

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re	)	Case No. 04-63851
	)	
NIPPON ELECTRIC GLASS OHIO, INC.	)	Federal I.D. No. 95-4658750
	)	
Debtor.	)	Chapter 11
	)	
	)	Judge John E. Hoffman, Jr.

**SECOND INTERIM FEE APPLICATION OF  
MORRISON & FOERSTER, LLP  
FOR ALLOWANCE AND PAYMENT OF COMPENSATION  
AND REIMBURSEMENT OF COSTS AND EXPENSES FOR THE  
PERIOD DECEMBER 1, 2004 THROUGH MARCH 31, 2005**

Morrison & Foerster, LLP (“Morrison”), counsel for Nippon Electric Glass Ohio, Inc., the debtor and debtor in possession in the above-captioned Chapter 11 case (the “Debtor”), hereby submits its Second Interim Fee Application for Allowance and Payment of Compensation and Reimbursement of Costs and Expenses (the “Application”) covering the period from December 1, 2004 through March 31, 2005 (the “Second Interim Period”). Morrison submits the Application in accordance with the Bankruptcy Code, this Court’s *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* entered on September 27, 2004 (the “Fee Order”), the United States Trustee Chapter 11 Notices and Guidelines, and the Local Bankruptcy Rules for the Southern District of Ohio.

By the Application, Morrison respectfully requests that the Court enter an order (1) allowing and approving interim compensation to Morrison in the amount of \$54,937.00 in fees for professional services rendered and \$111.75 in expenses and costs incurred during the Second Interim Period, for a total of \$55,048.75 in fees and expenses; (2) approving the payments already received by Morrison, or expected to be received by Morrison prior to the hearing on the Application, of \$44,041.35; (3) authorizing payment of the unpaid balance owed to Morrison of \$10,987.40; and (4) granting to Morrison such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. The Application is supported by the Declaration of Patricia S. Mar (the “Mar Declaration”), filed contemporaneously and the exhibits attached thereto. In further support of the Application, Morrison respectfully represents and states as follows:

#### **I. MORRISON’S ENGAGEMENT**

1. Morrison is a law firm with substantial experience in business reorganizations, corporate insolvency, commercial litigation, corporate law, bankruptcy-related asset acquisition and bankruptcy litigation. Morrison routinely represents debtors, creditors, equity holders, committees, trustees, landlords, potential acquirers of assets, and other parties with interests in financially distressed businesses.

2. On September 1, 2004, the Debtor filed its voluntary Chapter 11 petition in this case. On or about September 10, 2004, the Debtor filed its application to employ Morrison to serve as counsel in this case. Attached hereto as Exhibit 1 is a copy of this Court’s Order entered September 27, 2004, authorizing the Debtor to employ Morrison. On the same date, the Court authorized the Debtor’s employment of the law firm of Kegler Brown Hill & Ritter, L.P.A. (“Kegler Brown”) as Ohio counsel for the Debtor.

## **II. SUMMARY OF PRIOR APPLICATIONS AND PAYMENTS**

3. This Application is the second interim application filed by Morrison pursuant to the Fee Order. Morrison filed its First Interim Fee Application on January 12, 2005, for services rendered from September 1, 2004, the date the petition was filed, through and including November 30, 2004 (the "First Interim Period"). The First Interim Fee Application was approved by order of the Court entered on February 10, 2005.

4. Pursuant to the First Interim Fee Application, Morrison has received payment of \$144,989.00 for fees and \$4,096.76 for costs, for a total of \$149,085.76 for services rendered during the First Interim Period.

## **III. SUMMARY OF COMPENSATION REQUEST**

5. During the Second Interim Period, Morrison submitted four monthly statements for fees and expenses ("Monthly Fee Statements"), covering the months of December, 2004, and January, February and March, 2005, pursuant to the provisions of the Fee Order. As provided by the Fee Order, the Debtor has paid Morrison 80% of the fees requested and 100% of the expense reimbursement requested in the Monthly Fee Statements for December, January and February. Upon expiration of the objection period for the Monthly Fee Statement for March 2005, and provided that no objection is filed to that Monthly Fee Statement, a similar payment will be made for the March fees and costs. Payments have been and will be made from the retainer that the Debtor paid to Morrison prior to the filing of the petition.

6. The following table summarizes the monthly fees and expenses incurred and payments made during the Second Interim Period pursuant to the Fee Order.

<b>Period</b>	<b>Fees Incurred</b>	<b>Expenses Incurred</b>	<b>Total Fees and Expenses Incurred</b>	<b>Total Payments Received</b>	<b>20% Holdback</b>
December, 2004	\$8,107.50	\$55.26	\$ 8,162.76	\$6,521.26	\$1,621.50
January, 2005	15,790.50	2.31	15,792.81	12,634.71	3,158.10
February, 2005	21,181.00	22.89	21,203.89	16,967.69	4,236.20
March, 2005	9,858.00	31.29	9,889.29	7,917.69 <sup>1</sup>	1,971.60
<b>Total</b>	<b>\$54,937.00</b>	<b>\$111.75</b>	<b>\$55,048.75</b>	<b>\$44,041.35</b>	<b>\$10,987.40</b>

7. Morrison has neither received nor been promised any compensation for the services it has rendered or the expenses that it has incurred in this Chapter 11 case except as authorized in the Fee Order, subject to review and approval of this Court. Neither Morrison, nor any member of Morrison, has any agreement or understanding of any kind to divide, pay over, or share any portion of the fees to be awarded to Morrison with any other person or attorney, except as among the partners and other attorneys employed by Morrison.

#### **IV. SUMMARY OF SERVICES PERFORMED**

8. During the First Interim Period, Morrison professionals spent a total of 107.5 hours rendering services to the Debtor. A detailed daily description of the services performed, by timekeeper, and the hourly rates applicable to each timekeeper is contained in the Monthly Fee Statements that are attached to the Mar Declaration.

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<sup>1</sup> The deadline for objections to the Monthly Fee Statement for March 2005 is May 16, 2005, and therefore the 80% fees and 100% costs for that month have not been paid to Morrison, as of the date of filing of this Application. Assuming no objections are received to the Monthly Fee Statement for March, Morrison will receive partial payment for March services prior to the end of the objection period and any hearing on this Application. If for any reason the fees and costs shown as received for March 2005 are not paid to Morrison prior to the Court's consideration of this Application, the unpaid amount shown in the "20% Holdback" column will increase accordingly.

9. Morrison classifies the services it performs for the Debtor into project categories. During the First Interim Period, Morrison billed services in the following project categories:

- Case Administration
- Employment and Fees
- PBGC Issues
- Creditor Claims and Objections
- Business Operations
- Plan Formulation and Confirmation

10. Following is a narrative summary of the significant services that Morrison provided to the Debtor during the First Interim Period, by project category:

11. Bankruptcy Administration (Total fees: \$18,375.00). This category reflects the services performed by Morrison relating to the administration of the bankruptcy case. Secondly, “Bankruptcy Administration” includes activities that did not readily fit into any other category.

12. The services performed by Morrison in the “Bankruptcy Administration” category during the Second Interim Period included conferring with and advising the Debtor on the monthly operating reports and reviewing the operating reports before they were filed; responding to inquiries from the Techneglas Creditors Committee on several issues relating to the operating reports; reviewing the Debtor’s motion to set a bar date and conferring with the Debtor, co-counsel and counsel for the Debtor’s affiliate, Nippon Electric Glass America, Inc. to coordinate the setting of a bar date; and participating in a court hearing set by the court to review the status of the case. In addition, Morrison monitored and reviewed filings in the

Chapter 11 cases of the Debtor's affiliates, Techneglas, Inc. and Nippon Electric Glass America, Inc.

13. Employment and Fees (Total fees: \$11,853.00). This category included the preparation of Morrison's Monthly Fee Statements and its First Interim Fee Application, and review of the Monthly Fee Statements and interim fee application of its co-counsel, Kegler Brown. Morrison also advised the Debtor on employment of other professionals and prepared the Debtor's motion for employment of two accounting firms as "ordinary course" professionals to provide tax return and financial statement services. Morrison responded to inquiries from the Debtor regarding fee and retainer issues.

14. PBGC Issues (Total fees: \$6,416.50). Morrison provided services to the Debtor related to the claim of the Pension Benefit Guaranty Corporation (PBGC) arising out of the insolvency and default on pension obligations of the Debtor's affiliate, Techneglas Inc. Morrison reviewed and analyzed the six proofs of claim filed by the PBGC against the Debtor and communicated with counsel for the Debtor's affiliates regarding the status of negotiations and resolution of the PBGC's claims.

15. Creditor Claims and Objections (Total fees: \$2,100.00). This category pertains to Morrison's services relating to creditor claims, other than the PBGC claims. Morrison reviewed the bar date order and notice to creditors regarding the bar date and reviewed and analyzed creditor claims as scheduled and as filed.

16. Plan Formulation and Confirmation (Total fees: \$ 1,470.00). Activity in this category consisted primarily of coordination with counsel in the affiliate cases on an extension of exclusivity, and review of the Debtor's motion to extend exclusivity.

17. Business Operations (Total fees: \$14,722.50). Morrison provided continuing consultation to the Debtor in the category of "Business Operations." Such services included

consultation with and advice to the Debtor on operations, including bankruptcy issues affecting the Debtor's operations; providing information to the Debtor's auditors in connection with the annual audit of its financial statements; and preparation of a proof of claim in the Techneglas case for a prepetition trade receivable owed by Techneglas to the Debtor.

18. A significant portion of Morrison's fees in the "Business Operations" category related to issues arising out of a fire at the manufacturing facilities of the Debtor's subsidiary, NEG Mexico, in Mexicali, Mexico, in which the Debtor's inventory and machinery were totally destroyed. Morrison's services to the Debtor included ongoing consultations with the Debtor regarding its insurance claim, advising the Debtor regarding claims of customers who lost inventory or otherwise suffered losses as a result of the fire; analyzing the Debtor's proposed settlement of customer claims; and preparing settlement agreements to be used in settlement of the customer claims.

#### **V. SUMMARY OF COSTS AND EXPENSES**

19. Morrison is seeking reimbursement of \$111.75 in costs and expenses that it incurred during the First Interim Period. Such expenses were primarily for copying, FAX and on-line research charges.

#### **VI. REQUEST FOR APPROVAL OF INTERIM COMPENSATION**

20. Bankruptcy Code Section 330(a)(1) authorizes the Court to award to professionals who have been employed under Bankruptcy Code Section 327 reasonable compensation for their services, as well as reimbursement for all actual and necessary expenses. Bankruptcy Code Section 331, in turn, provides for allowance of interim compensation and reimbursement. Section 330(a)(3) further states that the Court should consider the nature, extent, and value of the services provided, taking into account all relevant

factors. These factors include the time spent on the services, the rates charged for the services, whether the services were necessary or beneficial, whether the services were performed in a reasonable amount of time, and whether the compensation is reasonable based on compensation customarily charged by comparable professionals.

21. Morrison submits that the services rendered for which compensation is sought in this Application have been beneficial to the estate of the Debtor, that the costs incurred have been necessary and proper, and that the sums requested for the services rendered and the costs incurred are fair and reasonable.

## **VII. CONCLUSION**

22. The interim compensation sought in this Application is on an interim basis and is not final. Upon the conclusion of these cases, Morrison will seek fees and expenses for the totality of the services rendered as counsel to the Debtor based upon the applicable standards. Any interim fees approved by the Court and received by Morrison will be credited against such final fees as the Court may allow.

WHEREFORE, Morrison respectfully requests that the Court enter an order:

(1) allowing and approving interim compensation to Morrison in the amount of \$54,937.00 in fees for professional services rendered and \$111.75 in expenses and costs incurred during the First Interim Period, for a total of \$55,048.75 in fees and expenses; (2) approving the payments already received by Morrison, or expected to be received by time of the Court's consideration of the Application, of \$44,041.35; (3) authorizing payment of the unpaid balance owed to Morrison of \$10,987.40; and (4) granting to Morrison such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. A form of proposed order is attached hereto as Exhibit 2.



Dated: April 26, 2005

/s/ Patricia S. Mar

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