

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.
§ Hearing Location: Courtroom 5 North

APPLICATION OF DEBTORS FOR AN ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT
OF FOLEY & LARDNER LLP AS SPECIAL COUNSEL FOR
THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) file this application (this “**Application**”) for entry of an order (the “**Proposed Order**”), pursuant to sections 327(e), 328, 329, 330, 331, 1107, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014 and 2016-1 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Rules**”), authorizing the retention and employment of Foley & Lardner LLP (“**Foley**”) as special counsel to the Debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), effective as of the Petition Date (as defined below). In support of this Application, the Debtors submit and rely upon the *Declaration of Patrick G. Quick in Support of Application of Debtors for an Order Authorizing the Retention and Employment of Foley & Lardner LLP as*

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.



Special Counsel for the Debtors Effective as of the Petition Date, attached hereto as Exhibit A (the “**Quick Declaration**”), and the *Declaration of Kathryn M. Buono in Support of Application of Debtors for an Order Authorizing the Retention and Employment of Foley & Lardner LLP as Special Counsel for the Debtors Effective as of the Petition Date*, attached hereto as Exhibit B (the “**Buono Declaration**”). In further support of this Application, the Debtors respectfully state as follows:

Background

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under 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 the Chapter 11 Cases. The Debtors have also filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Federal Rule 1015(b) and Local Rule 1015(b).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for residential and commercial 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 the 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, which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The United States Bankruptcy Court for the Eastern District of Missouri (the “**Court**”) has jurisdiction to consider this Application 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 the Proposed Order authorizing them to retain and employ Foley to serve as their special counsel, effective as of the Petition Date, in accordance with the terms and conditions set forth in that certain Engagement Letter, dated October 1, 2019 (the “**Engagement Agreement**”), a copy of which is attached to the Quick Declaration as Appendix 3 and incorporated herein by reference.

Applicable Authority

5. Bankruptcy Code Section 327(e) provides the following:

The [debtor in possession], with the court’s approval, may employ, for a specified special purpose, other than to represent the [debtor in possession] in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

6. Bankruptcy Code Section 327(e), thus, authorizes the retention of an attorney who previously represented a debtor prior to the commencement of its bankruptcy case, provided that: (a) such retention is for a special purpose; (b) the purpose of the retention is not to conduct the chapter 11 cases; (c) the retention is in the best interests of the debtor’s estate; and (d) the attorney

does not hold any interest adverse to the debtor with respect to the subject of its retention. Of note, Bankruptcy Code Section 327(e) does not require that special counsel be “disinterested,” just that special counsel not hold or represent interests adverse to the debtor. *See* COLLIER ON BANKRUPTCY ¶ 327.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (“[T]he ‘disinterested’ test of section 327(a) does not apply to section 327(e) . . .”). Thus, retaining an attorney under Bankruptcy Code Section 327(e) does not require the same searching inquiry required for a debtor to retain general bankruptcy counsel under Bankruptcy Code Section 327(a). *See Meespierson Inc. v. Strategic Telecom Inc.*, 202 B.R. 845, 847 (D. Del. 1996) (“[S]pecial counsel employed under [section] 327(e) need only avoid possessing a conflict of interest concerning the matter at hand.”).

7. Furthermore, Bankruptcy Code Section 1107(b) provides that “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.” 11 U.S.C. § 1107(b).

8. Bankruptcy Rule 2014(a) requires that an application for retention include the following:

[S]pecific 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, any proposed arrangement for compensation, and, to the best of the applicant’s knowledge, all of the [firm’s] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

FED. R. BANKR. P. 2014(a).

9. The Debtors submit that, for all the reasons stated in this Application and in the Quick Declaration and Buono Declaration, their proposal to retain and employ Foley as special counsel is appropriate under Bankruptcy Code Section 327(e) and Bankruptcy Rule 2014(a).

Foley's Qualifications

10. The Debtors seek to retain Foley as their special counsel because, among other reasons, (a) Foley and its partners have represented certain of the Debtors for over 20 years in connection with a variety of corporate, financing, transactional, litigation, intellectual property, and other matters, and therefore, Foley is familiar with the Debtors' operations, business, capital structure, material agreements, and potential legal issues that may arise during the pendency of the Chapter 11 Cases, and (b) Foley has extensive experience and knowledge in the field of debtors' and creditors' rights and business reorganizations and specific expertise and experience representing companies in the manufacturing industry.

11. Foley and its partners have represented the Debtors in a variety of matters involving, among other things, employee benefits, bankruptcy and reorganization consultation and litigation, data security, corporate governance, credit transactions, contracting, tax, intellectual property, commercial litigation, consumer litigation, health & safety, and trade compliance (collectively, the "**Represented Matters**"). Due in large part to the Represented Matters, Foley has become substantively familiar with the Debtors' assets and operations.

12. Foley and its partners have been actively involved in major chapter 11 cases over the last decade and have represented numerous debtors in chapter 11 cases. *See, e.g., In re Diamondback Industries, Inc.*, Case No. 20-41504 (Bankr. N.D. Tex.) (engaged as debtors' bankruptcy counsel); *In re PNW Healthcare Holdings, LLC*, Case No. 19-43754 (Bankr. W.D. Wash.) (same); *In re Reagor-Dykes Motors, LP*, Case No. 18-50214 (Bankr. N.D. Tex.) (engaged as debtors' bankruptcy counsel); *In re Exco Services, Inc.*, Case No. 18-30167 (Bankr. S.D. Tex.) (same); *In re Hooper Holmes, Inc. d/b/a Provant Health*, Case No. 18-23302 (Bankr. S.D.N.Y.) (same); *In re Preferred Care Inc.*, Case No. 17-44642 (Bankr. N.D. Tex.) (same); *In re Highland Capital Management, L.P.*, Case No. 19-34054 (Bankr. N.D. Tex.) (engaged as debtors' special

Texas counsel); *In re AgFeed USA, LLC*, Case No. 13-11761 (Bankr. D. Del) (engaged as debtors' special counsel); and many others.

13. Accordingly, the Debtors believe that Foley is both well qualified and uniquely positioned to represent the Debtors as their special counsel under Bankruptcy Code Section 327(e).

Scope of Services to Be Provided

14. The Debtors anticipate that Foley will, among other things, (a) continue to represent the Debtors with respect to the Represented Matters; (b) provide corporate, finance, employee benefits, environmental, labor, tax, and other related advice to the Debtors in connection with a sale of substantially all of the Debtors' assets (including certain equity interests) under Bankruptcy Code Section 363 (the "**Sale Transaction**"); (b) prepare, on behalf of the Debtors, certain agreements and documents relating to or in furtherance of the advice and matters related to the Sale Transaction; and (c) provide corporate and other related advice to one or more of the Debtors in connection with their business operations during the Chapter 11 Cases.

15. Because of Foley's familiarity with the Debtors' operations and potential issues that may arise in connection with their ongoing business operations and the Sale Transaction, the Debtors believe that it is reasonable and efficient to retain historical corporate counsel for the corporate and transactional work that will be required for the Debtors' continued operations, in addition to the Sale Transaction. This will ensure that the Debtors are being represented by counsel with historical knowledge of the Debtors' assets and obtaining consistent advice regarding the Debtors' ongoing operations and the Sale Transaction, as necessary and appropriate to protect their interests in the Chapter 11 Cases. To engage alternate counsel at this stage of the Debtors' restructuring efforts would be disruptive and extremely costly and would likely adversely affect the Debtors' businesses and the consummation of the Sale Transaction on the timetable necessary for the Debtors to achieve their restructuring objectives.

16. Pursuant to separate retention applications filed with this Court, the Debtors have sought to retain Weil, Gotshal & Manges LLP (“**Weil**”) and Carmody MacDonald P.C. (“**Carmody**”) as general bankruptcy co-counsel to the Debtors. Importantly, the services rendered and functions to be performed by Foley will not be duplicative of work performed by Weil, Carmody, or any other law firms retained by the Debtors. The Debtors have discussed a division of responsibilities with Foley, Weil, and Carmody and intend to monitor carefully these and any other retained legal professionals to ensure a clear delineation of their respective duties and roles so as to prevent duplication of effort.

17. In light of the proposed scope of Foley’s services, the Debtors submit that Foley’s retention is appropriate under Bankruptcy Code Section 327(e), as it is for the limited purpose of representing the Debtors as counsel in connection with the Represented Matters and corporate and transactional matters related to the Sale Transaction. For the reasons noted above, the Debtors further believe that (a) the attorneys at Foley are well qualified to act in that capacity on behalf of the Debtors, and (b) retaining Foley on the terms set forth in the Engagement Agreement and described herein is an efficient and cost-effective means for the Debtors to obtain the requisite services. The proposed retention of Foley is, therefore, in the best interests of the Debtors’ estates and their creditors. Subject to the Court’s approval of this Application, Foley is willing to serve as the Debtors’ special counsel and perform the services described above.

Terms and Conditions of Foley’s Retention

18. The terms and conditions of Foley’s retention are set forth in the Engagement Agreement. As set forth in the Engagement Agreement, Foley intends to charge the Debtors for its services on an hourly or fixed-fee basis, as applicable, and to submit for reimbursement its out-of-pocket expenses and other charges incurred in the course of representing the Debtors, all subject to the Court’s approval and in compliance with the applicable provisions of the Bankruptcy Code,

Bankruptcy Rules, Local Rules, and such procedures or guidelines as may be fixed by order of the Court or otherwise in force in the Chapter 11 Cases. Foley will file periodic applications seeking compensation for its services and reimbursement of its expenses, which will constitute a request for interim payment against Foley's reasonable fees and expenses to be determined at the conclusion of the Chapter 11 Cases.

19. Foley's current hourly rates for matters related to the Chapter 11 Cases are expected to be within the following ranges:

Position	Range of Hourly Rates
Partners	\$520 - \$1,140
Senior Counsel/Of Counsel	\$455 - \$820
Associates	\$305 - \$480
Paraprofessionals	\$195 - \$265

20. While the Engagement Agreement enumerates certain Foley professionals who will provide services to the Debtors, the Debtors and Foley have agreed that other Foley professionals and paraprofessionals will also provide services to the Debtors, as necessary.

21. Foley's hourly rates are set at a level designed to compensate Foley fairly for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. Hourly rates vary with the experience and seniority of the individuals assigned. Foley's proposed hourly rates reflect that the matters in which it is involved are typically national in scope and typically involve great complexity, high stakes, and significant time pressures. The Engagement Agreement sets forth a rate structure negotiated among Foley and the Debtors based on the unique circumstances of that attorney-client relationship. Foley will bill the Debtors at the rates set forth in the

Engagement Agreement, or as otherwise agreed to by the Debtors, pursuant to the terms of the Engagement Agreement.²

22. Further, as set forth in the Engagement Agreement, Foley will continue to provide a **fixed-fee arrangement** for certain matters involving the Debtors' **patents and trademarks**. In addition, as set forth in Exhibit III to the Engagement Agreement, the Debtors will be entitled to the historical discount structure agreed to between Foley and the Debtors pre-bankruptcy in the ordinary course.

23. Other than the potential periodic adjustments described above, Foley's hourly rates and financial terms of the prepetition engagement under the Engagement Agreement, or as otherwise agreed among the Debtors and Foley, are identical to the hourly rates and financial terms of the postpetition engagement proposed herein. Notwithstanding the agreed-upon fee structure set forth in the Engagement Agreement, Foley reviews all time charges and makes adjustments as necessary to correct any inefficiencies that may appear before billing.

24. Consistent with Foley's policy with respect to its other clients, Foley will continue to seek reimbursement for expenses and other charges incurred in the rendition of services, as more particularly described in the Quick Declaration. It is Foley's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also Foley's policy to charge its clients only the amount actually incurred by Foley in connection with such items. These charges and disbursements include (without limitation) costs for electronic data management services, including scanning and document imaging, travel, travel-related expenses,

² Like many of its peer law firms, Foley periodically increases the hourly billing rate of attorneys and paraprofessionals in the form of (a) step increases historically awarded in the ordinary course of business on the basis of advancing seniority and promotion and (b) periodic increases within each attorney's and paraprofessional's current level of seniority.

business meals, computerized research, messengers, couriers, postage, witness fees, and other fees related to trials and hearings. In addition, Foley utilizes the services of overtime secretaries and will bill the Debtors for related overtime secretarial charges. Foley professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

25. As ordinary practice among Foley and the Debtors, Foley engages foreign law firms (the “**Foreign Firms**”) to perform necessary work for the Debtors in foreign jurisdictions. The Foreign Firms then bill Foley for their work, which Foley pays on the Debtors’ behalf. The Debtors then reimburse Foley at the cost of the invoice (the “**Foreign Firm Expenses**”). While the Debtors are seeking the retention of these Foreign Firms under separate requests to the Court, the Debtors anticipate that Foley may be asked to pay the Foreign Firm Expenses on the Debtors’ behalf. Therefore, the Debtors respectfully request that Foley be permitted to continue this practice of paying the Foreign Firm Expenses on the Debtors’ behalf and then seeking reimbursement from the Debtors on a postpetition basis.³

26. In accordance with the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective as of November 1, 2013, issued by the Executive Office of the United States Trustee (the “**U.S. Trustee Guidelines**”), Foley will work with the Debtors to develop a prospective budget and staffing plan, which may be amended as necessary to reflect changed circumstances or unanticipated developments. Foley also intends to make a reasonable effort to comply with requests for information and additional disclosures from the Office of the United

³ As there may be residual, unpaid Foreign Firm Expenses as of the Petition Date, the Debtors request permission to use this arrangement to pay any unpaid, prepetition Foreign Firm Expenses in the ordinary course of business.

States Trustee for the Eastern District of Missouri (the “**U.S. Trustee**”), as set forth in the U.S. Trustee Guidelines, in connection with both this Application and the interim and final fee applications to be filed by Foley in the Chapter 11 Cases.

Compensation Received by Foley from the Debtors

27. As of the Petition Date, Foley had received from the Debtors the amounts set forth in the Quick Declaration as compensation for professional services performed in the year prior to the Petition Date, as well as additional amounts for the reimbursement of reasonable and necessary expenses incurred in connection therewith. Commencing on or about May 15, 2020, the Debtors delivered payments to Foley in advance of receiving legal services (“**Advance Payments**”). As of July 19, 2020, Foley estimates that the amounts of Advance Payments paid to Foley prior to the Petition Date exceeded amounts applied or to be applied as prepetition compensation and reimbursement by approximately \$552,275, which amount is subject to adjustment for any prepetition fees and related expenses not reflected in Foley’s accounting system at the time of such estimate.

28. In view of the excess Advance Payments, as of the Petition Date, the Debtors did not owe Foley any amounts for legal services rendered before the Petition Date. The Debtors respectfully request that Foley be authorized to apply the excess Advance Payments to any outstanding, prepetition fees and related expenses incurred by the Debtors for work performed by Foley for the benefit of the Debtors that had not been processed in Foley’s accounting system as of the Petition Date and any related expenses.

29. Other than as set forth in the Quick Declaration, no arrangement is proposed between the Debtors and Foley for compensation to be paid in the Chapter 11 Cases. Under Bankruptcy Rule 2016(b), Foley has informed the Debtors that, except for sharing arrangements

among the partners of Foley, it has no agreement with any other entity to share any compensation received, nor will any be made, except as permitted under Bankruptcy Code Section 504(b)(1).

30. The Debtors submit that the employment and retention of Foley on the terms and conditions set forth herein is necessary and in the best interests of the Debtors, their estates, and their creditors and should be approved.

Disclosure Concerning No Adverse Interest

31. As noted above, Bankruptcy Code Section 327(e) requires that the attorney proposed to be retained “does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.” 11 U.S.C. § 327(e). To the Debtors’ knowledge, information, and belief, other than as set forth herein or in the Quick Declaration, Foley does not represent or hold any interest adverse to, the Debtors, their creditors, the U.S. Trustee, any persons employed by the U.S. Trustee, the Bankruptcy Judge presiding over the Chapter 11 Cases, or any other party with an actual or potential interest in the Chapter 11 Cases, with respect to the matters on which Foley is to be employed and retained. As set forth in Appendix 2 attached to the Quick Declaration, Foley currently represents or has recently represented the parties in interest described therein in matters wholly unrelated to the matters for which Foley is to be retained in the Chapter 11 Cases. Accordingly, these representations are not disqualifying.

Notice

32. 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 Senior Notes; and (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

33. The Debtors have not made any prior application for the relief sought in this Application to this Court or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Application and such other and further relief as may be just and proper.

Dated: July 20, 2020
Wauwatosa, Wisconsin

Respectfully submitted,

BRIGGS & STRATTON CORPORATION
for itself and on behalf of each of its affiliated
Debtors and Debtors in Possession

/s/ Kathryn M. Buono _____

Kathryn M. Buono
Vice President, Corporate Counsel,
and Secretary