

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

**MOTION FOR AN ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF
PROFESSIONALS**

Nippon Electric Glass Ohio, Inc. (the “Debtor”), debtor and debtor in possession hereby moves the Court (the “Motion”) for an administrative order, attached hereto as Exhibit B, establishing procedures for the interim compensation and reimbursement of expenses of professionals. A memorandum in support of this Motion is provided below.

September 10, 2004

Respectfully submitted,

/s/ Lisa M. Diem
Kenneth R. Cookson (0020216)
Lisa M. Diem (0069283)
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 East State Street, Suite 1800
Columbus, Ohio 43215
614/462-5400
614/464-2634 - Facsimile
kcookson@keglerbrown.com
ldiem@keglerbrown.com

and

Adam A. Lewis (California #88736)
Patricia S. Mar (California #45593)
MORRISON & FOERSTER^{LLP}
425 Market Street, 33rd Floor
San Francisco, California 94105-2482
415/268-7000
415/268-7522 - Facsimile
llewis@mofocom
pmar@mofocom

Counsel for the Debtor and Debtor-in-Possession

MEMORANDUM IN SUPPORT

Jurisdiction

1. The Court has jurisdiction over this 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. Venue of this proceeding and the Motion is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Local Bankruptcy Rule 2016-1(a)(1)(F).

Background

4. On September 1, 2004 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Relief Requested

5. Pursuant to sections 105(a) and 331 of the Bankruptcy Code, the Debtor requests that this Court enter an order establishing certain interim compensation and expense reimbursement procedures for Court approved, retained professionals of the Debtor (the “Professionals”) on a monthly basis similar to those established in other large Chapter 11 cases in this District. Such an

order will streamline the professional compensation process and enable the Court and all other parties to more effectively monitor the Professionals' fees incurred in this Chapter 11 case. Further, it will avoid forcing Professionals to finance this Chapter 11 case while awaiting final approval of their fees and expenses.

6. Contemporaneously herewith, the Debtor has filed applications to retain (a) Morrison & Foerster LLP as its bankruptcy counsel, and (b) Kegler Brown Hill & Ritter, Co., L.P.A. as its local bankruptcy counsel. The Debtor anticipates that it may also retain other professionals in this Chapter 11 case as the need arises and upon application to this Court. The Debtor's various Professionals will carry out unique functions and will coordinate with one another to avoid unnecessary duplication of services while obtaining maximum advantage from each firm's expertise and knowledge of the Debtor. The requested procedures would permit each retained Professional to present to the Debtor, the United States Trustee, a committee of unsecured creditors if appointed, and certain other interested parties, a monthly fee statement for services rendered and expenses incurred by each retained Professional during the immediately preceding month.

7. Specifically, the Debtor proposes that, except as otherwise provided in an order of the Court authorizing the retention of a particular professional, the Professionals retained pursuant to an order of the Court in this Chapter 11 case be permitted to seek monthly payment of compensation and reimbursement of expenses in accordance with the procedures attached hereto as Exhibit A (collectively, the "Compensation Procedures").

8. The Professionals shall also file and serve quarterly applications for interim allowance of compensation and reimbursement of expenses of the amounts sought in the monthly fee statements filed during such period, in accordance with the Compensation Procedures.

Law and Argument

9. Local Bankruptcy Rule 2016-1(a)(1)(F) provides that a professional may file a motion with the Court for approval of procedures for the monthly compensation and reimbursement of expenses of professionals by order of the Court.

10. Moreover, section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional personal employed under section 327 or 1103 of this title may apply to the court no more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11 U.S.C. § 331.

11. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules.

11 U.S.C. § 105(a).

12. The Compensation Procedures requested in this Motion will (a) relieve the burden on the Court imposed by alternative interim compensation procedures that require monthly Court orders, (b) preserve all rights of objection, (c) enable parties to closely monitor costs of administration, and (d) allow the Professionals to avoid having to wait several months before receiving any compensation.

13. Procedures comparable to those proposed in this Motion have been adopted by other courts in this District and elsewhere. *See, e.g., National Century Financial Enterprises, Inc., Case*

No. 02-65235 (Bankr. S.D. Ohio Nov. 27, 2002); *In re Chiquita Brands International, Inc.*, Case No. 01-18812 (Bankr. S.D. Ohio Nov. 28, 2001); *In re Cooker Restaurant Corp.*, Case No. 01-56156 (Bankr. S.D. Ohio Jul. 31, 2001); *In re Federated Department Stores, Inc.*, Case No. 1-90-00130 (Bankr. S.D. Ohio Mar. 28, 1990).

14. The relief requested herein will permit the Court, the Debtor, the Office of the United States Trustee, and certain other interested parties to more effectively monitor the fees incurred. Further, such procedures are needed to avoid having professionals fund the Chapter 11 case. *In re Int'l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensation). Appropriate factors to consider include the “size of [the] reorganization cases, the complexity of the issues included, and the time required on the part of the attorneys for the Debtor[s] in providing services necessary to achieve a successful reorganization of the Debtor[s].” *Id.* The Debtor submits that the procedures sought herein are appropriate considering the above factors and the time the Professionals anticipate spending evaluating issues in and monitoring two affiliated debtor cases of Techneglas, Inc. and Nippon Electric Glass America, Inc., also pending before this Court.

Notice and Prior Request

15. Notice of this Motion has been given to the Office of the United States Trustee, the Debtor’s list of 20 largest creditors, and all parties having requested notice in this case. The Debtor submits that no other notice need be given.

16. No previous motion for the relief sought herein has been made to this or any other court.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form of the order attached hereto as Exhibit B (a) establishing procedures for the monthly

compensation and reimbursement of expenses of professionals, and (b) granting such other and further relief as the Court may deem proper.

Dated: September 10, 2004

Respectfully submitted,

/s/ Lisa M. Diem

Kenneth R. Cookson (0020216)
Lisa M. Diem (0069283)
KEGLER, BROWN, HILL & RITTER
A Legal Professional Association
65 East State Street, Suite 1800
Columbus, Ohio 43215
614/462-5400
614/464-2634 – Facsimile
kcookson@keglerbrown.com
ldiem@keglerbrown.com

and

Adam A. Lewis (California #88736)
Patricia S. Mar (California #45593)
MORRISON & FOERSTER^{LLP}
425 Market Street, 33rd Floor
San Francisco, California 94105-2482
415/268-7000
415/268-7522 - Facsimile
llewis@mofocom
pmar@mofocom

Counsel for the Debtor and Debtor-in-Possession

NOTICE OF MOTION AND CERTIFICATE OF SERVICE

Nippon Electric Glass Ohio, Inc. has filed the foregoing *Motion for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* seeking an order establishing certain compensation procedures. Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want to Court to rule against you, or if you want the Court to consider your views on the Motion, then on or before twenty (20) days after service of this Motion you or your attorney must file with the Court a response explaining your position at:

United States Bankruptcy Court
170 North High Street
Columbus, Ohio 43215

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the deadline stated above. You must also serve a copy on the following:

United States Trustee
170 North High Street, Suite 200
Columbus, Ohio 43215

Kenneth R. Cookson
Lisa M. Diem
Kegler Brown Hill
& Ritter
65 East State St.,
Suite 1800
Columbus, OH 43215

Adam Lewis
Patricia Mar
Morrison & Foerster LLP
425 Market St., 33rd Floor
San Francisco, CA 94105-
2482

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion or objection and may enter an order granting that relief.

The undersigned hereby certifies that a copy of the foregoing *Motion for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* was served by regular U.S. Mail, postage prepaid, or by electronic filing, as indicated on the receipt of filing, on September 10, 2004, on the parties listed below.

Nippon Electric Glass Ohio, Inc.
Attn: Katsuo Takeda
P.O. Box 220
El Centro, CA 92444

Adam Lewis
Patricia S. Mar
Morrison & Forrester LLP
235 Market Street, 33rd Floor
San Francisco, CA 94104

Japan Bank for
International Cooperation
4-1, Ohtemachi 1-Chrome
Chiyoda-ku
Tokyo 100-8144
Japan

Thomson, Inc.
PO Box 972630
El Paso, TX 79997

Transportes Juan Carlos
De Mixicali, SA de CV
Blvd. Hector Teran Teran
#2382 Fracc. Laguna
Xochimilco, Mexicali, B.C.
Mexico

Daniel A. DeMarco, Esq.
Christopher B. Wick, Esq.
Hahn Loeser & Parks LLP
3300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2301

United States Trustee
170 N. High Street, Suite 200
Columbus, Oh 43215-2403

/s/ Lisa M. Diem
Lisa M. Diem

EXHIBIT A

Compensation Procedures

1. No later than the final business day of each month (beginning with October 29, 2004), each Professional seeking interim compensation will serve a monthly fee statement (the "Monthly Fee Statement") on (i) the officer designated by the Debtor to be responsible for such matters, (ii) counsel for the Debtor, (iii) counsel to all official committees appointed in this case, and (iv) the Office of the United States Trustee (collectively, the "Notice Parties"), for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Compensation Period"). The Monthly Fee Statement due on or about October 29, 2004, shall cover the period between the commencement of the case through September 30, 2004.

2. The Monthly Fee Statement need not be filed with the Court. Professionals still will be required to serve and file interim and final applications for approval of fees and expenses in accordance with relevant provisions of Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable law, and the Local Rules for the United States Bankruptcy Court for the Southern District of Ohio (the "Local Rules").

3. The Notice Parties shall have until twenty (20) days after service of a Monthly Fee Statement (the "Objection Deadline") to review the Monthly Fee Statement and raise objections thereto. Any objections to a Monthly Fee Statement must be served on the affected Professional and the other Notice Parties on or before the Objection Deadline. Any objections (each an "Objection") must be in writing and state the nature of the objection and the amount of fees or expenses at issue.

4. If no timely Objection is served regarding a Professional's Monthly Fee Statement, the Debtor shall be authorized to pay immediately to the applicable Professional, 80% of fees and 100% of expenses requested in the Monthly Fee Statement. If a timely Objection is served regarding a Professional's Monthly Fee Statement, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to resolve the Objection, the affected Professional may either: (i) file a request for payment of the disputed amount with the Court and serve such request on the Notice Parties, which request shall be heard at the first scheduled hearing in this case occurring at least 20 days after the filing and service of such request; or (ii) forego payment of the disputed amount until the next interim or final fee application hearing, at which time the Court shall consider and dispose of the Objection. Pending resolution of any timely Objection, the Debtor shall be authorized to pay immediately to the applicable Professional the lesser of (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Statement and (ii) the aggregate amount of fees and expenses in the Monthly Fee Statement that are not subject of the Objection. After resolution of an Objection (either consensual or by the Court), the Debtor shall be authorized to pay immediately to the applicable Professional any additional allowed amounts consistent with the terms of the Compensation Procedures.

5. No later than January 14, 2005, and at three month intervals (each, a “Quarterly Period”), each Professional shall file and serve a quarterly application for allowance of compensation and reimbursement of expenses, of the amounts sought in the Monthly Fee Statements served during such period (the “Quarterly Fee Application”). The Quarterly Fee Application must include a summary of the Monthly Fee Statements that are the subject of the request and any other information requested by the Court or required by law.

6. The service of an Objection in accordance with paragraph 3 shall not prejudice the objecting party’s right to object to any Quarterly Fee Application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the Objection or not. Furthermore, the decision by any party to not object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party’s right to object to any Quarterly Fee Application subsequently made to the Court in accordance with the Bankruptcy Code.

7. A Quarterly Fee Application shall be filed and served no later than forty-five (45) days of the conclusion of the preceding Quarterly Period. The first Quarterly Fee Application shall cover the time between the commencement of this Chapter 11 case through and including November 30, 2004. Any Professional who fails to file a Quarterly Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as the Quarterly Fee Application is submitted.

8. The Debtor may request that a hearing on the Quarterly Fee Applications be held every three months or at such other intervals as the Court deems appropriate.

9. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

10. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court’s interim or final allowance of compensation and reimbursement of expenses of any Professionals.

11. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

EXHIBIT B

Form of Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

**ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the Motion (the “Motion”)¹ of Nippon Electric Glass Ohio, Inc. (the “Debtor”), debtor and debtor in possession, seeking an order establishing procedures for interim compensation and reimbursement of expenses of Professionals [Docket No. ____]; and it appearing that the relief requested is essential to the continued operation of the Debtor’s business and is in the best interest of the Debtor’s estate and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157; and adequate notice of the Motion

¹ Capitalized terms used but not defined herein shall have the same meanings given to them in the Motion.

having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Motion, served on September ____, 2004 by regular U.S. Mail, postage prepaid upon the United States Trustee, the Debtor's largest unsecured creditors and other parties requesting notice, and heard upon expedited hearing on September ____, 2004, is granted.

2. Except as otherwise provided in an order of the Court authorizing the retention of a particular professional, the Professionals may seek interim payment of compensation and reimbursement of expenses in accordance with the Compensation Procedures attached hereto as Exhibit A.

3. The Debtor is authorized and empowered to take all actions and execute all documents or refrain from any actions necessary or appropriate to implement the relief granted in this Order.

4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

IT IS SO ORDERED.

Copies to: See Attached Service List

SERVICE LIST

Nippon Electric Glass Ohio, Inc.
Attn: Katsuo Takeda
P.O. Box 220
El Centro, CA 92444

Adam Lewis
Patricia S. Mar
Morrison & Forrester LLP
235 Market Street, 33rd Floor
San Francisco, CA 94104

Japan Bank for
International Cooperation
4-1, Ohtemachi 1-Chrome
Chiyoda-ku
Tokyo 100-8144
Japan

Thomson, Inc.
PO Box 972630
El Paso, TX 79997

Transportes Juan Carlos
De Mixicali, SA de CV
Blvd. Hector Teran
#2382 Fracc. Laguna
Xochimilco, Mexicali, B.C.
Mexico

Daniel A. DeMarco, Esq.
Christopher B. Wick, Esq.
Hahn Loeser & Parks LLP
3300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2301

United States Trustee
170 N. High Street, Suite 200
Columbus, Oh 43215-2403

Kenneth R. Cookson
Lisa M. Diem
Kegler Brown Hill & Ritter
65 East State Street, Suite 1800
Columbus, Ohio 43215

EXHIBIT A

Compensation Procedures

1. No later than the final business day of each month (beginning with October 29, 2004), each Professional seeking interim compensation will serve a monthly fee statement (the "Monthly Fee Statement") on (i) the officer designated by the Debtor to be responsible for such matters, (ii) counsel for the Debtor, (iii) counsel to all official committees appointed in this case, and (iv) the Office of the United States Trustee (collectively, the "Notice Parties"), for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Compensation Period"). The Monthly Fee Statement due on or about October 29, 2004, shall cover the period between the commencement of the case through September 30, 2004.

2. The Monthly Fee Statement need not be filed with the Court. Professionals still will be required to serve and file interim and final applications for approval of fees and expenses in accordance with relevant provisions of Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable law, and the Local Rules for the United States Bankruptcy Court for the Southern District of Ohio (the "Local Rules").

3. The Notice Parties shall have until twenty (20) days after service of a Monthly Fee Statement (the "Objection Deadline") to review the Monthly Fee Statement and raise objections thereto. Any objections to a Monthly Fee Statement must be served on the affected Professional and the other Notice Parties on or before the Objection Deadline. Any objections (each an "Objection") must be in writing and state the nature of the objection and the amount of fees or expenses at issue.

4. If no timely Objection is served regarding a Professional's Monthly Fee Statement, the Debtor shall be authorized to pay immediately to the applicable Professional, 80% of fees and 100% of expenses requested in the Monthly Fee Statement. If a timely Objection is served regarding a Professional's Monthly Fee Statement, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to resolve the Objection, the affected Professional may either: (i) file a request for payment of the disputed amount with the Court and serve such request on the Notice Parties, which request shall be heard at the first scheduled hearing in this case occurring at least 20 days after the filing and service of such request; or (ii) forego payment of the disputed amount until the next interim or final fee application hearing, at which time the Court shall consider and dispose of the Objection. Pending resolution of any timely Objection, the Debtor shall be authorized to pay immediately to the applicable Professional the lesser of (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Statement and (ii) the aggregate amount of fees and expenses in the Monthly Fee Statement that are not subject of the Objection. After resolution of an Objection (either consensual or by the Court), the Debtor shall be authorized to pay immediately to the applicable Professional any additional allowed amounts consistent with the terms of the Compensation Procedures.

5. No later than January 14, 2005, and at three month intervals (each, a “Quarterly Period”), each Professional shall file and serve a quarterly application for allowance of compensation and reimbursement of expenses, of the amounts sought in the Monthly Fee Statements served during such period (the “Quarterly Fee Application”). The Quarterly Fee Application must include a summary of the Monthly Fee Statements that are the subject of the request and any other information requested by the Court or required by law.

6. The service of an Objection in accordance with paragraph 3 shall not prejudice the objecting party’s right to object to any Quarterly Fee Application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the Objection or not. Furthermore, the decision by any party to not object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party’s right to object to any Quarterly Fee Application subsequently made to the Court in accordance with the Bankruptcy Code.

7. A Quarterly Fee Application shall be filed and served no later than forty-five (45) days of the conclusion of the preceding Quarterly Period. The first Quarterly Fee Application shall cover the time between the commencement of this Chapter 11 case through and including November 30, 2004. Any Professional who fails to file a Quarterly Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as the Quarterly Fee Application is submitted.

8. The Debtor may request that a hearing on the Quarterly Fee Applications be held every three months or at such other intervals as the Court deems appropriate.

9. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

10. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court’s interim or final allowance of compensation and reimbursement of expenses of any Professionals.

11. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

###