

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

BRIGGS & STRATTON
CORPORATION, *et al.*¹

Debtors.

Chapter 11

Case No. 20-43597-399

Jointly Administered

Related to Docket Nos. 53, 300

**PRELIMINARY DECLARATION OF CHRISTOPHER KEARNS IN SUPPORT OF
THE OBJECTIONS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

I, Christopher Kearns, declare under penalty of perjury:

1. I am a Managing Director and co-head of the Corporate Finance practice of Berkeley Research Group, LLC (“BRG”), a professional services firm with offices located at 810 Seventh Avenue, Suite 4100, New York, New York 10019. The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (the “Debtors”) has selected BRG as its financial advisor, and I am authorized to make this declaration (this “Declaration”) on behalf of the Committee in support of (i) the Committee’s joinder to the Ad Hoc Group’s objection (the “Bidding Procedures Objection”) to the *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures; (II) Authorizing (A) Sale of Debtors’ Assets*

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.



*and Equity Interests Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Docket No. 53] (the “Bidding Procedures Motion”), and (ii) the Committee’s objection (the “DIP Objection”, and together with the Bidding Procedures Objection, the “Objections”) to the *Motion Of Debtors 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 Final Hearing And (VII) Granting Related Relief [Docket No. 35] (the “DIP Motion”, and together with the Bidding Procedures Motion, the “Motions”).²**

2. Except as otherwise noted,³ all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ current operations and financial performance, (b) information learned from my review of relevant documents, and (c) information I have received from the Debtors’ professionals. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

QUALIFICATIONS

3. I am a Certified Public Accountant, a Certified Insolvency and Restructuring Advisor, a Certified Turnaround Professional, and a Certified Fraud Examiner. I have over 40 years of financial experience as an auditor, corporate officer and, for approximately the past 29 years, as an advisor or crisis manager in bankruptcy and turnaround matters.

² Capitalized terms not otherwise defined in this Declaration shall have the meaning set forth in the Motions or the Objections, as applicable.

³ Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at BRG and are based on information provided by them.

4. Prior to joining BRG in June 2015, I was one of the founding members of Capstone Advisory Group, LLC (“Capstone”), a financial services consulting firm, founded in January 2004, which provided a vast array of services to businesses. The services provided by Capstone included consultation in business turnaround and restructuring situations, workouts and reorganization, bankruptcy matters, crisis management, transaction advisory and due diligence services, forensic accounting, valuation and dispute resolution services. Prior to co-founding Capstone, from 1991 to 2004, I was a senior managing director of FTI Consulting, Inc. (“FTI”) (and predecessor firms) and the co-leader of FTI’s New York office. My experience and client assignments during that period were substantially similar to the assignments I have performed at Capstone. Representative engagements include Peabody Energy Corp., Nortel, Hertz Global Holdings Inc., Chemtura Corporation, MPM Silicones, Schwinn, Southern Foods Group (Dean Foods), Molycorp, Inc., Starter Corporation, Eastman Kodak, Mirant Corporation, 21st Century Oncology Holdings, Caesars Entertainment Operating Company Inc., McClatchy Co., SunGard Availability Services, and Lyondell Chemical Company.

5. Prior to 1991, I was employed by Bristol-Myers Squibb Company for approximately three years (including serving as Assistant Corporate Controller), and a major international public accounting firm for ten years in the mergers and acquisitions group, and in the audit practice. I have served as a principal financial advisor in numerous complex bankruptcies and restructurings. I have also served as a testifying expert witness in matters concerning solvency, valuation, contract breach, lost profits and various financial/business issues in bankruptcy and restructuring.

6. Additionally, I have gained extensive knowledge and experience through my consultancy and work experience including in the areas of business turnaround and restructuring

situations, out-of-court workouts, bankruptcy matters, crisis management, transaction advisory and due diligence services and dispute resolution.

7. My current billing rate for this matter is \$1,095 per hour. I was assisted by others at BRG, who worked at my direction and under my supervision. My and BRG's compensation is not contingent upon the litigation outcome of this matter.

PRELIMINARY OBSERVATIONS

8. The Committee asked BRG to evaluate the Bidding Procedures Motion, the Debtors' marketing efforts and the DIP Motion.

9. Given that BRG was engaged in the hours before the deadline for filing these Objections, the BRG team has not been able to conduct full diligence to familiarize itself with the: (i) Debtors' operations and business plan; (ii) DIP financing and related budget; and (iii) Debtors' current and prior efforts to market the Debtors' assets.

10. Based on a very preliminary review of the Debtors' filings (including, but not limited to, the declaration of Reid Snellenbarger in support of the Bidding Procedures Motion, the declaration of Jeffrey Lewis in support of the DIP Motion, and the First Day Declaration), a sale of all of the Debtors' assets to KPS Capital Partners, LP ("KPS") for \$550 million in cash consideration does not appear to provide a value-maximizing outcome for the Debtors' stakeholders. Other viable alternatives such as a plan of reorganization or piecemeal sale of the assets may be more value-maximizing options.

A. Proposed Sale to KPS

11. The Debtors' business is comprised of several product lines within its Engines and Products segments. However, it is unclear whether the Debtors have evaluated a potential sale of the various product lines to determine whether the sum of the Debtors' parts is greater

than the whole. The Debtors' Bidding Procedures do not appear to allow for potential bidders to bid on a subset of assets that, when combined with other bids, could generate value greater than the stalking horse bid.⁴ This is so even though the Debtors previously contemplated divestitures of discrete assets. The Company's strategic repositioning plan conveyed to the market included divestitures of the majority of the businesses within the Products Segment (which I understand generated revenues of over \$900 million in FY 2019),⁵ with priority placed in divesting the turf products business (a discrete business within the Products Segment), among other businesses. See Briggs & Stratton Corporation, Strategic Repositioning Plan, dated March 6, 2020 attached to the DIP Objection. During the Company's May 7, 2020 third-quarter earnings call, the Chairman, President and CEO, Todd Teske, in response to an analyst question regarding "prospective asset sales, turf products or otherwise," confirmed that the Company expects over \$195 million in proceeds from discrete asset sales and noted that "especially the turf business, has tremendous value". See Briggs & Stratton Corporation, Earnings Call Transcript, dated May 7, 2020, attached to the DIP Objection. Given the Debtors' expectation that select discrete assets sales, such as the turf products business, could generate over \$195 - \$200 million in sale proceeds, it is possible that separate discrete sales of the Debtors' business lines in the aggregate could result in a greater value than the current \$550 million stalking horse bid.

12. Based on initial observations of the Debtors' disclosures, KPS's stalking horse bid appears to be more consistent with the book value of current asset values and attributes limited value to the Company's going concern operations, intellectual property portfolio, joint venture

⁴ To be considered a "Qualified Bid", a bid must equal or exceed \$570.25 million, *i.e.*, the Stalking Horse Bid (\$550 million), plus the Break-up Fee (\$16.5 million), plus the Expense Reimbursement (\$2.75 million), plus a \$1 million minimum overbid. See Bidding Procedures, p. 7. Thus, the Debtors are free to reject a bid for a subset of assets that may be providing greater value to the Debtors' estates on a sum-of-the-parts basis because it does not equal KPS's stalking horse bid, which, of course, is for substantially all of the assets.

⁵ See Briggs & Stratton Corporation, Current Report on Form 8-K, dated July 13, 2020, Ex. 99-1 (the "June 2020 Business Plan"), attached to the DIP Objection.

businesses or other assets. I note that the June 2020 Business Plan shows a return to pre-COVID levels of profitability with higher projected EBITDA margins. For example, in the fiscal year ending June 30, 2023, the Debtors are projecting approximately \$1.9 billion and \$190 million in net sales and EBITDA, respectively.⁶ A standard discounted cash flow methodology applied to these projections would show a valuation that substantially exceeds the stalking horse bid. In the Debtors' June 2020 Business Plan, the Debtors project aggregate inventory and accounts receivable amounts of \$645 million at FYE 2020 (as well as \$569 million at FYE 2021; \$598 million at FYE 2022; and \$601 million at FYE 2023). *See* Current Report on Form 8-K, dated July 13, 2020, Ex. 99-1, at 30, attached to the DIP Objection. The stalking horse bid also seems to indicate that the DIP Lenders have loaned money at 100% loan-to-value with no collateral cushion – unlikely in any market environment, let alone during current market conditions.

13. The Debtors indicate that Houlihan Lokey was initially retained by the Company on April 8, 2020 to assist the Company in its debt and capital matters, including raising additional capital to address its near-term liquidity needs as well as the 2020 maturity of the Unsecured Notes. Houlihan Lokey was tasked with exploring balance sheet restructuring alternatives as well as pursuing a capital raise. Houlihan Lokey contacted over 100 potential investors in connection with the Debtors' attempted capital raise process and apparently subsequently pivoted to a sale. Based on the Debtors' disclosures, the refinancing process resulted in 8 proposals, 2 of which were solely for DIP financing, 1 sought a change of control, and 5 provided for DIP financing and change of control provisions, which ostensibly led to the ongoing sale process.

⁶



14. I understand that Houlihan Lokey began their capital raise process at the height of the COVID-19 pandemic in April when the capital markets were substantially less liquid than they are currently. The Debtors' efforts ultimately generated interest with certain parties submitting term sheets by May 29. However, it is not clear that the Debtors and their advisors engaged in a fulsome sale process, instead selecting a stalking horse bidder from potential lenders who counter-offered a purchase of substantially all of the assets of the Company. In my opinion, given these circumstances, additional time is needed to market the Debtors' assets.

15. KPS' stalking horse bid is also chilling on the bid process when nearly half of its purchase price comes in the form of a DIP loan credit bid in addition to approximately \$20 million in "bid protections,"⁷ plus a potential DIP prepayment penalty if the KPS bid is not approved. While in a stand-alone scenario, the bid protections appear to be "market," when combined with the DIP loan credit bid by KPS (on which KPS is also receiving DIP fees and interest), the total package of compensation to KPS may be excessive. Other provisions of the bid procedures such as: (i) not allowing partial sale bids; or (ii) requiring a 10% cash deposit requirement due within two-and-a-half weeks of entry of the Bidding Procedures Order also deter potential bidders from submitting competing bids.⁸

16. The outreach that the Committee advisors have received from one of the potential bidders thus far (who has also filed an objection to the Bidding Procedures Motion) already suggests that a proper evaluation of the Debtors' business and marketing efforts as well as

⁷ The Bidding Procedures Motion seeks approval of the following "bid protections" related to KPS's proposed stalking horse bid: (a) \$16.5 million of 3% of the \$550 million gross purchase price (afforded allowed superpriority administrative expense status); (b) \$2.75 million expense reimbursement (afforded allowed superpriority administrative expense status); (c) right to credit bid up to the full amount of the outstanding obligations under the DIP facility.

⁸ Considering the requirement of a \$570.25 million minimum initial overbid, this requires bidders to post a deposit of more than \$57 million in cash in two-and-a-half weeks of entry of the Bidding Procedures Order in order to participate in the auction and sale process.

overall case strategy would be justified and potentially fruitful. *See* Objection of General Power Systems [Dkt. No. 367].

B. Proposed DIP Financing

17. The DIP Facilities contain aggressive milestones that essentially force the Debtors to accept KPS's bid, including the stalking horse bid or an ABL Lenders' credit bid, that appears to undervalue the assets. The proposed milestones are particularly troublesome here where KPS, in addition to being the stalking horse bidder, is also the sole DIP Lender under the DIP Term Loan Facility. Given the inextricably linked nature of the DIP Facilities, the KPS bid, and the proposed sale process, it is appropriate to consider the chilling implications on the sale process when considering the Debtors' request for approval of the DIP Facilities.

18. [REDACTED]

[REDACTED]

19. In my opinion, there is no apparent observable reason why the Debtors should not pursue potential alternatives, including a proper marketing process for the Debtors' assets and a

simultaneous exploration of the possibility for a plan of reorganization alternative. The Bidding Procedures Motion and the Debtors' DIP Motion would effectively preclude this prudent course of action. The current timeline sought through the Motions has predetermined the trajectory of this cases at the outset. In any event, the timeline and structure of the Bidding Procedures Motion and the DIP Motion would likely hinder a full realization of the value of the Debtors' assets, benefiting the ABL Lenders to the detriment of the Debtors' other stakeholders.

20. For the foregoing reasons, in my opinion, the Debtors need additional time to re-assess their Chapter 11 case strategy in order to reach a value-maximizing outcome for all of the Debtors' constituents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 13, 2020

/s/ Christopher Kearns
Christopher Kearns