

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	:	Chapter 11
	:	
NIPPON ELECTRIC GLASS	:	Case No. 04-63851
OHIO, INC.,	:	
	:	Judge John E. Hoffman, Jr.
	:	
Debtor.	:	

**SECOND INTERIM FEE APPLICATION OF
KEGLER, BROWN, HILL & RITTER CO., LPA
FOR ALLOWANCE AND PAYMENT OF COMPENSATION
AND REIMBURSEMENT OF COSTS AND EXPENSES FOR THE
PERIOD DECEMBER 1, 2004 THROUGH MARCH 31, 2005;
DECLARATION OF KENNETH R. COOKSON IN SUPPORT THEREOF**

Kegler, Brown, Hill & Ritter Co. LPA (“Kegler Brown”), counsel for 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”). Kegler Brown 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* (the “Fee Order”), the United States Trustee Chapter 11 Notices and Guides, and the Local Bankruptcy Rules for the Southern District of Ohio.

By the Application, Kegler Brown respectfully applies for an order of this Court (1) allowing and approving interim compensation to Kegler Brown in the amount of \$17,707.61 representing \$16,500.00 in professional services rendered and \$1,207.61 in expenses and costs incurred during the Second Interim Period; (2) approving the payments already received by

Kegler Brown of \$11,617.88; (3) authorizing payment of the unpaid balance owed to Kegler Brown of \$6,089.73; and (4) granting to Kegler Brown such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. The Application is supported by the appended Declaration of Kenneth R. Cookson (the “Cookson Declaration”) and the exhibits attached hereto. In further support of the Application, Kegler Brown respectfully represents and states as follows:

I. SUMMARY OF KEGLER BROWN’S ENGAGEMENT

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

On or about September 10, 2004, the Debtor filed its application to employ Kegler Brown to serve as local counsel in connection with this case. Attached hereto as Exhibit 1 is a copy of this Court’s Order appointing Kegler Brown. Kegler Brown’s work is in coordination with legal representation by the San Francisco law firm of Morrison & Foerster. Kegler Brown’s services in this interim period have included work in preparing motions and orders pertaining to pertinent issues in the case, attending hearings and participating in strategic planning. In addition, Kegler Brown has continued to monitor the cases of Techneglas and Nippon Electric Glass America, Inc., both pending before this Court. Kegler Brown, in coordination with Morrison Foerster, strove to avoid duplicative services.

II. SUMMARY OF COMPENSATION REQUEST

A. Professional and Hourly Rates.

The professionals who were principally responsible for rendering services to the Debtor during the Second Interim Period were Attorneys Kenneth R. Cookson, Lisa M. Diem, Mary F. Brenning and Stephanie P. Union and Paralegal Robin Hayes. In general, tasks were allocated among the professionals based upon their comparative expertise and, whenever feasible, work was allocated to individuals with lower hourly rates. Kegler Brown endeavored to represent the Debtor as effectively and efficiently as possible. Attached hereto as Exhibit 2 is the Declaration of Kenneth R. Cookson which summarizes the background and qualifications of the Kegler Brown professions who rendered services to the Debtor during the Second Interim Period. Attached as Exhibit 3 is the billing rates for each of those individuals during the Second Interim Period and a summary of the hours billed and fees incurred on behalf of the Debtor by each of these individuals.

B. Fees and Expenses for the Second Interim Period.

The Fee Order authorizes professionals to serve an abbreviated monthly statement for interim compensation and reimbursement of expenses (the "Monthly Statement") on the United States Trustee and other parties in interest. The amounts available pursuant to the Monthly Statements are limited to 80% of fees and 100% of expenses earned by such professional. The amounts requested in the Monthly Statements are payable if no objections are filed within 20 days of service of the Monthly Statement.

This Application is the second interim application that Kegler Brown has filed with the Court in accordance with the Fee Order. During the Second Interim Period, Kegler Brown submitted four (4) Monthly Statements covering the months of December, 2004, January, 2005,

February, 2005 and March, 2005. No party objected to any of the first three Monthly Statements, and the Debtor paid Kegler Brown in accordance with the Fee Order on these three statements. The response period for the March, 2005 statement has not yet expired. Therefore, Debtor has not yet paid Kegler Brown for any part of the March, 2005 statement.

During the Second Interim Period, Kegler Brown professionals spent a total of 73.5 hours rendering services to the Debtor. Kegler Brown also incurred \$1,207.61 in costs and expenses in connection with those services. The following table summarizes the monthly fees and expenses incurred and payments made during the Second Interim Period pursuant to the Fee Order.

<u>Period</u>	<u>Fees Incurred</u>	<u>Expenses Incurred</u>	<u>Total Fees and Expenses Incurred</u>	<u>Total Payments Received</u>
December, 2004	\$ 3,042.50	\$ 302.890	\$ 3,345.39	\$ 2,736.89
January, 2005	5,266.00	545.36	5,811.36	4,758.16
February, 2005	4,984.00	135.63	5,119.63	4,122.83
March, 2005	3,207.50	223.73	3,431.23	0.00
Totals	\$ 16,500.00	\$ 1,207.61	\$ 17,707.61	\$ 11,617.88
Total Unpaid Pursuant to 20% Holdback	\$ 6,089.73			

Kegler Brown 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 Employment Order, subject to review and approval of this Court. Furthermore, neither Kegler Brown, nor any member of Kegler Brown, has any agreement or understanding of any kind to divide, pay over, or share any portion of the fees to be awarded to Kegler Brown with any other person or attorney, except as among members and associates of Kegler Brown. Following entry of the Employment Order, Kegler Brown and its members have neither acquired nor received a transfer of a beneficial interest in claims against the Debtor or stock of the Debtor.

C. Holdbacks.

Pursuant to the Fee Order, the Debtor is required to withhold payment of at least 20% of the fees incurred by each professional on a monthly basis. The following table summarizes the amounts withheld as a holdback from payment to Kegler Brown during the Second Interim Period:

<u>Period</u>	<u>Total Amount Withheld From Payment</u>
December, 2004	\$ 608.50
January, 2005	1053.20
February, 2005	996.80
March, 2005	3,431.23
Total Holdbacks	\$ 6,089.73

The total amount that was withheld from payment to Kegler Brown pursuant to the 20% holdback, plus the entire amount of the March, 2005 statement (as the response period on that statement has not yet run) is \$6,089.73. Kegler Brown hereby seeks payment of this amount.

D. Project Billing.

Kegler Brown did classify the services performed for which compensation is being sought into specified project categories. Kegler Brown did create a separate category for services provided in the “Fee/Employment/Applications” category for which Kegler Brown billed \$2,392.00 for 11.0 hours of service.

III. SUMMARY OF COMPENSATION REQUEST

For purposes of providing a brief overview of those services, this section provides a narrative summary of the more significant services that Kegler Brown has provided to the Debtor during the Second Interim Period.

The Debtor filed its petition on September 1, 2004. The Debtor has spent a considerable amount of time and effort since the Petition Date evaluating its position and developing an appropriate business strategy. At the same time, the Debtor has been closely monitoring the cases of Techneglas and Nippon Electric Glass America, Inc. because the outcome of those cases will have a material effect on the Debtor and any plan of reorganization it proposes. During the Second Interim Period, Debtor established a Bar Date for claims so that over the next few months the Debtor can focus on developing a plan of reorganization and its emergence from bankruptcy protection.

IV. SUMMARY OF COSTS AND EXPENSES

Kegler Brown is seeking reimbursement of \$17,707.61 in costs and expenses that it incurred during the Second Interim Period. Attached hereto as Exhibit 5 is a summary of all expenses and costs by category and month. In addition, this section describes Kegler Brown's accounting procedures for the general categories of costs and expenses for which it is seeking reimbursement. These costs and expenses were billed to the Debtor at the rates that Kegler Brown customarily bills its client.

A. Delivery Services.

When the exigencies of this case required, Kegler Brown used air-courier services (such as FedEx) to deliver documents. When Kegler Brown uses these air-courier services, it charges its clients for the actual costs of the services without surcharge. During the Second Interim Period, Kegler Brown incurred \$0.00 in expenses in the Delivery Services expense category.

B. Duplicating.

Kegler Brown ordinarily logs internal duplicating and bills these projects to its clients at \$0.10 per page. During the Second Interim Period, Kegler Brown incurred \$860.66 in expenses in the Duplicating Category.

C. Postage.

Kegler Brown bills to the client the cost of transmitting mail. Postage is logged and billed to the client through a computer system, which calculates postage costs at the rate set by the postal service for the weight and class of a given mailing. The total expenses in the Postage category during the Second Interim Period were \$344.97.

D. Telephone (Long Distance).

While representing the Debtor, Kegler Brown has incurred long distance telephone charges of \$1.98 for which Kegler Brown is seeking reimbursement.

E. Hotel Charges

In the past, while representing the Debtor, Kegler Brown incurred hotel expenses for overnight stays in Columbus of Morrison & Foerster attorneys. Kegler Brown is seeking no reimbursement for hotel reimbursement during the Second Interim Fee Application.

F. Parking and Meals.

Kegler Brown charges its clients for parking costs incurred by its professionals in connection with services rendered and for working session meals. During the Second Interim Period, Kegler Brown incurred \$0.00 in parking costs and \$0.00 in working session meals.

VI. REQUEST FOR INTERIM COMPENSATION

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:

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

- (E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.¹

As detailed in the Exhibits attached hereto and referenced in the Cookson Declaration, based on its normal guideline hourly rates, Kegler Brown seeks interim allowance of \$17,707.61 in fees and costs incurred during the Second Interim Period. Kegler Brown also seeks payment of \$6,089.73, the unpaid balance of the foregoing amounts.

VII. CONCLUSION

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

Kegler Brown believes 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.

WHEREFORE, Kegler Brown respectfully requests that the Court enter an order: (1) allowing and approving interim compensation to Kegler Brown in the amount of \$17,707.61 representing \$16,500.00 in professional services rendered and \$1,207.61 in expenses and costs incurred during the Second Interim Period; (2) approving the payments already received by

¹ 11 U.S.C. § 330(a)(3).

Kegler Brown of \$11,617.88; (3) authorizing payment of the unpaid balance owed to Kegler Brown of \$6,089.73; and (4) granting to Kegler Brown such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate.

Dated: April 26, 2005

Respectfully submitted,

/s/ Kenneth R. Cookson

Kenneth R. Cookson (0020216)

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