

Provisionally granted until an order is entered after the final hearing on this document.

No later than two (2) business days after entry of this Order, the Debtors shall serve a copy of this Order, and shall file a certificate of service no later than 24 hours after service.

Jul 20, 2020

Barry S. Schermer
BARRY S. SCHERMER
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re: § Chapter 11
BRIGGS & STRATTON §
CORPORATION, *et al.*, § Case No. 20-43597-399
§ (Joint Administration Requested)
Debtors.¹ § Hearing Date: July 21, 2020
§ Hearing Time: 10:00 a.m. (Central Time)
§ Hearing Location: Courtroom 5 North
§ 111 S. 10th St., St. Louis, MO 63102

APPLICATION OF DEBTORS FOR INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY DELOITTE & TOUCHE LLP AS INDEPENDENT AUDITOR AS OF THE PETITION DATE

Briggs & Stratton Corporation 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 application (the “Application”):

Background

1. On the date hereof (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. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors’ corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company’s products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. 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 *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Ficks Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. 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

4. By this Application, the Debtors seek entry of an interim order (the “**Proposed Interim Order**”) and, pending a final hearing on the relief requested herein, a final order (the “**Proposed Final Order**”) and, together with the Proposed Interim Order, the “**Proposed**

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Application are to the U.S. dollar, unless stated otherwise.

Orders)³ pursuant to sections 327(a) and 328 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014(A), for authority to retain and employ Deloitte & Touche LLP (“**Deloitte & Touche**”) to be their independent auditor in accordance with the terms and conditions set forth in that certain engagement letter, dated October 30, 2019 (the “**Engagement Letter**”), effective as of the Petition Date.

5. In support of this Application, the Debtors submit the declaration of Eric Kulju, a partner at Deloitte & Touche (the “**Kulju Declaration**”), annexed hereto as **Exhibit A**. A copy of the Engagement Letter is annexed hereto as **Exhibit B**.

Deloitte & Touche’s Qualifications

6. The Debtors seek to employ and retain Deloitte & Touche to provide independent audit and review services. Deloitte & Touche has significant experience performing audit and accounting services and has performed such services throughout the United States. *See, e.g., In re Payless Holdings LLC*, No. 19-40883-659 (KAS) (Bankr. E.D. Mo. June 25, 2019) [Docket No. 1278]; *In re Halcón Resources Corp.*, No. 19-34446 (DRJ) (Bankr. S.D. Tex. October 20, 2019) [Docket No. 368]; *In re Bristow Grp. Inc.*, No. 19-32713 (DRJ) (Bankr. S.D. Tex. September 9, 2019) [Docket No. 629]; *In re PHI, Inc.*, No. 19-30923 (HDH) (Bankr. N.D. Tex. July 3, 2019) [Docket No. 757]; *In re PG&E Corp.*, No. 19-30088 (DM) (Bankr. N.D. Ca. July 24, 2019) [Docket No. 3190]; *In re HGIM Holdings, LLC*, No. 18-31080 (DRJ) (Bankr. S.D. Tex. May 16, 2018) [Docket No. 184]; *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. January 22, 2019) [Docket No. 1736]; *In re Halcón Resources Corp.*, No. 16-11724 (BLS) (Bankr. D. Del. October 5, 2016) [Docket No. 219]. Such experience renders Deloitte &

³ Copies of the Proposed Orders will be made available on the Debtors’ case information website at <http://www.kccllc.net/Briggs>.

Touche well qualified and able to provide services to the Debtors in a cost-effective, efficient, and timely manner. Deloitte & Touche's services fulfill an important need and are not provided by any of the Debtors' other professionals.

7. Deloitte & Touche has provided professional services to the Debtors since approximately December 2012. In providing such prepetition professional services to the Debtors, Deloitte & Touche has become familiar with the Debtors and their financial affairs, debt structure, business operations, and related matters. Having worked with the Debtors' management, Deloitte & Touche has developed relevant experience and knowledge regarding the Debtors that will assist it in providing effective and efficient services to the Debtors. Accordingly, Deloitte & Touche is both well-qualified and able to provide the services for the Debtors in an efficient and timely manner.

Services Provided by Deloitte & Touche

8. Subject to the Court's approval of the Application, Deloitte & Touche has agreed to provide professional services to the Debtors pursuant to the terms and conditions of the Engagement Letter, as requested by the Debtors and agreed to by Deloitte & Touche.

9. Deloitte & Touche will perform an integrated audit in accordance with the standards of the Public Company Accounting Oversight Board ("**PCAOB**") in order to express opinions on (i) the fairness of the presentation of Debtor Briggs & Stratton Corporation's ("**Briggs & Stratton**") financial statements for the year ended June 28, 2020, in conformity with accounting principles generally accepted in the United States of America, and (ii) the effectiveness of the Briggs & Stratton's internal control over financial reporting as of June 28, 2020, based on the criteria established in *Internal Control – Integrated Framework*, issued by the Committee of Sponsoring Organizations of the Treadway Committee. Deloitte & Touche will also perform a

review of Briggs & Stratton's condensed consolidated interim financial information in accordance with the PCAOB standards for each of the quarters in the year ended June 28, 2020.

10. Additionally, pursuant to the Engagement Letter, Deloitte & Touche may provide audit services and conduct procedures associated with the services described above that are beyond the scope of procedures that were anticipated to be performed at time the Engagement Letter was signed (collectively, the "**Out-of-Scope Services**").

Efforts to Avoid Duplication of Services

11. The services performed by Deloitte & Touche are intended to complement, not unnecessarily duplicate, or overlap with other services performed by any other professional retained by the Debtors. As set forth in the Kulju Declaration, Deloitte & Touche understands that the Debtors have retained and may retain additional professionals during the term of the Engagement Letter and will use its reasonable efforts to work cooperatively with the Debtors to avoid unnecessary duplication of services.

Professional Compensation

12. As set forth in the Kulju Declaration, and subject to the Court's approval, the Debtors understand and have agreed that Deloitte & Touche will apply to the Court for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and any other applicable orders of the Court, both in connection with this Application and the fee applications to be filed by Deloitte & Touche in these chapter 11 cases.

13. Pursuant to the terms of the Engagement Letter, Deloitte & Touche agreed to bill the Debtors periodically with respect to the audit services, excluding the Out-of-Scope Services, performed thereunder. As of the Petition Date, the remaining payment to be made pursuant to such agreed-upon billing schedule is \$232,000.

14. Deloitte & Touche and the Debtors agreed that for any Out-of-Scope Services performed by Deloitte & Touche under the Engagement Letter, the Debtors shall pay Deloitte & Touche at the following hourly rates:

Professional Level	Hourly Rates
Principal / Partner / Managing Director	\$350 – \$710
Senior Manager	\$300 – \$600
Manager	\$275 – \$500
Senior	\$175 - \$405
Staff	\$125 – \$320

15. In addition, the Debtors agreed to reimburse Deloitte & Touche for actual, reasonable, and necessary out-of-pocket expenses, including travel, report production, delivery services, and other expenses incurred in providing Deloitte & Touche’s services under the Engagement Letter.

16. The Debtors are advised that the compensation terms contemplated by the Engagement Letter are reasonable and comparable to those generally charged by independent auditors of similar stature to Deloitte & Touche for similar engagements. The fee structure summarized above is consistent with Deloitte & Touche’s normal and customary billing practices for comparable engagements. Moreover, the fee structure is consistent with and typical of arrangements entered into by Deloitte & Touche and other firms with the rendering of comparable services to clients such as the Debtors.

17. Deloitte & Touche intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in these chapter 11 cases in accordance with sections 330 and 331 of the Bankruptcy Code, with the

applicable provisions of the Bankruptcy Rules and Local Rules, and with any other applicable procedures and orders of the Court. The Debtors submit that the compensation terms are fair and reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

18. Deloitte & Touche provided prepetition services to the Debtors. In the 90 days prior to the Petition Date, the Debtors paid Deloitte & Touche approximately \$670,000. As of the Petition Date, no amounts remained outstanding with respect to invoices issued by Deloitte & Touche.

19. In addition, Deloitte Tax LLP (“**Deloitte Tax**”), an affiliate of Deloitte & Touche, provided prepetition services to the Debtors. In the ninety (90) days prior to the Petition Date, Deloitte Tax received approximately \$98,970 from the Debtors on account of invoices issued by Deloitte Tax. As of the Petition Date, no amounts were outstanding with respect to the invoice(s) issued by Deloitte Tax prior to such date.

20. The Debtors are advised that Deloitte & Touche intends to file interim and final fee applications for the allowance of compensation for the services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any applicable orders of the Court, and/or any applicable guidelines issued by the Office of the U.S. Trustee.

21. The Debtors are advised that Deloitte & Touche has received no promises regarding compensation in these chapter 11 cases other than in accordance with the Bankruptcy Code and as set forth in the Kulju Declaration. Deloitte & Touche has no agreement with any nonaffiliated or unrelated entity to share any compensation earned in these chapter 11 cases in accordance with section 504 of the Bankruptcy Code.

Deloitte & Touche's Disinterestedness

22. As provided in the Kulju Declaration, in connection with its proposed retention by the Debtors, Deloitte & Touche is in the process of process of researching its client and other databases to determine and to disclose whether Deloitte & Touche or its affiliates has any connections with the Debtors, the Debtors' affiliates, or has been employed by, or has any relationships with, the entities whose specific names were provided to Deloitte & Touche by the Debtors (the "**Potential Parties in Interest**"). Once this search is complete, the Debtors understand that Deloitte & Touche will file a supplemental disclosure with the Court with respect to its disinterestedness to disclose any such connections and relationships, as required by Bankruptcy Rule 2014(a), and will append a schedule to that supplemental filing that lists the Potential Parties in Interest with which Deloitte & Touche and/or its affiliates have such connections.

Relief Requested Should Be Granted

23. The Debtors seek authority to employ and retain Deloitte & Touche for certain audit services under section 327 of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Debtors in carrying out the Debtors' duties under this title." 11 U.S.C. § 327(a).

24. The Debtors seek approval of the Engagement Letter pursuant to sections 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 ... on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Accordingly, section 328 of the Bankruptcy Code permits the compensation of professionals, on flexible terms

that reflect the nature of their own services and market conditions. Moreover, Bankruptcy Rule 2014 requires that an application for retention include:

specific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, [and] any proposed arrangement for compensation

Fed. R. Bankr. P. 2014.

25. As further detailed in the Kulju Declaration, Deloitte & Touche intends to file a supplemental disclosure with respect to its disinterestedness relating to the Debtors' estates, the Debtors. All of Deloitte & Touche's fees and expenses are subject to approval of the Court in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and any further orders of the Court. Additionally, the compensation terms set forth in the Engagement Letter are reasonable terms and conditions of employment and should be approved under section 328(a) of the Bankruptcy Code. The fee structures adequately reflect (i) the nature of the services to be provided by Deloitte & Touche and (ii) fee and expense structures typically utilized by Deloitte & Touche and other leading accounting advisory services providers.

26. Moreover, Deloitte & Touche has significant experience and extensive knowledge in performing audit services. Deloitte & Touche is familiar with the relevant financial information and other data maintained by the Debtors and is qualified and best positioned to provide audit services to the Debtors in an efficient and cost effective manner.

27. The employment of Deloitte & Touche as of the Petition Date is warranted under the circumstances of these chapter 11 cases. Deloitte & Touche has provided, and will continue to provide, valuable services to the Debtors. While providing these valuable services after the Petition Date, Deloitte & Touche will be working diligently to undertake its conflicts review in order to be able to submit a supplement to the Kulju Declaration in support of this

Application as discussed above. To the best of the Debtors' knowledge, approval of this Application will not prejudice any parties in interest because, among other things, the auditing services Deloitte & Touche provide are beneficial to the estate.

28. Courts in this district regularly authorize debtors to retain and employ independent auditor as of the petition date, consistent with what the Debtors are seeking in this Application. *See, e.g. In re Payless Holdings LLC*, No. 17-42267-659 (KAS) (Bankr. E.D. Mo. Jun. 27, 2017) [Docket No. 1286] (approving the retention of independent auditor); *In re Peabody Energy Corp.*, No. 16-42529-399 (BSS) (Bankr. E.D. Mo. Jun. 16, 2016) [Docket No. 768] (same); *In re Noranda Aluminum, Inc.*, No. 16-10083-399 (BSS) (Bankr. E.D. Mo. Mar. 11, 2016) [Docket No. 395]; (same); *In re Arch Coal, Inc.*, No. 16-40120-705 (CER) (Bankr. E.D. Mo. Feb. 24, 2016) [Docket No. 403] (same).

29. For the foregoing reasons, Deloitte & Touche's retention and employment is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the Debtors to retain and employ Deloitte & Touche pursuant to the terms set forth in the Engagement Letter.

Notice

30. Notice of this Application will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the 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; and (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice**

Parties”). Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

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

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
Wauwatosa, Wisconsin

Respectfully submitted,

Briggs & Stratton Corporation (for itself and on behalf of each of its affiliated debtors as Debtors and Debtors in Possession)

/s/ Kathryn M. Buono

Name: Kathryn M. Buono

Title: Vice President, Corporate Counsel & Secretary

Filed by:

/s/ Robert E. Eggmann

Robert E. Eggmann, #37374MO
Christopher J. Lawhorn, #45713MO
Thomas H. Riske, #61838MO
CARMODY MACDONALD P.C.
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
Email: ree@carmodymacdonald.com
cjl@carmodymacdonald.com
thr@carmodymacdonald.com

*Proposed Local Counsel to the Debtors and
Debtors in Possession*

-and-

Ronit J. Berkovich (*pro hac vice* pending)
Debora A. Hoehne (*pro hac vice* pending)
Martha E. Martir (*pro hac vice* pending)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Ronit.Berkovich@weil.com
Debora.Hoehne@weil.com
Martha.Martir@weil.com

*Proposed Counsel to the Debtors and
Debtors in Possession*