

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 04-63788
)	
TECHNEGLAS, INC.,*)	Chapter 11
)	
Debtor.)	Judge John E. Hoffman, Jr.
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In re:)	Case No. 04-63851
)	
NIPPON ELECTRIC GLASS OHIO, INC.,)	Chapter 11
)	
Debtor.)	Judge John E. Hoffman, Jr.
)	
)	

**DEBTORS' MOTION FOR APPROVAL OF STIPULATION AND ORDER
RESOLVING CLAIMS BETWEEN TECHNEGLAS, INC.
AND NIPPON ELECTRIC GLASS OHIO, INC.**

The above-captioned debtors and debtors in possession (the “Debtors”) hereby move the Court (the “Motion”) for approval of the stipulation and order (the “Stipulation and Order”), attached hereto as Exhibit A, resolving the claims of Techneglas, Inc. (“Techneglas”) and Nippon Electric Glass Ohio, Inc. (“NEG Ohio”) against each other. A memorandum in support of this Motion is provided below.

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MEMORANDUM IN SUPPORT

Jurisdiction

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue of this proceeding and over this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are section 553 of Title 11 of the United States Code (as amended from time to time, the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”).

Background

4. Prior to the Petition Date (as defined below) Techneglas and NEG Ohio had a business relationship wherein Techneglas supplied NEG Ohio with CRT glass and then Techneglas subsequently bought back certain amounts of such glass from NEG Ohio. These transactions resulted in mutual prepetition obligations between Techneglas and NEG Ohio.
5. On September 1, 2004 (the “Petition Date”), the Debtors each filed a petition for relief under the Bankruptcy Code and commenced the above-captioned Chapter 11 cases (the “Chapter 11 Cases”). Each of the Debtors continues to operate its business and manage its properties as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 10, 2004, the United States Trustee appointed an official committee of unsecured creditors in the Techneglas Case (as defined below). No trustee or examiner has been appointed in either of the Chapter 11 Cases.
6. On May 20, 2005, Techneglas filed a claim against NEG Ohio in its Chapter 11 Case (Case No. 04-63851) (the “NEG Ohio Case”) in the amount of \$4,556,422.51,

which claim was docketed in the Claims Register in the NEG Ohio Case as Claim No. 10 (the “Techneglas Claim”).

7. On January 7, 2005, NEG Ohio filed a claim against Techneglas in its Chapter 11 Case (Case No. 04-63788) (the “Techneglas Case”) for the amount of \$1,628,286, which claim was docketed in the Claims Register of the Techneglas Case as Claim No. 1070 (the “NEG Ohio Liquidated Claim”). On January 14, 2005, NEG Ohio filed an additional claim against Techneglas in the Techneglas Case for a contingent and unliquidated amount, which claim was docketed in the Claims Register of the Techneglas Case as Claim No. 2032 (the “NEG Ohio Unliquidated Claim”)

8. Techneglas and NEG Ohio, together with Nippon Electric Glass America, Inc., have filed a First Amended Joint Plan of Reorganization dated August 22, 2005 (together with any amendments or modifications thereto, the “Plan”) in their respective Chapter 11 Cases. On October 7, 2005, the Court entered its order confirming the Plan.

9. Pursuant to the Plan, those holders of Class 3B Other Unsecured Claims against NEG Ohio, will be paid as soon as reasonably practicable after the effective date of the Plan, a distribution in the amount of 100% of the face value of such Allowed Claim without interest, penalties or other charges to be paid: (a) first by offset of any claims of NEG Ohio against the holder of the Class 3B Other Unsecured Claim; and/or (b) the balance in Cash. Under the Plan, the Techneglas Claim is a Class 3B Other Unsecured Claim.

10. Techneglas and NEG Ohio have evaluated their respective claims in light of the Plan, agreed upon the allowance and satisfaction of such respective claims against each other, and wish to memorialize such agreement by the Stipulation and Order.

Relief Requested

11. By this Motion, the Debtors respectfully request that the Court approve the Stipulation and Order, attached hereto as Exhibit A, pursuant to section 553(b) and Bankruptcy Rule 9019(a).

Law and Argument

12. This Court has authority to approve the Stipulation. Bankruptcy Rule 9019(a) provides, in pertinent part, that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Section 553 of the Bankruptcy Code allows a debtor and creditor to offset mutual debt that arose prepetition. See 11 U.S.C. § 553(a).

13. Compromises are tools for expediting the administration of the case and reducing administrative costs, and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy case, ‘[c]ompromises are favored in bankruptcy.’”); (quoting 9 Collier on Bankruptcy 9019.03[1] (15th Ed. 1993)); Fishell v. Soltow (In re Fishell), No. 92-1109, 1995 WL 66622, at *2 (6th Cir. 1995); In re Lee Way Holding Co., 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990). Moreover, various courts have endorsed the use of Bankruptcy Rule 9019 to resolve disputes. See, e.g., In re Miller, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992); In re Planned Systems, Inc., 82 B.R. 919, 921 (Bankr. S.D. Ohio 1988); see also Bartel v. Bar Harbour Airways, Inc., 196 B.R. 268 (S.D.N.Y. 1996); In re Foundation for New Era Philanthropy, Case No. 95-13729B, 1996 Bankr. LEXIS 1892 (Bankr. E.D. Pa. 1996); In re Check Reporting Service, Inc., 137 B.R. 653 (Bankr. W.D. Mich. 1992).

14. Generally, a settlement should be approved if it is determined to be in the best interests of the debtor's estate. See In re Goldstein, 131 B.R. 367, 370 (Bankr. S.D. Ohio 1991); Planned Systems, 82 B.R. at 921-22. More specifically, in determining whether a compromise is in the estate's best interest, courts ordinarily consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved; and (d) the paramount interest of creditors and proper deference to their reasonable views. See, e.g., In re Swallen's, Inc., 210 B.R. 123, 126 (Bankr. S.D. Ohio 1997) (quoting 10 Collier on Bankruptcy 9019.02 (15th Rev. ed. 1996)); Goldstein, 131 B.R. at 370. Further, a settlement should be approved unless it "falls below the lowest point in the range of reasonableness." Goldstein, 131 B.R. at 370; see also Matter of Energy Co-op, Inc., 886 F.2d 921, 929 (7th Cir. 1989); Matter of Rimsat, Ltd., 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997). The Stipulation and Order presently before the Court satisfies the above standard.

15. Section 553(a) provides that the Bankruptcy Code "does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case[.]" 11 U.S.C. § 553(a). Furthermore, under section 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

16. Courts within the Sixth Circuit have held that setoffs should be approved under section 553 when the prerequisites of section 553 have been met and the equities of the case justify a set off. See, e.g., In re Gordon Sel-Way, Inc., 270 F.3d 280, 292 (6th Cir. 2001) ("Once the prerequisites for establishing a setoff claim are established, the court generally looks

to the equities in order to determine if the setoff should be allowed.”). Generally, to exercise the right of setoff under section 553 of the Bankruptcy Code a creditor must establish:

(1) a debt owed by the creditor to the debtor which arose prior to the commencement of the bankruptcy case; (2) a claim of the creditor against the debtor which arose prior to the commencement of the bankruptcy case; (3) the debt and claim are mutual obligations; and (4) a right to setoff the debts under nonbankruptcy law.

In re Roberds, Inc., 285 B.R. 651, 656 (Bankr. S.D. Ohio 2002).

17. The Debtors submit that the facts underlying the Stipulation meet the standards of Rule 9019(a) and section 553 and that the Court should, therefore, grant the Motion.

18. The Techneglas Claim and the NEG Ohio Liquidated Claim arose prior to the Petition Date in these Chapter 11 Cases, and are mutual debts for goods and services provided by each of the respective Debtors to each other. Further, both Techneglas and NEG Ohio have independently evaluated the validity of each of the claims and reached a conclusion that the amounts agreed upon regarding the Techneglas Claim and the NEG Ohio Liquidated Claim are accurate reflections of the amounts due as reflected in the respective Debtor’s books and records. Similarly, the Debtors have agreed that the NEG Ohio Unliquidated Claim should be disallowed and expunged.

19. The Court’s approval of the Stipulation and Order would result in the offset of the NEG Ohio Allowed Claim against the Techneglas Allowed Claim, and no distributions would be made to NEG Ohio on account of the NEG Ohio Allowed Claim under the Plan. Such approval is entirely consistent with the Debtors’ confirmed Plan and the treatment of Class 3B Other Unsecured Claims under such Plan.

20. Based on the foregoing, the Debtors believe that it is in the best interests of their estates and their creditors to enter into the Stipulation and Order.

WHEREFORE, the Debtors respectfully request that the Court approve the Stipulation and Order, attached hereto as Exhibit A, (a) resolving the claims of Techneglas and NEG Ohio, and (b) granting such other and further relief as the Court may deem just and proper.

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**NOTICE AND
CERTIFICATE OF SERVICE**

Please take notice that any objection or memorandum contra shall be filed no later than twenty (20) days after the service of the Motion for Approval of Stipulation. If such an objection or memorandum contra is filed and served pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. 79] entered on September 20, 2004, said matter shall be heard at the next omnibus hearing at 2:00 p.m. (prevailing Eastern time) on November 16, 2005, at the United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215.

Please take further notice that the Debtor may present a proposed order to the Court granting the relief sought without further notice unless such objection or memorandum contra is timely filed.

The undersigned hereby certifies that a copy of the foregoing was delivered to and served upon the Service List attached hereto on this 12th day of October, 2005 by regular United States mail, postage prepaid.

/s/ Kenneth R. Cookson

Kenneth R. Cookson (0020276)

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Exhibit A

Stipulation and Order