

**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.	:	

**FINAL FEE APPLICATION OF
KEGLER, BROWN, HILL & RITTER CO., LPA
FOR ALLOWANCE AND PAYMENT OF COMPENSATION
AND REIMBURSEMENT OF COSTS AND EXPENSES**

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 Final Fee Application for Allowance and Payment of Compensation and Reimbursement of Costs and Expenses (the “Application”) covering the period from August 1, 2005 through October 31, 2005 (the “Final 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 \$20,867.70 representing \$19,004.50 in professional services rendered and \$1,863.20 in expenses and costs incurred during the Final Period; authorizing payment of the unpaid balance owed to

Kegler Brown of \$20,867.70; and granting to Kegler Brown such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate; and

(2) Granting final approval and allowance of (a) all fees and costs previously approved, allowed and paid to Kegler Brown as interim compensation pursuant to the Fee Order, and (b) all fees and costs previously approved, allowed and unpaid to Kegler Brown, in the amount of \$14,932.01; and (c) all fees and costs approved and allowed pursuant to this Final Application for the Final Fee Period, such final approval and allowance to be in the amount of \$78,848.00 in fees and \$6,954.71 in costs, for total fees and costs of \$85,802.71, for services rendered by Kegler Brown to the Debtor from the commencement of the case through October 31, 2005.¹

The Application is supported by the appended Declaration of Kenneth R. Cookson (the “Cookson Declaration”) and the exhibits attached thereto. 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.

¹ The Debtor’s Joint Plan of Reorganization provides for professionals to file final applications for fees for services rendered and reimbursement of expenses incurred on or before the Confirmation Date, defined in the Plan as the date of entry of the Confirmation Order. Although the Confirmation Order was entered on October 7, 2005, Kegler Brown has included fees through October 31, 2005 in this Final Application. The Effective Date of the Plan was November 1, 2005.

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 have included work in preparing the petition and other initial filing documents, in the preparation of the Schedules and Statements of Affairs, attending hearings, participating in strategic planning and assisting with plan confirmation. In addition, Kegler Brown has monitored 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 PRIOR FEE APPLICATIONS AND PAYMENTS

Kegler Brown previously filed three Interim Fee Applications pursuant to the Fee Order, all of which were approved by the Court.

Kegler Brown filed its First Interim Fee Application on January 13, 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. Pursuant to the First Interim Fee Application, Kegler Brown's fees in the amount of \$32,835.50 and expenses of \$2,374.57 were approved. Kegler Brown has received payment in full for these amounts.

Kegler Brown filed its Second Interim Fee Application on April 26, 2005, for services rendered from December 1, 2004 through and including March 31, 2005 (the "Second Interim Period"). The Second Interim Fee Application was approved by order of the Court entered on May 31, 2005. Pursuant to the Second Interim Fee Application, Kegler Brown's fees of \$16,500.00 and expenses of \$1,207.61 were approved. Kegler Brown has received payment of

\$13,585.32 for fees and \$1,207.61 for costs, for a total payment of \$14,792.93 for fee and expenses for services rendered during the Second Interim Period. The outstanding balance of \$2,914.68 remains unpaid.

Kegler Brown filed its Third Interim Fee Application on September 14, 2005, for services rendered from April 1, 2005 through and including July 31, 2005 (the “Third Interim Period”). The Third Interim Fee Application was approved by order of the Court entered on October 13, 2005. Pursuant to the Third Interim Fee Application, Kegler Brown’s fees in the amount of \$10,508.00 and expenses of \$1,509.33 were approved. Kegler Brown has received no payment of these fees and for costs, for a total amount of \$12,017.33 outstanding.

Kegler Brown incorporates by reference the First, Second and Third Interim Fee Applications in this Final Application seeking final approval of all fees and expenses incurred in the course of Kegler Brown’s representation of the Debtor during the Chapter 11 Case and for payment of any outstanding balances.

III. SUMMARY OF COMPENSATION REQUEST FOR FINAL FEE PERIOD

A. Professional and Hourly Rates.

The professionals who were principally responsible for rendering services to the Debtor during the Final Period were Attorneys Kenneth R. Cookson and Stephanie P. Union and Paralegals Robin Hayes and Lynette Kelley. 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 Final Period. Attached as Exhibit 3

are the billing rates for each of those individuals during the Final 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 Final 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 fourth and final application that Kegler Brown has filed with the Court in accordance with the Fee Order. During the Final Period, Kegler Brown submitted three (3) Monthly Statements covering the months of August, September, and October 2005. No party objected to any of the Monthly Statements², but Debtor has not yet paid Kegler Brown in accordance with the Fee Order.

During the Final Period, Kegler Brown professionals spent a total of 76.20 hours rendering services to the Debtor. Kegler Brown also incurred \$1,864.70 in costs and expenses in connection with those services. The following table summarizes the monthly fees and expenses

² The Monthly Fee Notice for October, 2005 was served on November 11, 2005, so the time limit for objections has not yet passed. Nonetheless, Kegler, Brown has not yet received any such objection.

incurred and payments made during the Final 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>
August, 2005	\$ 7,996.00	\$ 1,159.75	\$ 9,155.75	\$ 0.00
September, 2005	3,166.00	270.50	3,436.50	0.00
October 2005	<u>7,842.50</u>	<u>432.95</u>	<u>8,275.45</u>	<u>0.00³</u>
Total Fees and Expenses Incurred	\$ 19,004.50	\$ 1,863.20	\$ 20,867.70	\$ 0.00
Total Unpaid	\$ 20,867.70			

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

³ Not eligible for payment until after December 5, 2005.

amounts withheld as a holdback from payment to Kegler Brown during the Final Period:

<u>Period</u>	<u>Total Amount Withheld From Payment</u>
August, 2005	1,599.20
September, 2005	633.20
October, 2005	1,568.50
Total Holdbacks	\$ 3,800.90

The total amount that was withheld from payment to Kegler Brown pursuant to the 20% holdback is \$3,800.90. 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 \$1,653.00 for 10.00 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 Final Period.

The Debtor filed its petition on September 1, 2004. An affiliate of Debtor is operating a manufacturing plant along the California border with Mexico. Subsequent to the Petition Date, a fire broke out in some overhead electrical lighting causing near total destruction of the facility. 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 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. Kegler Brown assisted in formulating an effective plan of reorganization and in obtaining Court approval of the plan.

IV. SUMMARY OF COSTS AND EXPENSES

Kegler Brown is seeking reimbursement of \$20,867.70 in costs and expenses that it incurred during the Final 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 Final Period, Kegler Brown incurred \$13.50 in expenses in the Delivery Services expense category.

B. Duplicating.

Kegler Brown ordinarily logs internal duplicating and bills these projects to its clients at \$0.19 per page. During the Final Period, Kegler Brown incurred \$1,438.50 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 Final Period were \$378.11.

D. Telephone (Long Distance).

Kegler Brown bills to the client the cost of long distance telephone calls. While representing the Debtor, Kegler Brown has incurred long distance telephone charges of \$31.09 in the Final Period for which Kegler Brown is seeking reimbursement.

VI. REQUEST FOR FINAL 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.⁴

As detailed in the Exhibits attached to the Cookson Declaration, based on its normal guideline hourly rates, Kegler Brown seeks final allowance of \$20,867.70 in fees and costs incurred during the Final Period, all of which remains unpaid.

VII. CONCLUSION

The interim compensation sought in this Application is on a final basis. 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 an Order:

(1) Approving and allowing compensation to Kegler Brown in the amount of \$19,004.50 in fees and \$1,863.20 in expenses and costs, for a total of \$20,867.70 in fees and costs, for services rendered during the period of August 1, 2005 through October 31, 2005 (the “Final Fee Period”), which fees and costs have not previously been approved in Interim Fee Applications submitted by Kegler Brown; and authorizing payment of the fee “holdback” for the Final Fee Period; and

⁴ 11 U.S.C. § 330(a)(3).

(2) Granting final approval and allowance of (a) all fees and costs previously approved, allowed and paid to Kegler Brown as interim compensation pursuant to the Fee Order, and (b) all fees and costs previously approved, allowed and unpaid to Kegler Brown, in the amount of \$14,932.01; and (c) all fees and costs approved and allowed pursuant to this Final Application for the Final Fee Period, such final approval and allowance to be in the amount of \$78,848.00 in fees and \$6,954.71 in costs, for total fees and costs of \$85,802.71, for services rendered by Kegler Brown to the Debtor from the commencement of the case through October 31, 2005; and

(3) Granting such other and further relief consistent with the foregoing that the Court deems necessary and appropriate.

Dated: November 15, 2005

Respectfully submitted,

/s/ Kenneth R. Cookson

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