

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON CORPORATION, <i>et al.</i> ,	§	Case No. 20-43597-399
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	Re: Docket No. 1428

**STIPULATION AND AGREED ORDER RESOLVING
INFORMAL OBJECTION OF MERCER (US) INC. AND
ITS AFFILIATES TO ASSUMPTION OF CERTAIN EXECUTORY
CONTRACTS PURSUANT TO PLAN AND FIXING OF CURE AMOUNTS**

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), and Mercer (US) Inc., on behalf of itself and its subsidiaries and affiliates, Mercer HR Services LLC, and Mercer Human Resource Consulting Inc. (collectively “**Mercer**,” and together with the Debtors, the “**Parties**”), hereby enter into this stipulation (the “**Stipulation**”), and represent, agree, and request the court to so order as follows:

Recitals

A. On July 20, 2020, the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”).

B. On July 27, 2020, the Court entered the *Order Authorizing Debtors to Employ Professionals Used in the Ordinary Course of Business* [Docket No. 351] (the “**OCP Order**”), authorizing the Debtors to retain and compensate professionals used by the Debtors in the ordinary course of business. Pursuant to the OCP Order and the *Declaration and Disclosure Statement of James W. Kelly, On Behalf of Mercer (US) Inc.* [Docket No. 682], filed on August 31, 2020 (the “**Mercer Declaration**”), the Debtors retained Mercer as an ordinary course



professional for postpetition retirement consulting and actuarial services with respect to the Debtors' defined benefit retirement plans, supplemental retirement plans, and post-retirement medical plans (the "**Services**").

C. In connection with the Services, Mercer and Briggs & Stratton Corporation are party to eleven (11) contracts (collectively, the "**Mercer Contracts**").

D. On August 24, 2020, the Court entered its *Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto and (II) Approving Form and Manner of Notice Thereof* [Docket No. 564] (the "**Bar Date Order**") establishing October 7, 2020 at 11:59 p.m. (prevailing Central Time) as the general bar date for certain claims, including claims under section 503(b)(9) of the Bankruptcy Code.

E. On October 9, 2020, the Debtors filed the *Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Docket No. 1066], as amended by amended chapter 11 plans filed on November 9, 2020 [Docket No. 1226] and December 16, 2020 [Docket No. 1369] (as amended, the "**Plan**"). On December 18, 2020, the Court entered an order confirming the Plan [Docket No. 1485].

F. In connection with the Plan, on December 4, 2020, the Debtors filed the *Notice of Filing of Plan Supplement in Connection With Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Docket No. 1369], which included, as Exhibit C, a schedule of certain executory contracts and an unexpired lease to be assumed by the Debtors on the Effective Date (as defined in the Plan, the "**Plan Effective Date**") pursuant to the Plan (the "**Assumption Schedule**").

G. On December 16, 2020, the Debtors filed the *Notice of Filing of Amended Exhibit C to Plan Supplement in Connection with Amended Joint Chapter 11 Plan of Briggs &*

Stratton Corporation and Its Affiliated Debtors [Docket No. 1428] (the “**Amended Assumption Schedule**”), amending the Assumption Schedule.

H. The Assumption Schedule and the Amended Assumption Schedule listed the Mercer Contracts for assumption by the Debtors on the Plan Effective Date with a \$0.00 cure amount for each Mercer Contract (the “**Asserted Cure Amount**”).

I. On December 29, 2020, Mercer informally objected to the Asserted Cure Amount, asserting an aggregate cure amount for the Mercer Contracts in the amount of \$64,485.00 in connection with unpaid prepetition Services (the “**Informal Cure Objection**”).

J. The Parties have agreed, subject to approval of the Court, to resolve the Informal Cure Objection, subject to the terms and conditions set forth below.

IT IS HEREBY ORDERED, STIPULATED, AND ADJUDGED AS FOLLOWS:

1. This Stipulation shall be effective and binding immediately upon entry of the Stipulation by the Court.

2. On the Plan Effective Date or as reasonably practicable thereafter, the Debtors, the Wind-Down Estates (as defined in the Plan), or the Plan Administrator (as defined in the Plan), as applicable, shall pay \$64,485.00 (the “**Amended Cure Amount**”) to Mercer as an aggregate cure cost for the Mercer Contracts.

3. Payment of the Amended Cure Amount to Mercer as provided in Paragraph 2 herein, shall be deemed to have waived any and all claims against the Debtors and the Debtors’ bankruptcy estates on account of, arising out of, or related to the Mercer Contracts in connection with the prepetition Services as of the Plan Effective Date.

4. For the avoidance of doubt, the Mercer Contracts shall be deemed assumed by the Debtors and their estates as of the Plan Effective Date.

5. This Stipulation contains the entire agreement between the Parties and supersedes all prior agreements and undertakings between the Parties thereto.

6. Nothing in this Stipulation shall be considered an admission of any breach, wrongdoing, negligence, omission, liability or fault on the part of either of the Parties. The Parties are entering into this Stipulation as a commercial compromise on disputed claims and solely to resolve the claims that are addressed herein. Nothing in this Stipulation, nor anything done pursuant hereto, shall be deemed or construed as modifying, or establishing any precedent, interpretation, or course of dealing under any contract or agreement made between the Parties.

7. This Stipulation may not be modified other than by a signed writing executed by the Parties hereto or by further order of the Court.

8. Each person who executes this Stipulation on behalf of a party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such party.

9. The Debtors, the Wind-Down Estates (as defined in the Plan), and the Plan Administrator (as defined in the Plan), as applicable, are authorized to execute, deliver, implement, and fully perform any and all obligations, instruments and papers and to take any and all actions reasonably necessary or appropriate to perform any and all of the Debtors' obligations set forth in, or contemplated by, the Stipulation.


10. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person. Nothing herein is to be considered and/or construed as a waiver or release of any requirements pursuant to the Bar Date Order.

11. The Stipulation and all of the provisions hereof shall be binding upon and shall inure to the benefit of all Parties, and each of their respective successors or assigns.

12. The Debtors shall serve a copy of this Stipulation no later than two (2) business days after the date of its entry. The Debtors shall also file a certificate of service within twenty-four (24) hours of making service of this Stipulation.

DATED: January 6, 2021
St. Louis, Missouri

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Barry S. Schermer
United States Bankruptcy Judge

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SO STIPULATED:

By: /s/ James W. Kelly
Date: January 5, 2021

By: /s/ Ronit J. Berkovich
Date: January 5, 2021

MERCER (US) INC.

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