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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
GARRET MOTION INC, <i>et al.</i> ,)	Case No. 20-12212 (MEW)
Debtors.)	(Jointly Administered)

**LIMITED OBJECTION OF JOHN DEERE CONSTRUCTION AND
FORESTRY COMPANY AND RESERVATION OF RIGHTS TO
DEBTORS’ NOTICE OF SATISFIED CLAIMS**

John Deere Construction and Forestry Company (“**Deere**”), by and through its counsel, hereby files this Limited Objection and Reservation of Rights (“**Objection**”) with respect to the Debtors’ Notice of Satisfied Claims (Doc. No. 1232). In support of its Objection, Deere respectfully represents as follows:

BACKGROUND

1. On September 20, 2020 (the “**Petition Date**”), the above-captioned Debtors filed a voluntary petition for Bankruptcy relief under 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York.

2. As of the Petition Date, Deere and the Debtor were parties to a series of agreements, pursuant to which the Debtors agreed to manufacture on a production basis or rebuild various goods including turbos, turbo components and heat transfer products, which are placed into or



replaced in Deere equipment or machines, and service parts therefor (collectively, the “**Products**”), to be sold under or installed in John Deere brand named products.

3. Pursuant to the *Warranty Agreement*, the Debtors agreed to warranted to Deere that the Products shall (i) conform to all specifications applicable for the Products, (ii) be free from defects and/or non-conformance in material or workmanship, (iii) be free from defects and/or non-conformance in design and be fit for the applications specified, (iv) comply with all applicable safety standards and contain adequate warnings, (v) be free of asbestos and (vi) comply with all applicable federal, state, provincial and local statutes, laws, regulations, orders and ordinances, including, without limitation, all environmental and occupational health and safety laws and industry standards that restrict or prohibit certain chemical compounds as constituents of the Products.

4. Pursuant to a *Master Bailment Agreement*, Deere agreed that the Debtors may possess and use subject to the terms and conditions of the Master Bailment Agreement, certain tangible property owned by Deere, including, but not limited to tooling, dies, jigs, machinery, equipment, goods, parts, components, assemblies, products, raw materials, scrap materials and other materials (the “**Property**”). Pursuant to Paragraph 12 of this agreement, the Debtor agreed to bear the risk of loss of the Property at the Debtors’ premises.

5. Pursuant to a *Master Bailment Agreement*, the Debtors also agreed to defend, indemnity and hold Deere and its affiliates and all of their directors, officers, personnel, agents, and their successors and assigns harmless from and against any and all damages, claims, actions, losses, liabilities and causes of action (including, but not limited to, reasonable attorneys’ fees and expenses) arising out of or relating to the Debtors’ possession, use, repair or maintenance of the Property.

6. Pursuant to a *Mutual Non-Disclosure Agreement*, the Debtor agreed to use Confidential Information (as defined therein) only as required to carry out the purposes of the agreement. The Debtor agreed not to disclose the Confidential Information to any other person, except to its representatives who have a need to know the Confidential Information to carry out the purposes of the agreement and who are subject to confidentiality duties or obligations to protect the disclosed Confidential Information that are no less restrictive than the terms and conditions of this agreement. The Debtor also agreed to take reasonable measures to protect Confidential Information from misuse and unauthorized disclosure.

7. Deere timely filed Proofs of Claims Nos. 220 and 281 (collectively the “**Deere Claims**”) disclosing the known prepetition warranty claims which existed as of the Petition Date. On May 26, 2021 the Debtors filed its *Notice of Satisfied Claims* (Doc. No. 1232) in which the Debtors allege that each Deere Claim has either been (i) satisfied pursuant to the Final Order (I) Authorizing, But Not Directing, the Debtors to Maintain Their Customer Programs and Honor Related Prepetition Obligations, (II) Authorizing Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (III) Granting Related Relief [Doc. No. 245] or is duplicative of another Deere Claim and therefore no payment is necessary to satisfy said Deere Claim.

8. In addition to the known and identified warranty claims, Deere suspects there exists latent or inchoate prepetition warranty claims of an indeterminate amount, which have yet to be discovered or disclosed. Similarly, Deere suspects that there may be latent or inchoate indemnity claims under both the Warranty Agreement and the Master Bailment Agreement which also have not been discovered which inure to the benefit of Deere. Other, yet undiscovered, claims may

exist due to Debtors' failure to otherwise perform under the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement (collectively the "**Claim**").

ARGUMENT

9. Section 101(5) of the Bankruptcy Code defines the term 'claim' to be the "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . ." When parties agree in advance that one party will indemnify the other in the event of a certain occurrence, there exists a "right to payment", albeit contingent, upon the signing of the agreement. *In re Metco Mining and Minerals, Inc.*, 171 B.R. 210, 216-17 (Bankr. W.D. Pa. 1994). "That payments became due after the bankruptcy filing does not alter the conclusion that the payments are pre-petition obligations." *In re Stewart Foods, Inc.*, 64 F.3d 141, 146 (4th Cir. 1995) (citing *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Mgmt., Inc.)*, 4 F.3d 1329, 1335 n.7 (5th Cir. 1993)). A claim is prepetition if, at the time the bankruptcy petition is filed, the debt is absolutely owed but is not presently due, or when a definite liability has accrued but is not yet liquidated. *In re Young*, 144 B.R. 45, 46-47 (Bankr. N.D. Tex. 1992).

10. In the ordinary course of the Debtors' and Deere's respective businesses, there likely exists additional latent or inchoate prepetition warranty and indemnity claims arising under or related to the Warranty Agreement, the Master Bailment Agreement and the Mutual Nondisclosure Agreement, which have yet to be discovered by Deere, or fixed and settled by the Debtors. Such prepetition claims have, obviously, not yet been satisfied. Further, Deere has not been provided with adequate information to determine whether all previously identified warranty claims have been fully resolved and settled and, therefore, is unable to confirm whether such claims have actually been satisfied.

11. Further, while the Court entered a Final Order authorizing the Debtors to maintain their customer programs and honor related prepetition obligations, the Final Order simply authorized, but did not direct, the Debtors to so act. Additionally, while Deere believes the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement are executory contracts, which would be assumed under the Debtors Amended Joint Chapter 11 Plan of Reorganization, on information and belief, the Debtors have never actually identified the Warranty Agreement, Master Bailment Agreement or Mutual Nondisclosure Agreement as executory contracts subject to assumption or, for that matter, subject to rejection. Based on the uncertainty associated with the aforementioned facts and events, Deere is now makes this limited objection to the Debtors' Notice of Satisfied Claims.

RESERVATION OF RIGHTS

12. Deere objects to the Debtors' Notice of Satisfied Claims to the extent it would preclude Deere from asserting any unknown, unmatured, inchoate, or contingent liabilities related to the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement. Deere further objects to the Debtors' Notice of Satisfied Claims to the extent the Debtors have not provided Deere with sufficient evidence that previously identified warranty claim have, in fact, been satisfied. Deere does not intend and hereby does not waive any rights it may otherwise assert against the Debtors nor with respect to any other rights and/or remedies it may have against the Debtors. Deere reserves the right to amend and/or supplement this Motion.

CONCLUSION

WHEREFORE, John Deere Construction and Forestry Company respectfully requests that this Court enter an order, substantially in the form attached hereto, sustaining its limited objection to the Debtors' Notice of Satisfied Claims, and granting such other and further relief as may be just and proper under the circumstances

Dated: New York, New York
June 9, 2021

GENSBURG CALANDRIELLO & KANTER, P.C.

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*Attorneys for John Deere Construction and
Forestry Company, Creditors herein.*

CERTIFICATE OF SERVICE

On June 9, 2021, I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing Objection to be sent to each person named on the below Service List, as indicated below. Additionally, said document was electronically served via ECF notification upon all parties requesting service on June 9, 2021.

Dated: June 9, 2021

/s/ E. Philip Groben
E. Philip Groben

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(Proposed Order)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
GARRET MOTION INC, <i>et al.</i> ,)	Case No. 20-12212 (MEW)
Debtors.)	(Jointly Administered)

**ORDER SUSTAINING LIMITED OBJECTION OF JOHN DEERE CONSTRUCTION
AND FORESTRY COMPANY TO DEBTOR’S NOTICE OF SATISFIED CLAIMS**

Upon consideration of the Limited Objection of John Deere Construction and Forestry Company to the Debtors’ Notice of Satisfied Claims (the “**Objection**”), and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

- A. The Objection is SUSTAINED; and
- B. The Claims and Noticing Agent shall not expunge the Claim Proofs of Claims Nos. 220 and 281 from the claim registry absent further order of this Court; and
- C. The Court hereby retains jurisdiction over the implementation and enforcement of this Order.

DATED: New York, New York
June __, 2021

MICHAEL E. WILES
United States Bankruptcy Judge