

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
	§	Case No. 20-43597-399
BRIGGS & STRATTON CORPORATION, et al.,	§	(Jointly Administered)
	§	
Debtors.	§	Related Docket Nos. 34

**ORDER AUTHORIZING THE DEBTORS TO
RETAIN AND EMPLOY DELOITTE & TOUCHE LLP
AS INDEPENDENT AUDITOR**

Upon the application (the “**Application**”)¹ of Briggs & Stratton Corporation and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014(A) authorizing the Debtors to retain and employ Deloitte & Touche LLP (“**Deloitte & Touche**”) to provide independent audit services in accordance with the terms and conditions set forth in that certain engagement letter, all as more fully set forth in the Application; and upon consideration of the Kulju Declaration, annexed to the Application as **Exhibit A**, and the supplemental Kulju Declaration, filed at Docket No. 345; and this Court being satisfied, based on the representations made in the Application and in the Kulju Declaration, that Deloitte & Touche is a “disinterested person” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and, as required by section 327(a) of the Bankruptcy Code and referenced by section 328 of the Bankruptcy Code, neither represents nor holds an interest adverse

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



to the Debtors' estates or the Debtors; and this Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 and the Debtors having represented that adequate and proper notice of the Application has been given and that no other or further notice need be given; and this Court having reviewed the Application; and this Court having previously granted the Application on a provisional basis [Docket No. 76]; and this Court having held a hearing, if necessary, to consider the relief requested in the Application; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that the Application is **GRANTED** in that:

1. The Debtors are authorized pursuant to sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014(A), to retain and employ Deloitte & Touche as the Debtors' independent auditor, in accordance with the terms and conditions of the Engagement Letter, and to pay fees and reimburse expenses to Deloitte & Touche on the terms set forth in the Engagement Letter, as modified by this Order. This Order, to the extent it conflicts with the Engagement Letter, shall take precedence.

2. Consistent with, and subject to, the terms of the Engagement Letter and this Order, Deloitte & Touche shall be authorized to perform the services to be provided by Deloitte & Touche as set forth in the Engagement Letter.

3. The terms and conditions of Deloitte & Touche's employment as set forth in the Engagement Letter, including the fee and expense structures set forth therein, are hereby approved pursuant to section 328(a) of the Bankruptcy Code, and Deloitte & Touche shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms and conditions of the Engagement Letter.

4. Deloitte & Touche shall file fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the applicable U.S. Trustee guidelines, the Local Rules, and any applicable orders of this Court.

5. Notwithstanding anything to the contrary in this Order, the U.S. Trustee and this Court shall retain the right and be entitled to object to Deloitte & Touche's fees and expenses in these cases based on the reasonableness standard provided for in section 330 of the Bankruptcy Code, and this Order shall not prejudice or otherwise affect the rights of the U.S. Trustee or this Court to challenge the reasonableness of Deloitte & Touche's compensation and reimbursement requests in these cases under sections 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record of the hearing on the Application shall constitute a finding of fact or conclusion of law binding the U.S. Trustee or this Court on appeal or otherwise, with respect to the reasonableness of Deloitte & Touche's compensation and reimbursement requests in these cases.

6. Notwithstanding anything in the Engagement Letter to the contrary, the following provisions of the Engagement Letter shall be modified with respect to the services performed thereunder for the Debtors after the Petition Date and through the effective date of any chapter 11 plan:

- i. Paragraph 7 of the General Business Terms (Appendix D) to the Engagement Letter shall be deemed deleted and replaced with the following:

Any Dispute (as defined below) arising out of or relating to services performed under this engagement letter after the commencement of a bankruptcy case by the Company and prior to the effective date of (a) a plan of reorganization of the Company or (b) a court order dismissing the Company's chapter 11 case or cases (the "**Effective Date**") shall be brought in the Bankruptcy Court (or the District Court (each as defined below), if such District Court withdraws the reference to the Bankruptcy Court). All other Disputes, including, without limitation, Disputes arising out of or relating to services performed after the Effective Date and Disputes over which the Bankruptcy Court (or the District Court) does not have, retain or exercise jurisdiction, shall be resolved by mediation or binding arbitration as set forth in the Dispute Resolution Provision attached hereto as the immediately following appendix and made a part hereof (the "**Dispute Resolution Provision**"). The parties each hereby irrevocably waive, to the fullest extent permitted by law, all rights to trial by jury in any Dispute. Except with respect to the interpretation and enforcement of the arbitration procedures set forth in the Dispute Resolution Provision (which shall be governed by the Federal Arbitration Act), the laws of the State of New York (without giving effect to its choice of law principles) shall apply in arbitration or any other forum in connection with any Dispute. The foregoing shall be binding up on the parties and any and all of their respective permitted successors and assigns. This paragraph and the Dispute Resolution Provision shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise.

For purpose of the foregoing, (a) "**Dispute**" shall mean any controversy or claim between the parties arising out of or relating to the engagement letter, including its appendices, or this engagement, (b) "**Bankruptcy Court**" shall mean the United States Bankruptcy Court for the Eastern District of Missouri and (b) "**District Court**" shall mean the United States District Court of which the Bankruptcy Court constitutes a unit.

- ii. The language in the Dispute Resolution Provision (Appendix E) to the Engagement Letter shall be deemed deleted and replaced with the following:

This Dispute Resolution Provision sets forth the dispute resolution process and procedures applicable to the resolution of certain Disputes as set forth in the immediately preceding appendix.

All Disputes not heard by the Bankruptcy Court or the District Court as set forth in the immediately preceding appendix shall be first submitted to nonbinding confidential mediation by written notice to the parties, and shall

be treated as compromise and settlement negotiations under the standards set forth in the Federal Rules of Evidence and all applicable state counterparts, together with any applicable statutes protecting the confidentiality of mediations or settlement discussions. If the parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution (“**CPR**”), at the written request of a party, shall designate a mediator.

If a Dispute has not been resolved within 90 days after the effective date of the written notice beginning the mediation process (or such longer period, if the parties so agree in writing), the mediation shall terminate and the Dispute shall be settled by binding arbitration to be held in New York, New York. The arbitration shall be solely between the parties and shall be conducted in accordance with the CPR Rules for Non-Administered Arbitration that are in effect at the time of the commencement of the arbitration, except to the extent modified by this Dispute Resolution Provision (the “**Rules**”).

The arbitration shall be conducted before a panel of three arbitrators. Each of the Company and Deloitte & Touche LLP shall designate one arbitrator in accordance with the “screened” appointment procedure provided in the Rules and the two party-designated arbitrators shall jointly select the third in accordance with the Rules. No arbitrator may serve on the panel unless he or she has agreed in writing to enforce the terms of the engagement letter (including its appendices) to which this Dispute Resolution Provision is attached and to abide by the terms of this Dispute Resolution Provision. The arbitrators may render a summary disposition relative to all or some of the issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition. Discovery shall be conducted in accordance with the Rules.

All aspects of the arbitration shall be treated as confidential, as provided in the Rules. Before making any disclosure permitted by the Rules, a party shall give written notice to all other parties and afford such parties a reasonable opportunity to protect their interests. Further, judgment on the arbitrators’ award may be entered in any court having jurisdiction.

Each party shall bear its own costs in both the mediation and the arbitration; however, the parties shall share the fees and expenses of both the mediators and the arbitrators equally.

7. To the extent there may be any inconsistency between the terms of the Application, the engagement Letter, and this Order, this Order shall govern.

8. Notice of the Application is adequate under Bankruptcy Rule 6004(a).

9. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

10. Nothing herein shall be construed to permit Deloitte & Touche to be allowed reimbursement or compensation for fees or expenses Deloitte & Touche incurs in defense of Deloitte & Touche's fees from legal challenge.


11. Deloitte & Touche shall apply all pre-petition retainers, advances and expense advances for payment of fees and costs authorized by this Court to be paid before seeking compensation from the Debtors.

12. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

13. Not later than two (2) business days after the date of this Order, the Debtors shall serve a copy of the Order and shall file a certificate of service no later than twenty-four (24) hours after service.

DATED: August 19, 2020
St. Louis, Missouri

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Barry S. Schermer
United States Bankruptcy Judge

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