

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

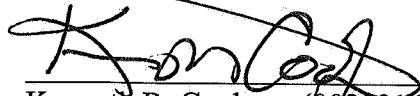
In re	)	Case No. 04-63851
NIPPON ELECTRIC GLASS OHIO, INC.	)	Federal I.D. No. 95-4658750
Debtor.	)	Chapter 11
	)	Judge John E. Hoffman, Jr.

**MOTION AUTHORIZING DEBTOR TO (1) SELL SCRAP MACHINERY AND  
INVENTORY DESTROYED BY FIRE LOSS AND PAY EXPENSES RELATING  
THERE TO, AND (2) ADVANCE FUNDS TO SUBSIDIARY FOR SEVERANCE  
PAYMENTS TO TERMINATED EMPLOYEES AND OTHER FIRE-RELATED  
EXPENSES**

Nippon Electric Glass Ohio, Inc., debtor-in-possession (the "Debtor"), hereby moves the Court for entry of an order, in the form attached as Exhibit A hereto, pursuant to 11 U.S.C. §§ 363(b), authorizing the Debtor to (1) sell as scrap damaged and destroyed machinery and inventory which has been rendered unusable by a recent fire at the Debtor's manufacturing location in Mexicali, Mexico, and pay expenses relating to such sale, and (2) advance up to \$500,000 to the Debtor's subsidiary, Nippon Electric Glass Mexico S.A. de C.V. ("NEG Mexico"), to be repaid upon NEG Mexico's receipt of insurance proceeds, to enable NEG Mexico to pay severance payments required by Mexican law to terminate employees who are no longer needed because of the fire and to pay other expenses resulting from the casualty loss.

A memorandum in support of this Motion is provided below.

October 25, 2004



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## MEMORANDUM IN SUPPORT

### JURISDICTION

1. On September 1, 2004 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. 11 U.S.C. §§ 101, *et seq.* The Debtor continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1109.

2. No creditor's committee has been appointed in this case. No trustee or examiner has been appointed in this case.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105 363, 1107 and 1108, Bankruptcy Rules 2002 and 6004 and Local Bankruptcy Rule 6004-1.

### BACKGROUND

#### A. Debtor's Business Operations

5. The Debtor is in the business of manufacturing glass parts for cathode ray tubes used in television sets. The Debtor has gross revenue of approximately \$20 million a year from sales to manufacturers of television sets.

6. The Debtor's manufacturing operations are conducted pursuant to a "maquila"<sup>1</sup> agreement with its subsidiary, NEG Mexico,<sup>2</sup> at NEG Mexico's facility located in Mexicali, Mexico. Under the agreement, a copy of which is attached hereto as Exhibit B, the Debtor supplies all equipment, machinery, raw materials and components used in the manufacturing operation. Thus, the Debtor owns the machinery and equipment and inventory, consisting of finished and unfinished glass components, at the Mexicali facility. NEG Mexico owns the building and real property. The Debtor pays NEG Mexico for its services in an amount equal to NEG Mexico's costs of operations, plus an 8% fee.<sup>3</sup>

7. Employees working at the Mexicali facility are NEG Mexico employees. The Debtor has only two employees of its own, namely its two executive officers, Mr. Katsuo Takeda, the president, and Mr. Akira Murakami, the vice president.

**B. Fire Loss at Mexicali Facility**

8. On October 7, 2004, a fire started by a spark in a lighting fixture severely damaged, and for practical purposes, destroyed the Mexicali facility and contents located inside the building. All of the Debtor's inventory and manufacturing equipment located in the building was destroyed and was transformed into broken glass and scrap metal. The building

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<sup>1</sup> "Maquila" refers to a program under which Mexican companies (called "maquiladoras"), commonly located near the U.S. border, perform assembly or manufacturing operations for United States companies, under laws affording favorable customs and tax treatment for machinery, equipment, materials and components imported into Mexico and the finished product exported from Mexico.

<sup>2</sup> The Debtor owns all but one share of the 50,000 shares of the stock of NEG Mexico, which is incorporated in Mexico. The remaining one share is nominally owned by the Debtor's affiliate, Nippon Electric Glass America, Inc.

<sup>3</sup> Under the agreement attached as Exhibit B, the original fee was 5%, but it was subsequently increased to 8% by agreement of the parties.

itself, owned by NEG Mexico, is also a total loss and will be torn down. The fire caused a total cessation of production at the Mexicali facility.

9. At the time of the loss, the equipment owned by the Debtor had a book value of approximately \$4.4 million, and the inventory had a book value of approximately \$2.7 million. The building owned by NEG Mexico had a book value of approximately \$5.8 million. The replacement cost of the equipment and building will likely exceed the book value.

10. The Debtor and NEG Mexico has casualty insurance, including fire insurance, with Grupo Nacional Provincial, S.A. (“GNP”), one of Mexico’s largest insurers, on the building, machinery and inventory. The insurance provides for payment of 80% of the loss, with policy limits of \$11.8 million for the building, \$9.1 million for machinery and equipment, and \$3.8 million for inventory. The GNP policy is in Spanish (45 pages long), and therefore is not attached to this Motion, but will be made available upon request. A summary page from the policy, partially in English, is attached hereto as Exhibit C. The Debtor is working with the insurer’s representatives to prepare its formal claim and adjust the loss.

## **PROPOSED RELIEF**

### **A. Sale of Destroyed Machinery and Inventory**

11. The Debtor has an estimated 1,698 tons, or 3,743,452 pounds, of broken glass at the Mexicali facility, which was formerly the inventory. The glass contains lead, which means that the glass must be disposed of properly.

12. The Debtor has assessed the available sale opportunities for the broken glass, and has not located a suitable, qualified purchaser in Mexico close to the Mexicali facility. The Debtor has identified two potential purchasers in the United States, Dlubak Glass

Company in Arizona and Envirocycle, Inc. in Pennsylvania. Neither of these companies are affiliated with the Debtor. Dlubak has offered to pay the Debtor \$140 per ton for the broken glass, which would produce gross proceeds estimated at \$237,720. The Debtor would be responsible for packaging and transporting the glass, at an estimated cost of \$51,900, resulting in estimated net proceeds of sale \$185,820.

13. The Debtor has not yet received a firm quote from Envirocycle, but believes that Envirocycle's bid would be comparable to that of Dlubak. Because of lower transportation costs to transport the glass to Arizona than to Pennsylvania, the Debtor believes that a sale to Dlubak would produce a higher net recovery for the estate.

14. Therefore, the Debtor proposes to sell the glass to Dlubak for the price of \$140 per ton, but seeks authority to change buyers if, before the hearing on this Motion, Envirocycle or another purchaser offers a price that results in a higher net recovery to the estate, after costs.

15. The Debtor has also investigated the most advantageous means of disposing of the destroyed machinery and equipment, which now consists of an estimated 440 tons of scrap metal. The Debtor has determined that because of the low price obtainable for the scrap metal and high transportation costs of shipping it elsewhere, a sale of the scrap metal in Mexico offers the best solution for the Debtor.

16. The Debtor therefore proposes to sell the scrap metal to Shimizu America Corporation ("Shimizu") in Mexico for 1,000 pesos per ton, which at a conversion rate of 11.45 pesos to the U.S. dollar, would produce a selling price of approximately \$87.33 per ton, or an estimated \$38,425 for 440 tons. The gross proceeds may be reduced by some

transportation and other selling costs, which Debtor cannot estimate at this time. Shimizu is not affiliated with the Debtor.

17. As with the glass, Debtor requests authority to change buyers if, before the hearing on this Motion, another purchaser offers a price that results in a higher net recovery to the estate, after costs, than Shimizu's offer.

18. Shimizu will also be employed to break down the building owned by NEG Mexico, which will produce an additional 660 tons of scrap metal to be sold to Shimizu. The proceeds of the scrap metal from the building would be paid to NEG Mexico.

19. The proceeds from the sale of the broken glass and scrap metal may be claimed by the insurance company upon its payment of the loss.

**B. Advance to NEG Mexico for Severance Payments and other Casualty Expenses**

20. Because of the cessation of operations at the Mexicali facility, NEG Mexico plans to terminate the employment of most of its employees. No decisions have yet been made on rebuilding of the Mexicali facility, but if rebuilt, it would be at least six months to a year before production could resume at that location.

21. Mexico law requires substantial severance payments and benefits to be paid to terminated employees. NEG Mexico estimates its severance obligations at \$460,000 for 66 employees, which is an average of \$6,970 (pretax) per employee. NEG Mexico may also have other immediate costs and expenses resulting from the casualty.

22. NEG Mexico's sole source of revenue was its income from its maquila operation for the Debtor. As a result of the fire and cessation of operations, NEG Mexico does not have sufficient current cash, until it receives the anticipated insurance proceeds from the fire, to pay its substantial severance obligations and other potential fire-related expenses.

If NEG Mexico is not able to terminate its employees, it may have continued liability for payment of wages and other benefits to its employees.

23. It is in the Debtor's interest to advance to NEG Mexico the amounts needed to cover its immediate casualty-related expenses, including required employee severance payments under Mexican law. As the Debtor owns the equity interest in NEG Mexico, the increased costs of continuing liability to NEG Mexico's employees will erode the value of the Debtor's interest in NEG Mexico. Furthermore, it is important to the Debtor that NEG Mexico pay its obligations orderly to insure the viability of NEG Mexico should the Debtor decide to resume production in Mexico. The insurance proceeds that NEG Mexico expects to receive for the building loss will far exceed the advance that NEG Mexico needs from the Debtor.

24. The Debtor proposes to advance to NEG Mexico up to \$500,000 to be used solely for employee severance payments and other expenses resulting from the fire and cessation of operations. The advance will be repaid to the Debtor upon NEG Mexico's receipt of sufficient insurance proceeds to repay the loan, but in any event no later than one year from the date of the advance. NEG Mexico will pay interest on the advance at an annual rate of 6.75% (equivalent to 2 percentage points over current prime rate), and will assign to the Debtor its right to the insurance proceeds for the building fire loss, as collateral for the advance. Documentation of the advance and the repayment obligation is being prepared and will be filed as a supplement to this Motion before the hearing.

25. The Debtor has approximately \$ 3 million in cash, as of October 16, 2004, and advancing the funds to NEG Mexico will not impair the Debtor's operations or ability to pay its postpetition obligations on a current basis.



## LAW AND ARGUMENT

26. Section 363(b)(1) of the Bankruptcy Code provides that the “[t]rustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code section 105(a), “[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).

27. The Debtor submits that the proposed sale of the broken glass and scrap metal and advance of funds to its subsidiary to meet its expenses following the casualty loss are in the best interests of the estate and meet the requirements of Bankruptcy Code sections 363 and 105.

28. To justify a sale or disposition of assets out of the ordinary course of business, a debtor must have a business purpose to support the transaction. *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986). Courts have adopted a flexible case-by-case test to determine whether a debtor’s stated business purpose justifies the transaction under section 363(b). *In re Baldwin United Corp.* 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). Once the debtor articulates a valid business justification, “a presumption of reasonableness attaches to a debtor’s management decisions.” *In re Johns-Manville Corp.* 60 B.R. 612, 615-616 (Bankr. S.D.N.Y. 1986).

29. In this case, the Debtor proposes to sell damaged machinery and inventory that are of no further use to the Debtor. The Debtor has made reasonable efforts to determine the market for the broken glass and scrap metal, has negotiated for sales to non-affiliated parties at arms length, and proposes to sell the property for the best price available, taking into consideration the costs of sale, including substantial transportation costs.

30. The proposed advance of funds to the Debtor's own subsidiary is also in the best long term interest of the Debtor. Failure to terminate employees properly may adversely affect the Debtor's equity in the subsidiary and prejudice NEG Mexico's ability to do further business in Mexico, thereby jeopardizing or reducing the value of the Debtor's investment in the subsidiary.

31. The Debtor will seek an expedited hearing for this Motion. The damaged property, located inside a damaged building, may create potential safety and environmental liability for the Debtor if not disposed of expeditiously and properly. The Debtor is currently incurring costs of maintaining security personnel at the building to secure and safeguard the property. It is also in the best interest of NEG Mexico, and therefore of the Debtor, for NEG Mexico to act quickly to terminate employees it no longer needs and eliminate substantial unnecessary employment costs.

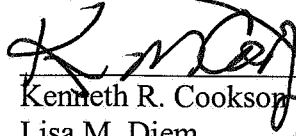
32. Therefore, expeditious consideration of this motion and entry of the requested order is in the best interest of the Debtor and its estate.

### **CONCLUSION**

For the reasons discussed above, the Debtor respectfully requests that this Court enter an order, substantially in the form attached here as Exhibit A, authorizing the Debtor to (a) sell the broken glass and scrap metal, and pay expenses associated with the sale; and (b) advance up to \$500,000 to the Debtor's subsidiary, NEG Mexico, on the terms set forth in this Motion, to pay employee severance obligations and other expenses related to the casualty loss at the Mexicali plant.

Dated: October \_\_, 2004

Respectfully submitted,



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Counsel for Debtor Nippon Electric Glass Ohio, Inc.

## **NOTICE OF MOTION AND CERTIFICATE OF SERVICE**

Nippon Electric Glass Ohio, Inc. has filed the foregoing *Motion Authorizing Debtor to (1) Sell Scrap Machinery and Inventory Destroyed by Fire Loss and Pay Expenses Relating Thereto, and (2) Advance Funds to Subsidiary for Severance Payments to Terminated Employees and Other Fire-Related Expenses*. 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 November 3, 2004, 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  
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If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application or objection and may enter an order granting that relief.

The undersigned hereby certifies that a copy of the foregoing *Motion Authorizing Debtor to (1) Sell Scrap Machinery and Inventory Destroyed by Fire Loss and Pay Expenses Relating Thereto, and (2) Advance Funds to Subsidiary for Severance Payments to Terminated Employees and Other Fire-Related Expenses* was served by regular U.S. Mail, postage prepaid, or by electronic filing, as indicated on the receipt of filing, on October 25, 2004, on the parties listed below.

  
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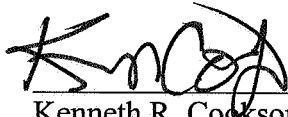
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Motion Authorizing Debtor to (1) Sell Scrap Machinery and Inventory Destroyed by Fire Loss and Pay Expenses Relating Thereto, and (2) Advance Funds to Subsidiary for Severance Payments to Terminated Employees and Other Fire-Related Expenses* was served by regular U.S. Mail and/or facsimile service and/or electronic mail service as indicated on the electronic receipt of filing, on all parties whose names are listed on the attached Service List this 25<sup>th</sup> day of October, 2004.

  
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