations from the date of injury or the date of compensation, both periods having passed in all cases relevant to Allmand Bros.

the Bond despite the reduction in associated risk and the patently obvious fact that the NE WCC is well-oversecured.

22. Upon information and belief, the last payment made by the NE WCC to an employee on behalf of the Debtors was on February 23, 2022, over three years ago. Yet, in spite of that, the NE WCC has declined to return some or all of the Bond to the Wind-Down Estates or disclose any facts or provide any information supporting why it is appropriate for the state of Nebraska to continue to hold on to the remaining \$681,599.82.

23. As this excess amount of security is property of the estate, the Debtors commence this action seeking turnover of \$656,599.82 (or such other amount as the Court deems just and appropriate), leaving \$25,000 in cash collateral for the benefit of the state of Nebraska. For the avoidance of doubt, the statute of limitations for assertion of new worker's compensation claims has passed such that there can be no new claims, all pending claims were resolved and paid more than two (2) years ago, and the Plan Administrator knows of no claims extant; but is nonetheless, willing to leave a modest amount of cash collateral to ensure that the state of Nebraska is indisputably oversecured.

BASIS FOR TURNOVER OF PROPERTY OF THE ESTATE

24. Section 542(a) of the Bankruptcy Code provides, in relevant part, that:

an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title...shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a).

25. Nebraska Revised Statute §48-137 states, in relevant part:

In case of personal injury, all claims for compensation shall be forever barred unless, within two years after the accident, the parties shall have

agreed upon the compensation payable under the Nebraska Workers' Compensation Act, or unless, within two years after the accident, one of the parties shall have filed a petition as provided in section 48-173. In case of death, all claims for compensation shall be forever barred unless, within two years after the death, the parties shall have agreed upon the compensation under the Nebraska Workers' Compensation Act, or unless, within two years after the death, one of the parties shall have filed a petition as provided in section 48-173. When payments of compensation have been made in any case, such limitation shall not take effect until the expiration of two years from the time of the making of the last payment.

Neb. Rev. Stat. § 48-137.

26. Bankruptcy Courts in similar circumstances have required turnover of excess collateral securing workers' compensation obligations. In *In re Circuit City*, the Debtors self-insured their workers' compensation obligations in the state of California by posting a letter of credit in the amount of 135% of their estimated workers' compensation liability, as proscribed by California law. *Siegel v. Cal. Self-Insurer's Sec. Fund (In re Circuit City Stores, Inc.)*, 2019 Bankr. LEXIS 1896 (Bankr. E.D. Va. 2016) (hereinafter "*Circuit City*"). Upon the liquidation and wind-down of the Debtors stores and termination of employees, the liquidation trust asserted rights to the collateral in excess of amounts that would be needed to satisfy the claims that had been capped by the passage of the bar date. At issue was the Bankruptcy Court's jurisdiction over the matter as well as whether the excess collateral was property of the estate. The Bankruptcy Court held that it had jurisdiction over the matter and that excess proceeds from a letter of credit provide a self-insurer with a contingent right to such collateral that is property of the estate. *Id.* at 201. *See also In re McLean Trucking Co.*, 74 B.R. 820 (Bankr. W.D.N.C. 1987) (a debtor has a contingent property right in excess collateral that is property of the estate); *Hunter v. Allied Clearings Co. (In re Challenge-Cook Bros.)*, 1998 Bankr. LEXIS 1982, at *32 (Bankr. N.D. Ohio 1998) ("The Debtor's right to the return of the excess security was clearly a prepetition asset, which, subject to Defendant's security interest, was included in the bankruptcy estate under § 541(a), as a legal or

equitable interest of the debtor in property as of the commencement of the case.”). In *Circuit City*, after the Bankruptcy Court’s decision, the parties worked together to determine their views on how much of the collateral was excess, and subsequently entered into a settlement agreement releasing the surplus collateral back to the bankruptcy estates. See *Cal. Self-Insurers' Sec. Fund v. Siegel*, 2019 U.S. Dist. LEXIS 167399 *7 (E.D. Va. 2019).

FIRST CLAIM FOR RELIEF

For Declaratory Relief

11 U.S.C. § 542; 28 U.S.C. § 2201

27. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully herein.

28. An actual controversy exists between the Plan Administrator, on the one hand, and Defendants on the other hand, as to the right, title, and interest in and to the remaining \$681,599.82 of the Bond.

29. The Plan Administrator asserts that, under applicable nonbankruptcy law, the Bond is property of the Debtors’ estates and that the excess Bond amount must be turned over to the Plan Administrator for the benefit of unsecured creditors.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a. On the First Claim for Relief for an order directing Defendant to turn over to the Debtor the sum of \$656,599.82, plus prejudgment interest thereon;
- b. For damages to compensate the Wind-Down Estates for the expenses that it incurred in response to the NE WCC’s unwarranted conduct in resisting the Plan Administrator’s use of the Bond proceeds;
- c. To the extent required under Nebraska law, judgment directing the NE WCC to refund \$656,599.82 in Bond proceeds;
- d. For costs of suit incurred herein; and

e. For such other and further relief as the Court deems just and proper.

Dated: August 1, 2025
St. Louis, Missouri

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

Robert E. Eggmann, #37374MO
Christopher J. Lawhorn, #45713MO
Thomas H. Riske, #61838MO
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Local Counsel to the Plan Administrator

-and-

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Matthew Murray
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Counsel to the Plan Administrator

B1040 (FORM 1040) (12/24)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS ALAN D. HALPERIN, solely as Plan Administrator of the Wind-Down Estates of Briggs & Stratton Corporation	DEFENDANTS STATE OF NEBRASKA, NEBRASKA WORKERS' COMPENSATION COURT and ZURICH- AMERICAN INSURANCE COMPANY			
ATTORNEYS (Firm Name, Address, and Telephone No.) Robert E. Eggmann, Christopher J. Lawhorn, Thomas H. Riske Carmody MacDonald P.C., 120 S. Central Ave., Ste. 1800 St. Louis, MO 63105	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR DECLARATORY RELIEF				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table border="0"><tbody><tr><td>FRBP 7001(a) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(b) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(c) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(d) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(e) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(f) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)</td><td>FRBP 7001(f) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(g) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(h) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(i) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(j) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et.seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</td></tr></tbody></table>			FRBP 7001(a) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(b) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(c) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(d) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(e) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(f) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(f) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(g) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(h) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(i) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(j) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et.seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$			
Other Relief Sought				

B1040 (FORM 1040) (12/24)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR BRIGGS & STRATTON CORPORATION, et al.		BANKRUPTCY CASE NO. 20-43597-399
DISTRICT IN WHICH CASE IS PENDING EASTERN	DIVISION OFFICE EASTERN	NAME OF JUDGE SURRETT-STATES
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ Robert E. Eggmann</i>		
DATE August 1, 2025	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Robert E. Eggmann	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.