

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)
	§
	§ Hearing Date: January 13, 2022
	§ Hearing Time: 2:00 p.m. (Central Time)
	§ Hearing Location: Courtroom 5 North
	§ 111 S. 10th St., St. Louis, MO 63102

**NOTICE OF THE PLAN ADMINISTRATOR’S OBJECTION TO CREDITOR  
DANTHERM S.p.A.’s RECLAMATION CLAIM IN AMENDED CLAIM No. 53-3**

**THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO REDUCE THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES.**

**IF YOU CHOOSE TO RESPOND, A WRITTEN RESPONSE MUST BE FILED WITH THE CLERK OF COURT, U.S. BANKRUPTCY COURT, 111 SOUTH TENTH STREET, 4TH FLOOR, ST. LOUIS, MISSOURI 63102, AND A COPY SERVED UPON COUNSEL TO THE PLAN ADMINISTRATOR, (A) HALPERIN BATTAGLIA BENZIJA LLP, 40 WALL STREET, 37<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10005 (ATTN: JULIE DYAS GOLDBERG, ESQ. AND MATTHEW T. MURRAY, ESQ.) AND (B) CARMODY MACDONALD P.C., 120 S. CENTRAL AVENUE, SUITE 1800, ST. LOUIS, MISSOURI 63105 (ATTN: DORMIE KO, ESQ.), SO THAT THE RESPONSE IS RECEIVED NO LATER THAN 11:59 P.M. (PREVAILING CENTRAL TIME) ON JANUARY 6, 2022.**

**FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE. YOU SHOULD READ THIS NOTICE AND THE ACCOMPANYING MOTION CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE.**

**Important Information Regarding the Objection**

1. **Grounds for the Objection.** By this Objection,<sup>1</sup> the Plan Administrator, on behalf of the Wind-Down Estates of the Debtors, is seeking to reclassify the claim identified on **Exhibit A** attached to the proposed order (the “**Claim**”).

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Debtors’ Second Amended Joint Plan (the “**Plan**”).



### **Resolving the Objection**

2. **Parties Required to File a Response.** If you disagree with the Objection filed with respect to your Claim, you may file a response (each, a “**Response**”) with the Court in accordance with the procedures described below and appear at the Hearing (as defined herein).

3. **Response Contents.** Any Response should contain the following (at a minimum):

- a. a caption stating the name of the Court, the name of the Debtors, the case number, and the Objection and claim to which the Response is directed;
- b. a concise statement setting forth the reasons why the Court should not grant the Objection with respect to such Claim, including the factual and legal bases upon which you rely in opposing the Objection;
- c. copies of documentation or other evidence of your Claim (not previously filed with proof of such Claim) on which your Response is based (excluding confidential, proprietary, or other protected information, copies of which must be provided to the counsel to the Plan Administrator, subject to appropriate confidentiality constraints, if any); and
- d. the following contact information:
  - (i) your name, address, telephone number, and email address or the name, address, telephone number, and email address of your attorney or designated representative to whom the attorneys for the Plan Administrator should serve a reply to the Response, if any; or
  - (ii) the name, address, telephone number, and email address of the party with authority to reconcile, settle, or otherwise resolve the Objection on your behalf (to the extent different from the information detailed in paragraph 3(d)(i) above).

4. **Response Deadline.** Your Response must be filed with the Court and served so as to be *actually received* by **11:59 p.m. (Central Time) on January 6, 2022** (the “**Response Deadline**”).

5. **Failure to Respond.** A Response that is not filed and served in accordance with the procedures set forth herein may not be considered by the Court at the Hearing. **Absent an agreement with the Plan Administrator resolving the Objection to a Claim, failure to timely file and serve a Response as set forth herein and appear at the Hearing may result in the Court granting the Objection without further notice or hearing.** Upon entry of an order, you will be served with a notice of entry, and a copy, of the order.

### **Hearing on the Objection**

6. **Date, Time, and Location.** If necessary, a hearing (the “**Hearing**”) on the Objection will be held on **January 13, 2022 at 2:00 p.m. (Central Time) in the United States Bankruptcy Court for the Eastern District of Missouri, 5th Floor, North Courtroom, Thomas F. Eagleton United States Courthouse, 111 South Tenth Street, St. Louis, Missouri.** Such Hearing may be adjourned from time to time in these chapter 11 cases in the Plan Administrator’s sole discretion. **You must attend the Hearing if you disagree with the Objection and have filed a Response.** If you file a Response in accordance with the response procedures herein, but such Response is not resolved prior to the Hearing, and you appear at the Hearing, the Objection may be heard at the Hearing or adjourned to a subsequent hearing in the Plan Administrator’s sole discretion. If a subsequent hearing is determined to be necessary, the Plan Administrator will file with the Court and serve you with a notice of the subsequent hearing (the date of which will be determined in consultation with the affected claimant(s)).

### **Additional Information**

7. **Questions or Information.** Copies of the pleadings (collectively, the “**Pleadings**”) filed in these chapter 11 cases are available at no cost at the Debtors’ case website <http://www.kccllc.net/Briggs>. You may also obtain copies of any of the Pleadings filed in these chapter 11 cases for a fee at the Court’s website at <https://pcl.uscourts.gov/pcl/>. A login identification and password to the Court’s Public Access to Court Electronic Records (“**PACER**”) are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>.

### **Reservation of Rights**

**NOTHING IN ANY OBJECTION OR OBJECTION NOTICE IS INTENDED OR SHALL BE DEEMED TO CONSTITUTE (I) AN ADMISSION AS TO THE VALIDITY OF ANY PREPETITION CLAIM AGAINST A DEBTOR; (II) A WAIVER OF ANY PARTY’S RIGHT TO DISPUTE ANY PREPETITION CLAIM ON ANY GROUNDS; (III) A PROMISE OR REQUIREMENT TO PAY ANY PREPETITION CLAIM; (IV) AN IMPLICATION OR ADMISSION THAT ANY PARTICULAR CLAIM IS OF A TYPE SPECIFIED OR DEFINED IN THE MOTION OR ANY ORDER GRANTING THE RELIEF REQUESTED BY THE MOTION; (V) A REQUEST OR AUTHORIZATION TO ASSUME ANY PREPETITION AGREEMENT, CONTRACT, OR LEASE PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE; OR (VI) A WAIVER OF THE PLAN ADMINISTRATOR’S RIGHTS UNDER THE BANKRUPTCY CODE OR ANY OTHER APPLICABLE LAW.**

Dated: November 22, 2021  
St. Louis, Missouri

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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-and-

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*Counsel to the Plan Administrator*

**EXHIBIT A**

**Schedule of Claim**

**Exhibit A**

*Briggs & Stratton Corp., et al.*

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Claimant Name and Address	Case Number	Debtor Name	Claim Number	Date Filed	Asserted		Modified Claim Amount and Priority	
					Claim Amount and Priority			Priority
1) Dantherm S.P.A.  Via Gardesana 11 Pastrengo, VR 37010 Italy	20-43598	Allmand Bros., Inc.	53	1/18/2021	Secured:	\$517,754.98	Secured:	\$0.00
					Administrative:	\$0.00	Administrative:	\$0.00
					Priority:	\$0.00	Priority:	\$0.00
					Unsecured:	\$441,822.41	Unsecured:	\$959,577.39
					Total:	\$959,577.39	Total:	\$959,577.39

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DANTHERM S.p.A.'s RECLAMATION CLAIM IN AMENDED CLAIM No. 53-3**

**THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO RECLASSIFY THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES.**

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Alan D. Halperin as Plan Administrator (the “**Plan Administrator**”) under the *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors*, dated November 9, 2020 [Docket No. 1226] (the “**Plan**”),<sup>1</sup> hereby files this objection (the “**Objection**”)

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

to the reclamation claim asserted in Dantherm S.p.A.'s ("**Dantherm**") amended Claim No. 53-3 (the "**Reclamation Claim**") and in support thereof states as follows:

**Preliminary Statement**

1. Dantherm's asserted "secured and/or priority reclamation claim . . . [of] \$517,754.98" (the "**Reclamation Claim**") should be reclassified as an unsecured claim in the amount of \$517,754.98.

2. While a secured lender's prior perfected and secured lien in substantially all of a debtor's assets usually subordinates an asserted reclamation claim, reclamation claims can be salvaged where the prior lienholder is oversecured and has received payment in full on account of their secured claim, as is the case here. However, such a circumstance is not an automatic validation of a reclamation claim. Rather, the claimant must be able to specifically trace the proceeds of the goods it sold to the debtor as being outside of the proceeds used to pay the secured creditor's claim. Here, Dantherm has not established its right to a reclamation claim as it has not met its burden of identifying the traceable proceeds from the specific goods that it sold to Allmand Bros., Inc. ("**Allmand**") in the 21-45 day period prior to the Petition Date. Without tracing the proceeds of its goods, Dantherm would be able to recover proceeds from goods that it did not sell to the detriment of all other unsecured creditors in these cases, including many trade creditors who are similarly situated to Dantherm. Such a result would expand Dantherm's state law reclamation rights, which is neither permitted under the Bankruptcy Code nor a just and equitable result given the facts and circumstances of these cases in which unsecured creditors of Allmand are estimated to receive a recovery in the range of one to two percent (1% - 2%).



### **Background**

3. On July 20, 2020 (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.

4. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only 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**”).

5. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets<sup>2</sup> to Bucephalus Buyer, LLC and on September 21, 2020, the Debtors closed the Sale Transaction.<sup>3</sup> On December 16, 2020, the Debtors filed the Plan, which was confirmed by the *Findings of Fact, Conclusions of Law, and Order Confirming the Plan* on December 18, 2020 [Docket No. 1485].

6. The Effective Date of the Plan occurred on January 6, 2021 and the *Notice of Entry of Order Confirming the Plan and Occurrence of the Effective Date* [Docket No. 1538] was filed, at which time the Creditors’ Committee was relieved of its duties and the Plan

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<sup>2</sup> *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

<sup>3</sup> *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, and (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

Administrator took over the administration of the Wind-Down Estates in accordance with the Plan. The Wind-Down Estates continue to honor their post-closing sale obligations, wind down the estates, and otherwise work on concluding these chapter 11 cases.

7. Prior to the Petition Date, the Debtors and Dantherm had a business relationship in which Debtor Allmand purchased from Dantherm heaters that were then installed in trailers manufactured by Allmand.

8. The Plan Administrator understands that the trailers at issue in Dantherm's Reclamation Claim were included in the Sale Transaction and, upon information and belief, that the Dantherm heaters were or were scheduled to have been installed in such trailers.

#### **Jurisdiction**

9. 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**

10. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007(d)(6), and Local Rule 3007(C), the Plan Administrator respectfully requests that the Court enter an order reclassifying Dantherm's Reclamation Claim as a general unsecured claim.

#### **Objection**

##### **I. Dantherm Cannot Trace the Proceeds of its Goods Sold to Allmand.**

11. Section 546(c) preserves a seller's state law right under the Uniform Commercial Code to reclaim goods it sold on credit to an insolvent purchaser. *Pester Refining Co. v. Ethyl Corp. (In re Pester Refining Co.)*, 964 F.2d 842, 845 (8th Cir. 1991). A reclaiming seller must satisfy the following four-part test:

- i. the debtor was insolvent at the time the goods were delivered by the seller;

- ii. a written demand was made on the debtor within ten days after the goods were delivered to the debtor;
- iii. the goods were identifiable at the time the demand was made; and
- iv. the goods were in the possession and control of the debtor at the time the demand was made.

*Monfort, Inc. v. Kunkel (In re Morken)*, 182 B.R. 1007, 1016 (Bankr. D. Minn. 1995). The seller's reclamation rights are subject to the rights of a good faith purchaser or a lien creditor. Mo. Rev. Stat. § 400.2-702(3); *In re Pester Refining Co.*, 964 F.2d at 845.

12. Not all reclamation rights survive after secured claims are paid in full from a sale of substantially all of a debtor's assets. Reclamation rights derive from state law and, under Mo. Rev. Stat. § 2-702, only extend to the particular goods, or proceeds thereof, sold to the buyer. *In re Bridge Info. Sys., Inc.*, 288 B.R. 133, 138-39 (Bankr. E.D. Mo. 2001) (citing *In re Pester Refining Co.*, 964 F.2d at 847).

13. Multiple decisions in the Eight Circuit and other courts state that in order for a creditor to establish a reclamation claim, the creditor must meet its burden of identifying traceable proceeds from the specific goods it sold to the debtor. *In re Pester Refining Co.*, 964 F.2d at 847 (requiring traceable proceeds be available for a seller to succeed on a reclamation claim); *In re Specialty Shops Holding Corp.*, No. 8:19CV405, 2020 U.S. Dist. LEXIS 130933 (D. Neb. July 24, 2020) (seller fell short on its burden to establish a valid reclamation claim because it did not identify any traceable proceeds of the goods); *In re Bridge Info. Sys., Inc.*, 288 B.R. at 138-39 (in *dicta*, the court states that even if the lender in the case were over-secured, the seller did not produce evidence it could trace the proceeds from the goods); *In re Buyer's Club Mkts., Inc.*, 100 B.R. 37, 38 (Bankr. D. Colo. 1989) (noting a reclaiming seller failed to show it traced or could trace proceeds); *Galey & Lord Inc. v. Arley Corp. (In re Arlco, Inc.)*, 239 B.R. 261 (Bankr. S.D.N.Y. 1999) (recognizing a reclaiming seller is only entitled to proceeds traceable by the court).

14. In this instance, without a specific finding that proceeds of the goods which comprise the Reclamation Claim can be traced to the surplus of proceeds which remained with Allmand, Dantherm cannot be allowed to recover proceeds from goods that it did not sell to Allmand. To do so would give Dantherm greater rights in the bankruptcy proceeding than it would be entitled to under state law, a result not permitted under section 546(c). *See In re Dairy Mart Convenience Stores, Inc.*, 302 B.R. 128, 134 (Bankr. S.D.N.Y. 2003) (“The reclaiming seller is only entitled to receive what it would have received outside of the bankruptcy context after the superior claim was paid.”) (citing *In re Pester Refining Co.*, 964 F.2d at 847). Once secured creditors are paid in full, a reclaiming seller is only entitled to reclamation rights when the surplus collateral remaining consists of the very goods sold by the reclaiming seller or the traceable proceeds from those goods. *In re Bridge Info. Sys., Inc.*, 288 B.R. at 138 (“Thus, [the seller’s] reclamation rights only extend[] to the goods or its traceable proceeds.”). Merely identifying that there exists excess collateral or generalized proceeds over and above all prior lienholders is not enough for a reclamation claimant to prevail; rather, the reclamation claimant must identify the traceable proceeds of the specific goods that it sold to the debtor.

15. Dantherm has not provided evidence to accompany its Reclamation Claim that identifies the proceeds from the specific goods that it sold to Allmand. Additionally, the Plan Administrator does not believe that any measures were taken to itemize and apportion the sale proceeds with respect to specific items in inventory – much less specific parts of assembled items in inventory (such as the Dantherm heaters used in fully assembled Allmand trailers) – that comprised the assets sold pursuant to the Sale Transaction. The Sale Transaction comprised the purchase of substantially all of the stock, interests, and/or assets in thirty-seven (37) entities across more than twenty (20) countries and five (5) continents. It is unrealistic, in such a sale of an

insolvent enterprise, to determine the value of not only each specific asset, but each component part of an asset. Indeed, upon information and belief, the Plan Administrator does not believe any such valuation was undertaken in this instance. Accordingly, as sale proceeds cannot be traced to the level of even an Allmand trailer (much less a heater within such a trailer), Dantherm cannot succeed in tracing the sale proceeds that were used to satisfy secured lender claims as opposed to the funds for the administration of the estates, the funds for the benefit of creditors of all types, etc.<sup>4</sup> Stated simply, the Plan Administrator asserts that Dantherm has not and cannot meet its evidentiary burden to trace the proceeds of the goods sold to Allmand in the 21-45 day period to the surplus cash after payment of the secured lienholders' claims.

**II. Section 546(c) Does Not Give Dantherm any Rights in the Proceeds of the Goods Sold.**

16. Section 546(c) grants the reclaiming seller the right to reclaim only the goods themselves, not the proceeds thereof. *In re Circuit City Stores, Inc.*, 441 B.R. 496, 511 (Bankr. E.D. Va. 2010); 11 U.S.C. § 546(c) (referring only to the “right of a seller of goods that has sold goods to the debtor . . . to reclaim such goods . . .”). Prior to BAPCPA, when a court denied a seller a valid right to reclaim its goods in a bankruptcy case, the court would provide the seller with an administrative claim or a junior lien. *In re Circuit City Stores, Inc.*, 441 B.R. at 507. Among the many amendments made by BAPCPA, former subsection (c)(2) was deleted from section 546 and replaced with an entirely new provision that does not provide the seller an administrative claim or a junior lien. *Id.*

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<sup>4</sup> For a frame of reference, there were more than \$2.2 billion in unsecured claims filed in these cases, of which substantially more than \$100 million relate to trade claims such as those of Dantherm. Trade and other unsecured creditors are estimated to receive a recovery of only 6% - 8% at the Briggs level and 1% - 3% at the Allmand level, according to the Disclosure Statement. It would be inaccurate, erroneous, and unreasonable to presume that the funds that remain for distribution are somehow skewed toward sale proceeds traceable to Dantherm's former goods (or, for that matter, the goods of any one given creditor), given the low amount of funds available for distribution, even when compared solely to trade debt as opposed to general unsecured debt on the whole.

17. Here, the goods that Dantherm sold to Allmand have long been sold as part of the Sale Transaction and, therefore, in the absence of any statutory language permitting Dantherm an administrative claim or junior lien, Dantherm is not entitled to have its Reclamation Claim paid in full.

18. Accordingly, Dantherm's Reclamation Claim should be properly classified as an unsecured claim.

### **Reservation of Rights**

19. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors or the Wind-Down Estates, (ii) a waiver or limitation of rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

### **Notice**

20. Notice of this Objection will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri (Attn: Sirena Wilson, Esq.); (ii) the claimant; (iii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (iv) any other party entitled to notice pursuant to the Omnibus Procedures Order (collectively, the "**Notice Parties**").

**No Previous Request**

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

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Plan Administrator respectfully requests (a) entry of an Order reclassifying Dantherm's Reclamation Claim in the amount of \$517,754.98 as an unsecured claim, and together with Dantherm's remaining \$441,822.41 unsecured claim, resulting in a remaining allowed general unsecured claim of \$959,577.39; and (b) such other and further relief as the Court may deem just and appropriate.

Dated: November 22, 2021  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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*Local Counsel to the Plan Administrator*

-and-

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*Counsel to the Plan Administrator*



**EXHIBIT A**

**Schedule of Claim**

**Exhibit A**

*Briggs & Stratton Corp., et al.*

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Claimant Name and Address	Case Number	Debtor Name	Claim Number	Date Filed	Asserted		Modified Claim Amount and Priority	
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					Administrative:	\$0.00	Administrative:	\$0.00
					Priority:	\$0.00	Priority:	\$0.00
					Unsecured:	\$441,822.41	Unsecured:	\$959,577.39
					Total:	\$959,577.39	Total:	\$959,577.39

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