

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff

v.

CASE NO.: 11-1487 (ESH)

REGAL BELOIT CORPORATION

and

A.O. SMITH CORPORATION

Defendants

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**HOLD SEPARATE STIPULATION AND ORDER**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. "RBC" means Defendant Regal Beloit Corporation, a Wisconsin corporation with its headquarters in Beloit, Wisconsin, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "AOS" means Defendant A.O. Smith Corporation, a Delaware corporation with its headquarters in Milwaukee, Wisconsin, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Acquirer of the Pump Motor Divestiture Assets” means SNTech, the entity to which RBC divests the Pump Motor Divestiture Assets.

D. “Acquirer of the Draft Inducer Divestiture Assets” means Revcor, the entity to which RBC divests the Draft Inducer Divestiture Assets.

E. “SNTech” means SNTech, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Revcor” means Revcor, Inc., an Illinois corporation with its headquarters in Carpentersville, Illinois, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Divested RBC Product Lines” means all motors smaller than NEMA 140 frame that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being designed, developed, manufactured, marketed, distributed, and/or sold by or for RBC for use in pool pump and/or spa pump applications, including, but not limited to, single-speed motors, two-speed motors, three-speed motors, the imPower motors, variable speed motors, and electronically commutated motors. However, the Divested RBC Product Lines shall exclude RBC’s imPulse motors; RBC’s imPower motors that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, have been or are being designed or developed for use and/or sale, and are intended to be used and/or sold, solely outside of the United States; and all motors that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being designed, developed, manufactured, marketed, distributed, and/or sold by or for AOS.

H. “Divested AOS Product Line” means all AOS draft inducers that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being marketed to furnace manufacturers and/or are being designed and/or developed for use in furnaces having a thermal efficiency of 90 percent or greater.

I. “Pump Motor Divestiture Assets” means:

(1) All tangible assets that are used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines, including, but not limited to, manufacturing equipment, machining, tooling, dies, prototypes, models, drawings, blueprints, bills of material, specifications, inventory, supplies, customer lists, contracts, agreements, accounts, credit records, teaming arrangements, leases, commitments, manuals, licenses, permits, authorizations, and repair and performance records.

(2) All intangible assets used exclusively or primarily to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines, including, but not limited to, research and development activities, patents, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, product designs, packaging designs, design protocols, safety procedures, marketing and sales data, quality assurance and control procedures, design tools and simulation capabilities, technical information RBC provides to its own employees, customers, suppliers, agents, or licensees, and data concerning historic and current research and development efforts relating to the Divested RBC Product Lines, including, but not limited to, designs and experiments, the results of such designs and experiments, testing protocols, and the results of product testing.

(3) With respect to any intangible assets used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines that are not included in paragraph I(I)(2), above, and that prior to the filing of the Complaint in this matter were used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines and any other RBC product, a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license for such intangible assets to be used for the design, development, manufacture, marketing, servicing, distribution, and/or sale of any of the Divested RBC Product Lines; provided, however, that any such license is transferrable to any future purchaser of substantially all of the Pump Motor Divestiture Assets. Any improvements or modifications to these intangible assets developed by the Acquirer of the Pump Motor Divestiture Assets shall be owned solely by that acquirer.

The Pump Motor Divestiture Assets shall exclude the trademarks, trade names, service marks, or service names “Regal Beloit,” “Marathon,” “Leeson,” “FASCO,” “imPower,” and “imPulse,” or any internet domain names. However, for the sole and limited purpose of marketing, distributing, servicing, and/or selling any of the Divested RBC Product Lines, RBC shall grant the Acquirer of the Pump Motor Divestiture Assets a worldwide and royalty-free license to use the trademarks, trade names, service marks, or service names “Marathon,” “Leeson,” “FASCO,” “imPower,” and the internet domain names [impowerdealer.com](http://impowerdealer.com) and [pumpmotors.com](http://pumpmotors.com) for a period of one year from the date the Pump Motor Divestiture Assets are divested to the Acquirer of the Pump Motor Divestiture Assets.

The Pump Motor Divestiture Assets shall exclude those assets used by FASCO Australia Pty, Ltd., FASCO Motors Thailand, and CMG Engineering Group Pty, Ltd., and the subsidiaries of each of these entities, unless those assets have, prior to the time the Court signs the Hold

Separate Stipulation and Order in this matter, been used in any way to design, develop, manufacture, market, service, distribute, and/or sell motors smaller than NEMA 140 frame that are designed or developed for use and/or sale in, or are otherwise intended to be used and/or sold in, the United States for pool pump and/or spa pump applications.

J. “Draft Inducer Divestiture Assets” means:

(1) All tangible assets that are used exclusively or primarily to design, develop, manufacture, market, and/or sell the Divested AOS Product Line, including, but not limited to, drawings, specifications, tooling, dies, models, prototypes, records, customer agreements, teaming agreements, and test data.

(2) The following intangible assets that are used to design, develop, manufacture, market, and/or sell the Divested AOS Product Line: patents, drawings, product designs, packaging designs, marketing and sales data, and quality assurance and control procedures.

(3) All intangible assets that are used exclusively or primarily to design, develop, manufacture, market, and/or sell the Divested AOS Product Line, including, but not limited to, research and development activities, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, design protocols, and data concerning historic and current research and development efforts relating to the Divested AOS Product Line, including, but not limited to, designs and experiments, the results of such designs and experiments, testing protocols, and the results of product testing.

## **II. OBJECTIVES**

The Final Judgment filed in this case is meant to ensure RBC's prompt divestiture of the Pump Motor Divestiture Assets for the purpose of establishing an independent and economically viable competitor that has the intent and capability of competing effectively in the design, development, manufacture, marketing, servicing, distribution, and sale of the Divested RBC Product Lines in order to remedy the effects that the United States alleges would otherwise result from RBC's acquisition of AOS's electric motor business. The Final Judgment also is meant to ensure RBC's prompt divestiture of the Draft Inducer Divestiture Assets to an acquirer that can and will attempt to use the Draft Inducer Divestiture Assets to design, develop, and sell draft inducers for use in furnaces having a thermal efficiency of 90 percent or greater in order to remedy the effects that the United States alleges would otherwise result from RBC's acquisition of AOS's electric motor business. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that RBC and AOS's electric motor business remain economically viable, and ongoing business concerns that will remain independent and uninfluenced by one another, and that competition is maintained during the pendency of the ordered divestitures.

## **III. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

## **IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT**

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and

Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the Antitrust Procedures and Penalties Act. The publication shall be arranged no later than five calendar days after Defendants' receipt from the United States of the text of the notice and identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States: (1) confirmation that publication of the newspaper notice has been arranged; and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

D. RBC shall not consummate its acquisition of AOS's electric motor business before the Court has signed this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event: (1) the United States has withdrawn its consent, as provided in Section IV(A), above; or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this stipulation shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

#### **V. HOLD SEPARATE PROVISIONS**

During the period of time between: (1) the consummation of RBC's acquisition of AOS's electric motor business; and (2) the latter of RBC's divestiture of the Pump Motor Divestiture Assets to the Acquirer of the Pump Motor Divestiture Assets and RBC's divestiture of the Draft Inducer Divestiture Assets to the Acquirer of the Draft Inducer Divestiture Assets, in accordance with the terms of the proposed Final Judgment:

A. RBC shall preserve, maintain, and continue to operate its own assets and the assets it acquired from AOS as independent, ongoing, economically viable competitive businesses with management, sales, and operations of RBC's assets and the assets RBC acquired from AOS held entirely separate, distinct, and apart from the other. RBC shall not coordinate the production, marketing, or terms of sale of any of its products with those products designed,



developed, manufactured, marketed, serviced, distributed, and sold using the assets RBC acquired from AOS.

B. RBC shall maintain and operate the assets it acquired from AOS as an independent, ongoing, economically viable, and active competitor in the markets for all products designed, developed, manufactured, marketed, serviced, distributed, and sold using the assets RBC acquired from AOS. RBC shall take all steps necessary to ensure that management of the assets RBC acquired from AOS will not be influenced by RBC and that the books, records, decision making and competitively sensitive sales, marketing, and pricing information relating to the assets RBC acquired from AOS will be kept separate and apart from RBC's other operations.

C. RBC shall use all reasonable efforts to maintain and increase the sales and revenues of all products designed, developed, manufactured, marketed, serviced, distributed, and sold using the assets RBC acquired from AOS and shall maintain at 2011 levels all promotional, advertising, sales, technical assistance, marketing, and merchandising support for all products designed, developed, manufactured, marketed, serviced, distributed, and sold using the assets RBC acquired from AOS.

D. RBC shall provide sufficient working capital and lines and sources of credit to continue to maintain the AOS electric motor business as an economically viable and competitive, ongoing business, consistent with the requirements of Sections V(A) and (B).

E. RBC shall take all steps necessary to ensure that the assets it acquired from AOS are fully maintained in operable condition at no less than current capacity and sales and shall maintain and adhere to normal repair and maintenance schedules for these assets.

F. RBC shall not, except as part of the divestitures approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the assets it acquired from AOS.

G. RBC shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of RBC's assets and the assets RBC acquired from AOS.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale or use of the Pump Motor Divestiture Assets or the Draft Inducer Divestiture Assets.

I. RBC's employees with responsibility for the design, development, production, marketing, servicing, distribution, and/or sale of any of the Divested RBC Product Lines or the operation and maintenance of the Pump Motor Divestiture Assets shall not be transferred or reassigned to other areas within RBC except for transfer bids initiated by employees pursuant to RBC's regular, established job posting policy. RBC shall notify the United States immediately of such transfer.

J. RBC shall appoint, subject to the approval of the United States, a person or persons to oversee the AOS electric motor business who will be responsible for RBC's compliance with this Section. This person shall have complete managerial responsibility for the AOS electric motor business, subject to the provisions of the proposed Final Judgment.

## **VI. DURATION OF HOLD SEPARATE OBLIGATIONS**

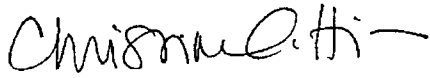
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until: (1) the date the Pump Motor Divestiture Assets are divested or the Draft Inducer Divestiture Assets are divested, whichever is later; or (2) further order of the

Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: August 17, 2011

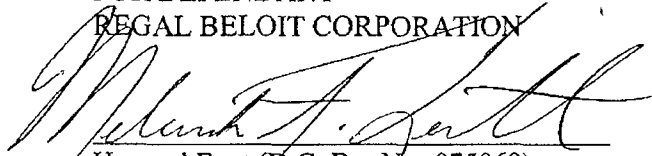
Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA



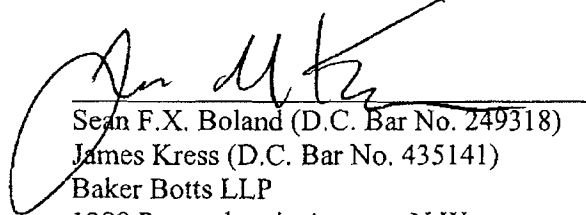
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**ORDER**

IT IS SO ORDERED by the Court, this 19<sup>th</sup> day of August, 2011.



United States District Judge