

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON	§	Case No. 20-43597-339
CORPORATION, <i>et al</i>	§	
	§	Jointly Administered
Debtors.	§	
	§	

LIMITED OBJECTION AND RESERVATION OF RIGHTS

NOW COMES Deere & Company and certain of its affiliates (“**Deere**”) by and through its undersigned counsel, and hereby submits this Limited Objection and Reservation of Rights (the “**Limited Objection**”) with respect to the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 514] (the “**Cure Notice**”) filed by Briggs & Stratton Corporation and its debtor affiliates (the “**Debtors**”). In support of its Limited Objection, Deere respectfully states as follows:

BACKGROUND

1. On July 20, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Code.
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 various goods including engines which are placed into Deere equipment or machines, and service parts therefor (collectively, the “**Products**”), to be sold under the John Deere brand name (as amended and modified, collectively the “**Supply Agreement**”).
3. Pursuant to Section 10.1 of the Supply Agreement, the Debtors agreed to warrant to Deere that the Products shall (i) conform to all specifications applicable for the Products, (ii) be



free from defects in material or workmanship, (iii) be free from defects in design, (iv) comply with all applicable safety standards, and (v) be free of asbestos.

4. Pursuant to Article 11 of the Supply Agreement, it was agreed, among other matters, that Deere would provide a pass-through warranty from the Debtors for the Products to retail end users. The agreement provided that the Debtors would be responsible for administering the warranty and for making timely payment to Deere, Deere dealers and/or distributors for claims for the Products.

5. Further, pursuant to Section 12.1 of the Supply Agreement, the Debtors agreed to:

Protect, defend, hold harmless and indemnify Deere and Deere's officers, directors, employees, agents successors, assigns, and customers, from and against any and all claims, lawsuits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses * * * including without limitation reasonable attorney and expert witness fees for injury, loss or damage of any kind claimed by a person not a party to this Agreement caused by or arising from, or alleged to have been caused by or arise from the design, manufacture, sale or use of the Products, including but not limited to product liability, negligence, or breach of the Agreement * * * by [the Debtors] * * * *.

6. Pursuant to Section 12.2 of the Supply Agreement, the Debtors similarly agreed to Protect, defend, hold harmless and indemnify Deere and Deere's officers, directors, employees, agents successors, assigns, and customers, from and against claims arising from the infringement of any patent, trademark or copyright, or wrongful use of third-party trade secret or proprietary information.

7. On the Petition Date the Debtors filed their *Motion of Debtors for entry of an 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; (II) Authorizing (A) Sale of Debtors' Assets and Equity Interests Free and Clear of Liens, Claims,*

Interests, and Encumbrances and (B) Assumption and assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Doc. No. 53] (the “**Sale Motion**”).

8. This Court granted the Sale Motion on August 19, 2020 (the “**Sale Order**”). In connection with the Sale Motion, on August 19, 2020, the Debtors filed the Cure Notice, which identifies numerous executory contracts that the Debtors seek to assume and assign in connection with the transactions contemplated under the Sale Motion, including numerous contracts between the Debtors and Deere as counterparty (collectively, the “**Deere Contracts**”).

9. The Sale Order contains certain deadlines pertinent to the Debtor’s ability and authority to assume and assign executory contracts and unexpired leases, including the Deere Contracts. Those deadlines including the following:

- September 4, 2020: Deadline to object to the Debtors’ proposed cure costs in connection with the proposed assumption and assignment of executory contracts and unexpired leases.
- September 9, 2020: Deadline to file objections to the Sale Transactions.

10. A hearing on the relief sought in the Sale Motion is set for September 15, 2020.

11. Deere received a copy of the Sale Motion, Sale Order, the Cure Notice, and a letter from the Debtors dated August 14, 2020, which identified a Stock and Asset Purchase Agreement and requested that Deere consent to the contemplated assignment of the Supply Agreements and waive “any potential defaults, remedies, acceleration or termination rights, put or call options, or any other similar rights that may be triggered by or arise as a result of the Transaction.” However, due to the COVID-19 pandemic and the resulting disbursement of Deere’s managers and officers working from home, these documents were not routed to the appropriate personnel within Deere.

12. In the Cure Notice, the Debtors listed over 47 contracts which it seeks to assume and assign. For each of those contracts, the Debtors stated that no cure amount is due or otherwise exists.

13. While, on information and belief, the Debtors are not past due with payments under the Supply Agreements, Deere has now determined that there exists known warranty claims covered by the Supply Agreements in the approximate amount of \$172,247.00. On information and belief, these known warranty claims all arose or have become due on or after to the Petition Date.

14. In addition to the above post-petition warranty claims, Deere suspects there probably exists latent or inchoate pre-petition 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 which also have not been discovered which inure to the benefit of Deere.

15. Deere is not currently objecting to the contemplated assumption and assignment of the Supply Agreements. However, (i) the cure amount needs to include all post-petition warranty claims, currently in the amount of \$172,247.00, and (ii) in taking assignment of the Supply Agreements, the prospective purchaser, to the extent provided in the Supply Agreements, must remain responsible for any and all latent and/or inchoate warranty and indemnity claims which may arise, whether from pre-petition or post-petition events or transactions.

16. Further, the Debtors have identified approximately 47 executory contracts by and between Deere and the Debtors. Deere, on the other hand, has identified only 8 contracts which remain executory or otherwise unexpired. Deere and the Debtors are attempting to resolve this discrepancy but Deere notes that while these agreement carry different dates, they are all part of

an integrated agreement between Deere and the Debtors, which, absent Deere's consent, must be assumed and assigned *cum onere*, or as an integrated whole.

17. Prior to the filing of this Limited Objection, counsel for Deere spoke with Debtors' counsel at Weil Gotshal & Manges, LLP in an attempt to reach a mutually agreeable understanding of the rights and responsibilities of the parties; however, due to the time sensitive nature of this proceeding the parties were unable to conclude their discussions necessitating the filing of this Limited Objection.

18. Deere asks this Court to extend the Deadline by which Deere can object to the Debtor's proposed cure costs in connection with the proposed assumption and assignment of executory contracts and unexpired leases and deadline to file objections to the Sale Transactions to September 12, 2020 at 6:00pm.

19. The filing of this Limited Objection shall neither: (i) waive or release any rights of Deere against any Debtor or any other entity or person; nor (ii) elect a remedy which waives or otherwise affects any other remedy of Deere.

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20. Therefore, Deere objects to the attempted assumption and assignment of the Supply Agreements to the extent the prospective purchaser believes it will not be responsible for the (i) identified warranty claims of \$172,247.00, (ii) any latent or inchoate warranty claims, whether relating to pre-petition events or transactions, to the extent provided for in the Supply Agreements, and (iii) any latent or inchoate indemnity claims, whether relating to pre-petition events or transactions, to the extent provided for in the Supply Agreements.

21. Deere further objects to any assumption and/or assignment of the Supply Agreements to the extent that the Debtors or the prospective purchaser believes they can assume some of the agreements entered with Deere, while rejecting other agreements entered with Deere.

Dated: September 12, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2020, a true and correct copy of the above and foregoing was served by the method or methods specified below:

 X by electronically filing with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

 X by U.S. Mail, postage prepaid, to the following:

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