

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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

**OBJECTION OF WALBRO LLC TO NOTICE OF CURE COSTS AND PROPOSED
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE, REQUEST FOR ADEQUATE
ASSURANCE OF FUTURE PERFORMANCE, AND RESERVATION OF RIGHTS**

Walbro LLC (“Walbro”) states as follows in support of its Objection to Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale, Request for Adequate Assurance of Future Performance, and Reservation of Rights (the “Objection”):

Relevant Factual Background

A. Contracts Relationships Between Walbro and Briggs & Stratton Corporation

1. Walbro Engine Management is a prior name of Walbro LLC.
2. Walbro is a global market leader in engine management and fuel systems for the outdoor power equipment, recreational, marine and personal transportation markets, and a leading supplier of high pressure aluminum die casting to various industries. Walbro manufactures carburetors, electronic fuel injection systems, ignition systems, fuel tanks, fuel pumps, valves and fuel storage and distribution systems.



3. Walbro and Briggs & Stratton Corporation are and/or were parties to the following agreements:¹

- a. Multiple Confidentiality Agreements, as follows:
 - i. Mutual Confidentiality Agreement dated July 23, 2015;
 - ii. Mutual Confidentiality Agreement dated November 25, 2015 (fuel delivery injection system);
 - iii. Mutual Confidentiality Agreement dated November 25, 2015 (carburetor);
 - iv. Mutual Confidentiality Agreement dated April 15, 2016, as amended by First Amendment to Mutual Confidentiality Agreement effective as of September 26, 2017; and,
 - v. Briggs & Stratton Corporation Mutual/Confidentiality Agreement, effective date January 22, 2018;
- b. Supply Agreement, Effective Date June 26, 2018, pertaining to an electronic fuel injection system developed by Walbro for Briggs & Stratton Corporation as detailed therein (the “EFI Supply Agreement”);
- c. Supply Agreement, Effective Date June 26, 2018, pertaining to carburetors and related parts, as detailed therein (the “Carburetor Supply Agreement”);
- d. Tooling Products Agreement, Effective Date January 17, 2019; and,
- e. Amendment to Tooling Products Agreement dated January 17, 2019, Effective Date February 18, 2019.

The Confidentiality Agreements, the EFI Supply Agreement, the Carburetor Supply Agreement, the Tooling Products Agreement, the Amendment to the Tooling Products Agreement, and the Purchase Orders (defined below) are collectively referred to as the “Agreements.”

¹ Walbro has not attached copies of the relevant agreements to its Objection because the terms of each of the agreements are confidential. Upon information and belief, the Debtors are in possession of the Confidentiality Agreements, both Supply Agreements, and the Tooling Agreement.

4. Walbro also sells replacement parts to the Debtors pursuant to several spot purchase orders (the “Purchase Orders”), including the following:

Purchase Order No.	Invoice No.	Amount Due
4502082090	SI25488	\$ 9,678.00
4502091158	SI25594	\$ 2,052.00
450208698	SI25815	\$ 6,452.00
4502094171	SI26028	\$ 737.76
45002094361	SI26165	\$ 51.94
	TOTAL:	\$18,971.70

As of the Petition Date, the Debtors owed Walbro \$18,971.70 for goods sold pursuant to the pre-petition Purchase Orders.

5. Pursuant to the Tooling Agreement, the Tooling Costs total \$261,578, 50% of which was due upon receipt of the purchase order, 40% upon PPAP submission (which submission is targeted for mid-September 2020) and 10% due at PPAP approval. Briggs & Stratton currently owes Walbro \$130,789.00 under the Tooling Agreement, which amount must be paid in full as cure for the Debtor to assume and assign the Tooling Agreement.

6. In order to cure all monetary defaults as of the date of the Objection, the Debtors must pay Walbro \$149,760.70, subject to confirmation of all contracts to be assumed and assigned, and final reconciliation of pre- and post-petition amounts due and owing at the time of assumption and assignment.

7. In order to perform under the terms of the various agreements, Walbro anticipates that it will be required to make significant financial investments and, as a result will incur costs

and expenditures in the aggregate amount of approximately \$895,000 by the end of calendar year 2020 and in the amount of approximately \$4,781,000 during calendar year 2021.

B. The Contract Assumption Notice

8. On August 19, 2020, the Court entered the Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures and Form and Manner of Notice of Assumption and Assignment and (II) Granting Related Relief (Dkt. No. 505) (the “Bidding Procedures Order”).

9. On August 12, 2020, the Debtor filed the Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale (Dkt. No. 537) (the “Assumption Notice”).

10. In the Assumption Notice, the Debtors² identified Proposed Assumed Contracts to which Walbro and Walbro Engine Management may be a counter-party as follows:

DOCUMENT_ 14888	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 14892	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 14886	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 14894	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 14890	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CERTIFICATION	\$0.00
DOCUMENT_ 06457	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	TERM AGREEMENT	\$0.00
DOCUMENT_ 06460	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	SUPPLY AGREEMENT	\$0.00
DOCUMENT_ 06459	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	SUPPLY AGREEMENT	\$0.00
DOCUMENT_ 06458	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 14209	BRIGGS & STRATTON CORPORATION	WALBRO ENGINE MANAGEMENT	CONFIDENTIALITY AGREEMENT	\$0.00
DOCUMENT_ 18982	BRIGGS & STRATTON CORPORATION	WALBRO LLC	CONFIDENTIALITY	\$0.00

² The Debtors in these jointly administered bankruptcy cases are Briggs & Stratton Corporation (Case No. 20-43597), Billy Goat Industries, Inc. (Case No. 20-10575), Allmand Bros., Inc. (20-43598), Briggs & Stratton International, Inc. (Case No. 20-43599) and Briggs & Stratton Tech, LLC (Case No. 20-43600).

			AGREEMENT	
DOCUMENT_ 18990	BRIGGS & STRATTON CORPORATION	WALBRO LLC	LETTER OF INTENT	\$0.00
DOCUMENT_ 19530	BRIGGS & STRATTON CORPORATION	WALBRO LLC	SUPPLY AGREEMENT	\$0.00
DOCUMENT_ 00834	BRIGGS & STRATTON CORPORATION	WALBRO LLC	TOOLING PRODUCTS AGREEMENT	\$0.00
DOCUMENT_ 00863	BRIGGS & STRATTON CORPORATION	WALBRO LLC	TOOLING PRODUCTS AGREEMENT	\$0.00
DOCUMENT_ 19531	BRIGGS & STRATTON CORPORATION	WALBRO LLC	SUPPLY AGREEMENT	\$22,366.31

See Assumption Notice, Dkt. No. 537 at 7 of 26.

Limited Objection

I. THE ASSUMPTION NOTICE DOES NOT ADEQUATELY DESCRIBE THE CONTRACTS TO BE ASSUMED

11. Walbro has ongoing business and contractual relationships with the Debtors and is a counter-party to one or more executory contracts that Briggs & Stratton intends to assume and assign to the Stalking Horse Bidder. Based upon the description of agreements set forth in Schedule 1 of the Assumption Notice, Walbro has been unable to determine the contracts to which it is a counter-party that Briggs & Stratton intends to assume and assign to the Stalking Horse Bidder.

12. Walbro does not object, *per se*, to assumption and assignment of the contracts identified in the Assumption Notice to which Walbro is a counter-party; however, Walbro objects to the assumption and assignment of the contracts identified in the Assumption Notice until such time as the Debtors identify, with specificity, the contracts to be assumed and assigned.

13. Walbro also objects to the Assumption Notice because, upon information and belief, the Assumption Notice is inaccurate. By way of example, the Assumption Notice references a Letter of Intent to be assumed. Upon information and belief, the Letter of Intent dated July 24, 2017 referenced in Schedule 1 to the Assumption Notice is believed to have been superseded by the EFI Supply Agreement. By way of further example, the Assumption Notice

designates two “Tooling Products Agreements” for potential assumption and assignment, and upon information and belief, Walbro and Briggs and Stratton are parties to the Tooling Products Agreement with an effective date of January 17, 2019, as amended by the Amendment to Tooling Products Agreement dated January 17, 2019, with an effective date of February 18, 2019.

14. It is also unclear to Walbro whether the reference to the Supply Agreement with a cure amount of \$22,366.31 is a reference to the EFI Supply Agreement, the Carburetor Supply Agreement or a reference to the outstanding Purchase Orders. If Briggs & Stratton intends to assume and assign the EFI Supply Agreement, the Carburetor Supply Agreement, and all outstanding Purchase Orders, the Assumption Notice should be modified to clarify which contracts are to be assumed and specify correct cure amounts for each.

15. Walbro further objects to the adequacy and accuracy of the Assumption Notice insofar as there may be other contracts with Walbro that may or will be assumed and assigned but which have not been included in the Assumption Notice.

II. WALBRO OBJECTS TO THE CURE AMOUNTS SPECIFIED IN THE ASSUMPTION NOTICE AND REQUESTS ADEQUATE ASSURANCE OF FUTURE PERFORMANCE OF THE OBLIGATIONS UNDER THE CONTRACTS TO BE ASSUMED

16. Section 365(b)(1)(A) of the Bankruptcy Code provides that the trustee may not assume an executory contract unless the trustee “cures, or provides adequate assurance that the trustee will promptly cure” any default under the contract. 11 U.S.C. § 365(b)(1)(A). According to the United States Court of Appeals for the Second Circuit, “[i]f the debtor is in default on the contract, it will not be allowed to assume the contract unless, at the time of the assumption it, *inter alia*, (a) cures, or provides adequate assurance that it will promptly cure, the default, and (b) provides adequate assurance of its future performance of its obligations under the contract. . . .

Congress's intent in imposing these conditions on the ability of the debtor to assume the contract was "to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance." *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2nd Cir. 1996) (*internal citations omitted*).

17. Moreover, the Debtor may only assign the Agreements to the Stalking Horse Bidder, if "(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease." 11 U.S.C. 365(f)(2).

A. Cure Objection

18. Walbro cannot identify which executory contracts the Debtors intend to assume and assign, and, therefore, objects to the Proposed Cure Amounts identified in the Assumption Notice. Walbro also objects to the Proposed Cure Amounts identified in the Assumption and Notice to the extent that the Assumption Notice may be incorrect as to those amounts that were in default as of the Petition Date and may not reflect all defaults under the contracts identified in the Assumption Notice.

19. Further, because Walbro cannot identify the executory contracts to which it is a counter-party that the Debtors intend to assume and assign, Walbro cannot state the cure amounts with certainty.

20. Walbro is in the process of reconciling the prepetition balances owed to it with respect to all contracts to which it is a counter-party.

21. As of the Petition Date, Walbro had claims against the Debtors in the approximate aggregate amount of \$18,971.70 under the pre-petition Purchase Orders which must be paid before the Purchase Orders may be assumed and assigned to the Stalking Horse Bidder.

22. Pursuant to the Tooling Agreement, the Tooling Costs total \$261,578, 50% of which was due upon receipt of the purchase order, 40% upon PPAP submission (which submission is targeted for mid-September 2020) and 10% due at PPAP approval. Briggs & Stratton currently owes Walbro \$130,789.00 under the Tooling Agreement, which amount must be paid in full as cure before the Debtor assumes and assigns the Tooling Agreement to the Stalking Horse Bidder.

23. The Debtor must also cure any monetary and non-monetary defaults that arise before assumption and assignment of the EFI Supply Agreement, the Carburetor Supply Agreement, the Tooling Agreement and the Purchase Orders, including any administrative expense priority claims that may arise. Debtor is currently in default under the Agreements as follows, (a) payment defaults under the pre-petition Purchase Orders in the aggregate amount of \$18,971.70 and (b) payment defaults under the Tooling Agreement in the aggregate amount of \$130,789.00.

24. In order to cure all monetary defaults as of the date of the Objection, the Debtors must pay Walbro \$149,760.70, subject to confirmation of all contracts to be assumed and assigned, and final reconciliation of pre- and post-petition amounts due and owing at the time of assumption and assignment.

25. Cure only occurs when all amounts due and owing, pre- and post-petition are paid in full, and absent such cure payment in full, the assumption and subsequent assignment is not binding.

26. Walbro will supplement this Objection with additional information and supporting documentation upon completion of the reconciliation process and upon specific identification of the contracts to be assumed

27. Walbro also objects to the Assumption Notice insofar as any post-petition performance by Walbro of any contract to be assumed may give rise to additional accounts receivable that, as of the prospective time of assumption and assignment, may be due or past-due and properly included in the Cure Amount.

B. Adequate Assurance Objection

28. Walbro also objects to the assumption and assignment of its contracts to the Stalking Horse Bidder until such time as Briggs & Stratton and the Stalking Horse Bidder provides adequate assurance of future performance as is required by section 365(b)(1) and section 365(f)(2)(B) of the Bankruptcy Code.

29. Pursuant to the Bidding Procedures Order and the Assumption Notice, Walbro specifically requests adequate assurance information of future performance by the Stalking Horse Bidder. Walbro submits that adequate assurance information must address the ability of the Stalking Horse Bidder to perform under the Agreements in the future, and Walbro must receive, at a minimum, the following information, and a reasonable timeframe to review such information, if Debtors are to satisfy their burden: (1) the Stalking Horse Bidder's established financing as well as what proposed credit enhancements will be offered to guaranty the Stalking Horse Bidder's performance under the Agreements; (2) all documents and other evidence of the potential assignee's experience operating a manufacturing company such as Briggs & Stratton; and (3) a contact person for the proposed assignee that Walbro may directly contact in connection with the adequate assurance of future performance. Walbro will enter into a

commercially reasonable non-disclosure agreement to facilitate its access to full adequate assurance of future performance information.

30. Walbro submits that, with respect to the Tooling Agreement, adequate assurance of future performance should also specifically include, (a) upon PPAP submission with respect to the Tooling, immediate payment of the amounts due and (b) immediate payment of the balance owed for the Tooling upon PPAP certification.

31. Walbro further submits that, with respect to the EFI Supply Agreement and the Carburetor Supply Agreement, adequate assurance of future performance should also specifically include, but not limited to, deposits in an amount to be determined to adequately protect Walbro and modified payment terms. Walbro submits that such adequate assurance is warranted to assure Walbro of Briggs & Stratton's and the Stalking Horse Bidder's respective abilities to perform the Agreements where, in order to perform under the terms of the Agreements, Walbro will incur costs and expenditures in the aggregate amount of approximately \$895,000 by the end of calendar year 2020 and in the amount of approximately \$4,781,000 during calendar year 2021.

C. Reservation of Rights

32. Walbro reserves the right to amend or supplement this Objection as additional facts are learned.

33. Walbro reserves its right to supplement and/or amend this Objection, to raise additional grounds for objection at the hearing, and to join in objection(s) filed by other parties-in-interest.

34. Walbro further reserves its rights, in the event that additional executory contracts are not assumed, to assert any claims for damages, which claims may include all amounts allowable under applicable law.

WHEREFORE, Walbro objects to the Assumption Notice and the proposed cure amount stated therein, and further objects to any proposed assumption before Walbro receives the full and correct cure amount owing at the time of assumption. Walbro further requests adequate assurance of the Debtors' and the Stalking Horse Bidder's ability to perform under the Agreements in the future.

Dated: September 4, 2020

Respectfully Submitted,

CLARK HILL PLC

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(pro hac pending)

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Objection to Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale, Request for Adequate Assurance of Future Performance, and Reservation of Rights was filed electronically on September 4, 2020 with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List and sent via U.S. First Class Mail to the Objection Notice Parties.

/s/ Eric C. Peterson