

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re:	§	<b>Chapter 11</b>
	§	
<b>BRIGGS &amp; STRATTON CORPORATION, et al.,</b>	§	<b>Case No. 20-43597-399</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Joint Administration Requested)</b>
	§	
	§	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

**MOTION OF DEBTORS FOR ENTRY OF ORDER FOR  
AUTHORITY TO FILE UNDER SEAL FEE LETTER RELATING TO  
DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING  
DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING  
DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND  
SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES, (V) MODIFYING AUTOMATIC STAY,  
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

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 motion (the “**Motion**”):

**Background**

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of 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

<sup>1</sup> 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.



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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 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**”),<sup>2</sup> 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, and Rule 13.05 of the Local Rules of the United States District Court for the Eastern District of Missouri. 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.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Motion to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

### **Relief Requested**

4. By this Motion, the Debtors seek entry of an order,<sup>3</sup> pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of any order authorizing the Debtors to file under seal the Fee Letter, dated July 19, 2020 (the “**Fee Letter**”), among the Debtors and JPMorgan Chase Bank, N.A. (“**JPMorgan**”), as the administrative and collateral agent executed in connection with the DIP Credit Agreement.

### **Facts Relevant to the Motion**

5. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing Debtors to file the Fee Letter under seal, *provided, however*, that the Debtors will provide the Fee Letter, on a strictly confidential basis and “professional eyes only” basis, to (i) the Court; (ii) the United States Trustee for the Eastern District of Missouri (the “**U.S. Trustee**”); and (iii) advisors to any statutory committee appointed by the U.S. Trustee, in each case, under appropriate confidentiality agreements reasonably satisfactory to the Debtors that preserve the confidentiality of the Fee Letter (and any information derived therefrom) (collectively, the “**Limited Notice Parties**”).

### **Basis for Relief**

6. Section 107(b) of the Bankruptcy Code provides courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

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

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b). In addition, section 105(a) of the Bankruptcy Code, which codifies the bankruptcy court's inherent equitable powers, empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

7. Bankruptcy Rule 9018, which sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal, states, in pertinent part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018. *See also In re Farmland Indus., Inc.*, 290 B.R. 364, 369 (Bankr. W.D. Mo. 2003) (stating that Bankruptcy Rule 9018 authorizes the court to prohibit disclosures as "necessary to protect the bankruptcy estate").

**A. Section 107(b) of the Bankruptcy Code Requires the Court to Protect the Confidential Information Contained in the Fee Letter**

8. Once a court determines that a party in interest seeks to protect information that falls within a category enumerated in section 107(b), "the court is required to protect a requesting interested party and has no discretion to deny the application." *In re Orion Pictures Corp.*, 21 F.3d 24, 27–28 (2d Cir. 1994) (section 107(b) creates an exception to the general rule that court records are open to public inspection and that under this exception, an interested party has to show only that the information it wishes to seal is "confidential and commercial" in nature);

*see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (the purpose of Bankruptcy Rule 9018(1) is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.”).

9. Accordingly, section 107(b) relief should be granted if the information sought to be protected is “*commercial information*.” *See Global Crossing*, 295 B.R. at 725. Moreover, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *Orion*, 21 F.3d at 28. Nor does it require a finding of “extraordinary circumstances or compelling need.” *Id.* at 27. Rather, “in the bankruptcy area . . . congress has established a special rule for confidential . . . commercial information.” *Id.* Section 107(b) requires only that the court find that the information falls within one of the enumerated categories. Once the court makes such a determination, it “is *required* to protect a requesting interested party and has no discretion to deny the application.” *Id.*

10. In *Orion*, the Second Circuit explained that, to qualify for section 107(b) relief, an interested party only needs to show that the information it wishes to seal is “‘confidential’ and ‘commercial’ in nature” to meet the “commercial information” standard. *Id.*; *see also In re Farmland Indus.*, 290 B.R. at 368 (“commercial information” is information that, if disclosed, would unfairly advantage the disclosing entity’s competitors by providing them with information as to the commercial operations of the entity seeking protection) (quoting *Orion*, 21 F.3d at 27). In holding that a license agreement contained commercial information where the agreement authorized a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films, the Second Circuit explained that commercial information need not rise to the level of trade secret to be protected under Bankruptcy Code section 107(b). *Orion*, 21 F.3d at 28.

**B. The Fee Letter Contains “Commercial Information”  
and Should Remain Under Seal**

11. Good cause exists to authorize the Debtors to file the Fee Letter under seal. The information contained in the Fee Letter falls well within the scope of confidential information that may be protected pursuant to section 107(b)(1) of the Bankruptcy Code. Specifically, the descriptions of fees set forth in the Fee Letter constitute detailed proprietary information not typically disclosed to the public or to competing financial institutions. In light of the highly competitive nature of the investment banking and finance lending industries, it is of critical importance to the DIP Lenders that the fees set forth in the Fee Letter be kept confidential so that their competitors may not use the information contained therein to gain a strategic advantage over the lenders in the marketplace. Public disclosure of fees of this sort could chill the market for financial institutions to provide financing to chapter 11 debtors.

12. Further, disclosure of the Fee Letter would violate the express terms of the Fee Letter, setting a discouraging precedent for the Debtors’ other potential creditors and trade partners. The Debtors believe that it is critical, especially at the outset of their chapter 11 cases, that they be able to assure their contractual counterparties that the confidential terms of their contracts will not face disclosure, so as not to further discourage such parties from contracting with the Debtors.

13. Based on the foregoing, absent protection of this information, the DIP Lenders would be placed at a competitive disadvantage, and the Debtors’ ability to obtain postpetition financing from the DIP Lenders could be undermined. Accordingly, maintaining the confidentiality of the commercial information set forth in the Fee Letter enables the DIP Lenders to remain competitive and willing to extend postpetition financing to these and other chapter 11 debtors.

14. Finally, the relief requested in this Motion is similar to relief granted in recent chapter 11 cases. *See, e.g., In re Peabody Energy Corp.*, Case No. 16-42529 (BSS) (Bankr. E.D. Mo. Apr. 15, 2016) (authorizing debtor to file fee letter agreements with proposed debtor in possession agent under seal); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. Feb. 12, 2016) (authorizing debtors to file fee letter agreements with proposed debtor in possession lenders under seal); *In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015) (authorizing debtors to file fee letter agreements with proposed debtor in possession lenders under seal); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. July 16, 2012) (same); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 18, 2012) (authorizing debtors to file unredacted fee letter agreements under seal); *In re Nebraska Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011) (authorizing the debtors to file under seal DIP agreement fee letters but requiring disclosure of the aggregate fees and expenses); *In re NewPage Corp.*, No. 11-12804 (KG) (Bankr. D. Del. Sept. 8, 2011) (authorizing debtors to file Letter Agreements with proposed debtor in possession lenders under seal); *In re Smurfit-Stone Container Corp.*, No. 09-10235 (BLS) (Bankr. D. Del. Feb. 14, 2010) (authorizing debtors to file under seal fee letter relating to exit term loan facility); *In re Champion Enters., Inc.*, No. 09-14019 (KG) (Bankr. D. Del. Nov. 17, 2009) (authorizing the filing under seal of letters regarding engagement and fees of lenders relating to DIP financing); *In re Adelpia Commc'ns Corp.*, No. 02-41729 (Bankr. S.D.N.Y. Mar. 24, 2004) (authorizing debtors to file a fee letter under seal in connection with debtors' motion for approval of an exit financing arrangement); *see also In re Coach Am. Grp. Holdings Corp.*, No. 12-10010 (Bankr. D. Del. Jan. 5, 2012) (authorizing, over the U.S. Trustee's objection, debtors to file under seal the Letter Agreements underlying the proposed debtor in possession financing); *In re LandSource Communities Dev. LLC*, No. 08-11111

(Bankr. D. Del. Jul. 21, 2008) (authorizing debtors to keep confidential the fee letter underlying proposed debtor in possession financing under Bankruptcy Rule 9018); *In re WCI Communities, Inc.*, No. 08-11643 (Bankr. D. Del. Sept. 23, 2008) (authorizing, over the U.S. Trustee's objection, the debtors to file under seal the fee letter underlying the proposed debtor in possession financing facility).

15. For these reasons, the Debtors respectfully request the Court to permit the Debtors to file the DIP Fee Letter under seal.

#### **Notice**

16. Notice of this Motion 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; (v) the Internal Revenue Service; and (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

#### **No Previous Request**

17. 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 Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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