Grizzly MANUFACTURING COMPANY

AUTOMOTIVE AND INDUSTRIAL BRAKE LINING DIVISION
MOULDED BRAKE LINING — BRAKE BLOCK — FRICTION PRODUCTS

700 W. CAROLINE ST. PAULDING, OHIO TELEPHONE: 711

PLAINTIFF'S EXHIBIT

MAR-252

February 1, 1954

Mr. Louis P. Haller
Sonnenschein Berkson Lautmann Levinson and Morse
77 West Washington Street
Chicago 2, Illinois

Dear Mr. Haller:

This will acknowledge your letter of January 29, with reference to our trade-marks No. 312067 and No. 382014.

The E. M. Smith Company was a corporation organized under the laws of California in 1928. Subsequently, I believe the year was 1934, its name was changed to Grizzly Manufacturing Company.

It involved only a change in corporate name.

Yours very truly,

F. W. Shelton
GRIZZLY MANUFACTURING DIVISION

FWS:J

BRAKE LINING

• PLANTS AT PAULDING, OHIO AND BELL, CALIFORNIA

December 23, 1953

COPY

Maremont Automotive Products, Inc.
1600 South Ashland Avenue
Chicago 8, Illinois

Attention: Arnold H. Maremont

Gentlemen:

In order that you may have a record in one document of the various contracts and other matters involved, we make the following report of the purchase of certain of the assets of Grizzly Manufacturing Company which was consummated on December 14, 1953, as of December 15, 1953.

UNDERLYING AGREEMENT

On August 7, 1953, you entered into a contract with Grizzly Manufacturing Company, a California corporation (hereinafter referred to as "Grizzly"), and its stockholders to purchase the assets of Grizzly (except cash) for $1,654,000 (less the cash on hand at the closing date), and the assumption of certain of the liabilities of Grizzly. The contract provided that the sale should be consummated on December 15, 1953, and the purchase price paid as follows: $100,000 earnest money; $330,000 by your 5% installment note payable $25,000 quarterly with a final payment three years after the closing date; $228,000 by your nonnegotiable note with interest at 5% payable quarterly and the final maturity on or before January 1, 1956; the balance in cash. Other provisions of the underlying agreement will be more particularly described in connection with the analysis of the documents executed pursuant to the terms thereof.

PRELIMINARY MATTERS

Pursuant to paragraph 6 of the underlying agreement, Grizzly procured a report of title from the Title Insurance

Company of Minnesota preliminary to the issuance of a guarantee policy in the sum of $200,000 covering its title to the land and buildings at Paulding, Ohio, and also delivered a survey of the property at Paulding by Daniel H. Stouffer, a professional engineer, assisted by Frank Harper and Fred Miller. The survey shows that all of the buildings of Grizzly are located within the property lines and that there are no encroachments on property not owned by Grizzly. The preliminary opinion of title shows title in Grizzly subject only to the usual objections contained in such preliminary reports of title, taxes for the year 1953 which are a lien in an amount not yet determined, and the rights, if any, of the Cincinnati and Northern Railroad in and to any switch or spur tracks or rights-of-way over the premises.

COPY

UNION CONTRACTS

Grizzly has a contract dated September 9, 1952, with International Union United Automobile, Aircraft and Agricultural Implement Workers of America and Local No. 1072 thereof, together with amendments modifying said contract dated respectively June 23, 1953, August 12, 1953, October 16, 1953, and an undated amendment modifying Section 15 and voiding Section 11 of said contract.

The agreement continues until March 15, 1955, and thereafter until modified or amended. Should either party desire to modify or amend the agreement, it is required to give 60 days' notice of its desire so to do.

The amendment of October 16, 1953, provides that if the company sells substantially all of its assets and the purchaser assumes and agrees to perform all of the provisions of the union contract, then the purchaser shall be substituted for the company and the union contract shall continue as though originally made by the purchaser.

There is also an agreement between Grizzly and Mechanics Educational Society of America Local No. 4.

The agreement is for one year from March 15, 1953, and from year to year thereafter unless either party shall have given 60 days' notice prior to termination of its intention to modify or change the agreement.

An amendment dated November 19, 1953, provides that if the company sells substantially all of its assets and the purchaser assumes and agrees to perform the conditions of the union contract, then the purchaser shall be substituted for the company.

COPY

RETIREMENT PLAN

We also examined the retirement income plan adopted May 15, 1944, as set forth in the printed pamphlet prepared by the company for its employees which may be summarized as follows:

Nature of Plan.

It is a contributory pension plan funded through individual retirement income insurance policies.

Eligibility.

Employees between the age of 21 and 64 having 24 months of service are eligible to participate.

Normal Retirement Age.

Normal retirement age is 65.

Amount of Retirement Income.

For future service (that is service after May 15, 1944) the retirement income will range from 40% of average salary with 30 years of participation to 15% of average salary with 10 or less years of participation. In addition, participating employees with past service (service prior to May 15, 1944) will receive 1% of their salary for each year of past service less two years.

Death Benefits.

Death benefits are 100 times the normal monthly retirement income or the cash value of the policy, whichever is larger.

Severance Benefits.

On termination of employment, employees will receive 100% of their contributions plus an applicable per cent of the remaining cash value of the policy. The percentage is 10% for 2 years of service and increases 5% a year to 100% with 20 years of service. An employee with 20 years of service is thus fully vested.

C O P Y

Employee Contributions.
Employees must contribute 20% of the gross annual cost of funding future service to be eligible.

Company Contributions.
Company will contribute the balance of the cost of the plan.

Discontinuance of Plan.
The company can discontinue the plan at any time.

TRUST AGREEMENT UNDER RETIREMENT PLAN

Pursuant to the terms of this plan, an agreement of trust between Grizzly and California Trust Company, as trustee, was entered into under date of May 15, 1944. This agreement incorporates the plan by reference and recites that funds paid and to be paid by the company and annuity income policies with or without life insurance purchased with such funds shall be held by the trustee subject to the following provisions:

1. The advisory board appointed by the board of directors of the company is invested with the duty of administering the plan under the direction of the board of directors of the company. The trustee shall follow the written instructions of the advisory board.

2. The trustee shall exercise all the rights of a legal owner with respect to policies held, all as more particularly set forth in the agreement.

3. The acts of the trustee shall be binding and conclusive on any life insurance company and no life insurance company shall be required to take cognizance of the requirements of the trust agreement.

4. All funds received by the trustee shall be held in cash for the purpose of purchasing retirement income policies with or without life insurance and for the payment of premiums thereon or for the purpose of paying trustee's fees and the cost of administration of the trust.

COPY

5. The trust is created for the benefit of the employees designated in the plan as contributing employees who are the sole and exclusive beneficiaries of the trust. The trustee shall distribute the separate accumulations or trust accounts as follows:

(1) to any employee attaining his normal retirement age, the policy held for his benefit;

(2) to an employee terminating his employment before attaining his normal retirement age, his beneficial interest in the trust by the method provided under "severance benefits" in the plan; and

(3) to the beneficiaries of a deceased employee or his estate, the policy or policies held for such employee.

Distribution shall be made by the trustee upon notification by the advisory board and the occurrence of any one of the above named events and not otherwise.

6. The trustee may resign on 30 days' notice to the president of the company as last recorded on the books of the trustee. The directors of the company may remove the trustee without cause and such removal shall become effective upon delivery of written notice to the trustee of the removal. Upon removal or resignation, the board of directors of the company shall appoint a successor trustee.

7. In the event of merger or consolidation of the company, the successor corporation may be substituted for the company as truster.

8. The trust is irrevocable but may be amended by the company without joinder by the employees or the trustee (except if the liabilities of the trustee would be increased thereby) by delivering to the trustee a signed copy of such amendment, but no amendment shall adversely affect any rights theretofore acquired by any employee.

9. The company reserves the right to discontinue the plan at any time and the right to reduce or discontinue from time to time the payments provided for under the plan.

10. Unless sooner terminated, the trust shall continue in force until the trustee and/or the life insurance company has made the last payment due under the last contract included in the trust and until the trustee has performed all of its duties thereunder.

11. The interest of any employee or his beneficiary shall not be subject to sale, assignment, hypothecation or transfer.

12. The trustee is entitled to reasonable compensation and shall keep a record of its accounts as trustee which shall be open to inspection and audit by the advisory board. The agreement shall be construed in accordance with the laws of California.

By amendment dated September 15, 1953, it is provided that upon the sale of substantially all of the assets of the company to another corporation, the company may assign its rights as trustor to the purchaser upon the acceptance by the purchaser of such assignment and its assumption of all of the obligations of the company as trustor and under the plan.

(We have sent to the California Trust Company an executed duplicate copy of the assignment of the trust to Pratt, have advised them of the name and address of the president of Pratt and have asked them to let us know the amount of their annual charges for acting as trustee of this trust.)

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ASSIGNMENT TO PRATT INDUSTRIES, INC.

Prior to December 15, 1953, you acquired 103,700 shares of the capital stock of Pratt Industries, Inc., a New York corporation (herein called "Pratt"), and on December 3, 1953, your directors had determined that if this stock was acquired the underlying contract would be assigned to Pratt Industries, Inc. We, therefore, prepared a contract under which you assigned to Pratt the agreement of August 7, 1953, and guaranteed to Grizzly that Pratt would make the payments and perform the obligations of the contract on your part to be performed, the guarantee being absolute and unconditional. Pratt accepted the assignment and agreed to perform the covenants thereof on your part to be performed and Grizzly consented to the assignment on these terms. The contract of assignment was executed prior to the closing.

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CLOSING

The transaction was closed in our offices on December 14, 1953, but as of December 15, 1953.

At the closing the following documents were executed and delivered:

A. General bill of sale from Grizzly to Pratt describing in the most general terms all of the assets sold to you and containing the agreement of Grizzly that it would from time to time at your request execute such further separate bills of sale, assignments or other instruments as you might deem desirable.

B. Bill of sale from Grizzly to Pratt of the machinery, equipment, furniture, fixtures, etc. with Exhibit A describing the most important items covered thereby and containing a warranty of title. Exhibit A was prepared by Mr. Frank Shelton.

C. Assignment from Grizzly to Pratt of the right to the use of the name "Grizzly" (subject to the terms of the agreement dated December 3, 1944 with the Thermoid Company) and of all Grizzly's interest in any patents and trade-marks (it is not represented that there are any patents or trade-marks).

D. Assignment from Grizzly to Pratt of notes and accounts receivable, Grizzly agreeing that 97% will be collected within 6 months and if less is so collected, to pay to Pratt the difference upon reassignment of the uncollected accounts. Pratt agrees that it will use its best efforts to collect the notes and accounts and will credit them with any payments made by the debtors before crediting such payments on accounts arising after the date thereof.

E. Assumption agreement between Pratt and Grizzly in which, pursuant to the terms of the underlying agreement, Pratt assumes all liabilities of Grizzly at December 31, 1952, reflected in Exhibits A, B and C (the financial statements) attached to the underlying agreement and which remain unpaid on December 15, 1953; all liabilities incurred by Grizzly in the usual and ordinary course of business between December 31, 1952, and December 15, 1953, and then remaining unpaid; all liabilities for state and Federal income and excess profits taxes for 1953 with interest thereon and interest, if any, which Grizzly may be required to pay on the repayment to the Government of any refund of taxes received by Grizzly after December 15, 1953; and all liability under contracts and commitments made in the usual course of business on or before December 15, 1953, including liability under certain contracts specified therein. Pratt also assumes all liabilities of Grizzly for state or Federal income or excess profits taxes for years prior to 1953 not reflected in Exhibits A, B or C and any other liabilities as of December 15, 1953, not reflected in Exhibits A, B or C, but not exceeding an aggregate of $125,000 for all such taxes and liabilities.

F. Agreement between Grizzly and Pratt assigning to Pratt the contract with Local No. 1072 which Pratt accepts and agrees to perform.

G. Assignment from Grizzly to Pratt of the contract with Local No. 4 which Pratt accepts and agrees to perform.

H. Assignment from Grizzly to Pratt of all rights under the retirement income plan and the trust thereto appertaining which Pratt accepts and the obligations under which it assumes and agrees to perform.

I. Employment contract with Frank V. Shelton providing that his employment shall continue for the balance of the calendar year 1953 as though Grizzly had not sold its assets and hiring him for the calendar year 1954 as general manager at Paulding for a salary of $9,000 payable in monthly installments, plus 7% of the annual net profits of the asbestos and brake lining division of employer's business, payable on March 31, following the end of the calendar year. Profits are

COPY

determined before Federal and state income and excess profits taxes. Unless the employee elects to retire from the brake lining business and so notifies the employer in writing, employer has the option to extend the employment contract for 2 additional one year periods upon the same terms and conditions, said option to be exercised by giving not less than 60 days' written notice before the end of each employment year of intention so to extend the term of employment.

COPY

J. Lease between Emsco Piston Company and Pratt Industries, Inc. of the property at 8355 Wilcox Avenue, Bell, California, formerly occupied by Grizzly, for a term of one year ending December 15, 1954, at a rental of $425 per month payable in advance on the 15th day of each month to the lessor at 8355 Wilcox Avenue, Bell, California. The lease provides that

1. The lessee may not assign or sublet without the written consent of the lessor.

2. The lessee shall keep the inside of the premises in good repair and shall not make alterations without the written consent of the lessor.

3. All laws and ordinances shall be complied with.

4. Lessee waives right to damages sustained by failure of lessor to repair.

5. If insurance rates are increased by lessee's occupancy, lessee will pay the difference in premium.

6. Lessee will surrender possession of premises at termination of lease in as good condition as reasonable use and wear thereof, damage by the elements and other unavoidable casualties will permit.

7. Either party may terminate on 60 days' written notice.

K. Pratt executed and delivered to Grizzly its installment note dated December 15, 1953, in the principal sum of $330,000 with interest at 5% payable quarterly at 251 South Windsor Boulevard, Los Angeles, California, the principal to be payable in quarterly installments of $25,000 commencing March 15, 1954, and on the 15th day of each June, September, December, and March until December 15, 1956, when the balance of $55,000 is payable with interest. You executed an unconditional guarantee of the payment of this note.

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L. Grizzly also executed and delivered to Pratt a nonnegotiable note in the principal sum of $228,000 payable on or before January 1, 1956, with interest at 5% per annum payable quarterly at 251 South Windsor Boulevard, Los Angeles, California. This note refers to the provisions of the underlying agreement of August 7, 1953, by the terms of paragraph 23 of which Grizzly agrees to file its Federal income tax return for 1953 on or before March 15, 1954, and file an application for tentative carry back adjustment on U. S. Treasury form 1137 in order to have the net loss of Grizzly for the calendar year of 1953 carried back and applied against its income for the calendar year 1952 for Federal income and excess profits taxes purposes. Under paragraph 24 if Grizzly does not receive a refund for 1952, in the amount of $227,936.52 on or before June 15, 1954, it shall file with the Director of Internal Revenue a claim for refund. By paragraph 25, if Grizzly receives a refund of all or part of said last mentioned sum and thereafter shall be required to return such refund or any part thereof, it shall within 30 days after the return of such refund file a claim for refund, and (paragraph 26) shall prosecute its application for tentative carry back adjustment or claim for refund and use its best efforts to obtain a refund. At your request it will employ such attorneys and accountants as you designate and in the absence of such request, shall employ its own attorneys and accountants, you to pay the reasonable fees and charges of the attorneys and accountants. Paragraph 27 provides that any amount received for tentative carry back adjustment or refund will be applied in reduction of the nonnegotiable note and interest shall cease to the extent of such refund. If any part of the refund has to be returned, then the note shall again be restored and bear interest from the date of repayment. When the time within which the Director of Internal Revenue may require the return of a refund has expired, the note shall be considered discharged to the extent of the refund. Paragraph 28 provides that if Grizzly receives a refund subsequent to January 1, 1956, provided the note has been paid, then Grizzly shall pay to you the amount of such subsequent refund. These provisions are incorporated by reference in the nonnegotiable note. Should default be made in any installment of interest when due, the whole sum of principal shall become due immediately at the option of the holder of the note. You executed an unconditional guarantee of this note by Pratt.

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We have been informed by the attorneys and accountants for Grizzly that it has sustained a large business loss by reason of the sale of its assets to Pratt. We are informed that the loss is greater than the net income of Grizzly for the year 1953 so that Grizzly will not be required to pay any Federal income taxes for the year 1953. In addition, there is an excess loss which will be carried back to 1952 and which should enable Grizzly to obtain a refund of all or a substantial part of the income taxes paid by Grizzly for the year 1952. The refund for 1952 income taxes will, of course, be affected by the amount of Grizzly income for the year 1953 before deduction of losses sustained in the sale. This income will not be authoritively known until the audit for the year 1953 is completed. It is anticipated that the net income before deductions for losses sustained in the sale will approximate $400,000. If such net income should be larger, the claim for refund of the 1952 taxes will be correspondingly affected. We have an understanding with the attorneys for Grizzly that they will make no charge to Pratt for services in filing the application for tentative carry back adjustment.

M. A warranty deed from Grizzly to Pratt covering the real estate at Pratt was executed and delivered. The contract allocates $200,000 of the purchase price to this real estate and $220 in revenue stamps were thereto attached. The deed has been sent to the Title Insurance Company of Minnesota for record and for the issuance of its guarantee policy for which Grizzly will pay.

N. Assignments of all assignable insurance policies at Paulding, Ohio, and at Bell, California, were executed. Those at Paulding were delivered to Mr. Shelton to complete the transfer and those at Bell were sent to Mr. Moon for the same purpose.

The transfer of title to the two motor vehicles at Bell were sent to you for execution and Mr. Shelton is taking care of the transfer of the Ohio motor vehicles. The workmen's compensation and employer's liability policies covering the plants at Paulding and Bell are not assignable and Mr. Grace is having new policies written.

O. A short agreement was entered into between Grizzly and Pratt providing that Pratt should retain the cash in the Grizzly account at Paulding and that to that extent there would be no reduction of the purchase price. Actually all of the cash in the Paulding account was closed out prior to the closing.

P. Certified copies of resolutions of stockholders and directors of Grizzly, which we believe adequate, approving the execution and performance of the underlying contract and its assignment to Pratt were delivered to us and we have delivered to Grizzly certified copies of your resolutions approving the execution of the underlying contract. We have sent to Mr. Grace a form of resolution approving the documents as executed by Pratt which should be adopted at the next meeting of your directors and certified copies sent to Grizzly.

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The credits to the seller and purchaser in connection with the closing of the transaction were as follows:

| Credits to Grizzly | | Credits to Pratt | |
|---|---|---|---|
| Purchase price | $1,654,000.00 | Note in the amount of | $330,000.00 |
| | | Nonnegotiable note in the amount of | 228,000.00 |
| | | Cash in the account of Grizzly at the Continental Illinois National Bank and Trust Company of Chicago | 645,595.91 |
| | | Cash in Grizzly Bank account at Security National Bank, Los Angeles, California | 112,232.75 |
| | 1,315,828.66 | Total | $1,315,828.66 |
| Balance due Grizzly | $ 338,171.34 | | |

The balance of $338,171.34 was paid by cashier's check in the amount of $325,000, and by your check in the amount of $13,171.34. Both checks were made payable to Pratt Industries, Inc. and endorsed by it to Grizzly. In determining the balance of the purchase price, no effect was given to the $100,000 earnest money deposit because this amount was included in the California bank account for which full credit was given.

The amount of liabilities of Grizzly at December 15, 1953, will be shown in the audit now being made by Seidman and Seidman, the independent certified public accountants employed to make an audit of the business of Grizzly on December 15, 1953.

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CORPORATE MATTERS

We are advised that Grizzly Manufacturing Company has changed its name to W. G. Smith, Inc.

We are advised by Prentice Hall that Pratt was licensed to do business in Ohio, and has never formally withdrawn, but has failed to file its last annual report. They are taking care of filing this report which will prevent the forfeiture of its license in Ohio. We are having them license Pratt in California and have written to Mr. Shelton inquiring as to the way in which business is done in other states in which Grizzly was licensed and shall advise you further when we have heard from him.

The following constitute the board of directors of Pratt: Howard E. Wolfson, Arnold H. Maremont, Jerome N. Comar, K. W. Maxwell, Charles A. Klaus and Russell A. Graham. The following are Pratt's officers: Arnold H. Maremont, president and treasurer; Jerome N. Comar, vice president; John C. Grace, vice president and secretary; and Bernard Nath, assistant secretary.

MISCELLANEOUS

Walter Smith purchased the Cadillac car and motor boat located at Bell, California, the car for $3,755.41 which was its book value and the boat for $1,900 which was the agreed price and made payment by his separate check for $5,655.41 which he delivered to Mr. Grace.

We are advised that Grizzly's regular dividend of $24,000 was declared and paid (as permitted by the terms of the underlying contract) before the closing.

No contract of employment was entered into at the closing with Richard Smith and Joseph Brown, but it is understood that they will continue to the end of the year 1953 on the terms on which they had been employed by Grizzly (including participation in the 1953 profits), and that you are to write them letters at a subsequent date with reference to their employment.

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ENCLOSURES

We are enclosing herewith the following original documents all dated December 15, except as otherwise noted:

1. Assignment and acceptance of the underlying contract.

2. General bill of sale.

3. Bill of sale of machinery, equipment, etc.

4. Assignment of patents and trade-marks.

5. Assignment of notes and accounts receivable.

6. Assumption agreement (in duplicate).

7. Assignment and acceptance of contract with Local Union No. 1072.

8. Assignment and acceptance of contract with Local Union No. 4.

9. Assignment and acceptance of income retirement plan and trust relating thereto.

10. Employment agreement with Frank W. Shelton.

11. Lease from Emsco Piston Co.

12. Agreement of Grizzly to furnish guarantee policy.

13. Agreement relative to the Paulding bank account.

14. The November 19, 1953, amendment to the contract with Local Union No. 4.

We are also enclosing copies of the following documents:

1. $330,000 installment note.

2. Guarantee thereof

3. $228,000 nonnegotiable note.

4. Guarantee thereof.

5. The contract with Local Union No. 1072 and amendments (some of the amendments being executed copies).

6. The trust relating to the retirement plan and amendments thereto (we understand that a copy of the retirement plan itself is in your possession).

7. The underlying agreement dated August 7, 1953.

8. Survey of the property at Paulding, Ohio.

Will you please acknowledge receipt of the enclosures on the carbon of this letter.

Very truly yours,

SONNENSCHEIN BERKSON LAUTMANN LEVINSON & MORSE

By

Louis P. Haller

LPH:las
Enc.

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