

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.

**FIRST INTERIM FEE APPLICATION OF
MORRISON & FOERSTER, LLP
FOR ALLOWANCE AND PAYMENT OF COMPENSATION
AND REIMBURSEMENT OF COSTS AND EXPENSES FOR THE
PERIOD SEPTEMBER 1, 2004 THROUGH NOVEMBER 30, 2004**

Morrison & Foerster, LLP (“Morrison”), counsel for Nippon Electric Glass Ohio, Inc., the debtor and debtor in possession in the above-captioned Chapter 11 case (the “Debtor”), hereby submits its First Interim Fee Application for Allowance and Payment of Compensation and Reimbursement of Costs and Expenses (the “Application”) covering the period from September 1, 2004 through November 30, 2004 (the “First Interim Period”). Morrison 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* entered on September 27, 2004 (the “Fee Order”), the United States Trustee Chapter 11 Notices and Guidelines, and the Local Bankruptcy Rules for the Southern District of Ohio.

By the Application, Morrison respectfully requests that the Court enter an order (1) allowing and approving interim compensation to Morrison in the amount of \$144,989.00 in fees for professional services rendered and \$4,096.76 in expenses and costs incurred during the First Interim Period, for a total of \$149,085.76 in fees and expenses; (2) approving the payments already received by Morrison, or expected to be received by Morrison prior to the hearing on the Application, of \$120,087.96; (3) authorizing payment of the unpaid balance owed to Morrison of \$28,997.80; and (4) granting to Morrison such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. The Application is supported by the Declaration of Patricia S. Mar (the "Mar Declaration"), filed contemporaneously and the exhibits attached thereto. In further support of the Application, Morrison respectfully represents and states as follows:

I. MORRISON'S ENGAGEMENT

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

2. On September 1, 2004, the Debtor filed its voluntary Chapter 11 petition in this case. On or about September 10, 2004, the Debtor filed its application to employ Morrison to serve as counsel in this case. Attached hereto as Exhibit 1 is a copy of this Court's Order entered September 27, 2004, authorizing the Debtor to employ Morrison. On the same date, the Court authorized the Debtor's employment of the law firm of Kegler Brown Hill & Ritter, L.P.A. ("Kegler Brown") as Ohio counsel for the Debtor.

II. SUMMARY OF COMPENSATION REQUEST

3. This Application is the first interim application filed by Morrison pursuant to the Fee Order. During the First Interim Period, Morrison submitted three monthly statements for fees and expenses ("Monthly Fee Statements"), covering the months of September, October, and November 2004, pursuant to the provisions of the Fee Order. As provided by the Fee Order, the Debtor has paid Morrison 80% of the fees requested and 100% of the expense reimbursement requested in the Monthly Fee Statements for September and October. Upon expiration of the objection period for the Monthly Fee Statement for November, and provided that no objection is filed to that Monthly Fee Statement, a similar payment will be made for the November fees and costs. Payments have been and will be made from the retainer of \$400,000 that the Debtor paid to Morrison prior to the filing of the petition.

4. The following table summarizes the monthly fees and expenses incurred and payments made during the First Interim Period pursuant to the Fee Order.

Period	Fees Incurred	Expenses Incurred	Total Fees and Expenses Incurred	Total Payments Received	20% Holdback
September, 2004	\$ 67,902.50	\$ 350.50	\$ 68,253.00	\$ 54,672.50	\$ 13,580.50
October, 2004	42,135.50	2,413.84	44,549.34	36,122.24	8,427.10
November, 2004	34,951.00	1,332.42	36,283.42	¹ 29,293.22	6,990.20
Total	\$ 144,989.00	\$4,096.76	\$ 149,085.76	\$ 120,087.96	\$ 28,997.80

¹ The deadline for objections to the Monthly Fee Statement for November, 2004 is January 18, 2005, and therefore the 80% fees and 100% costs for that month have not been paid to Morrison, as of the date of filing of this Application. Assuming no objections are received to the November Monthly Fee Statement, Morrison will receive payment for November prior to the hearing on this Application. If for any reason the fees and costs shown as received for November, 2004 are not paid to Morrison prior to the Court's consideration of this Application, the unpaid amount shown in the "20% Holdback" column will increase accordingly.

5. Morrison 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 Fee Order, subject to review and approval of this Court. Neither Morrison, nor any member of Morrison, has any agreement or understanding of any kind to divide, pay over, or share any portion of the fees to be awarded to Morrison with any other person or attorney, except as among the partners and other attorneys employed by Morrison.

III. SUMMARY OF SERVICES PERFORMED

6. During the First Interim Period, Morrison professionals spent a total of 298.95 hours hours rendering services to the Debtor. A detailed daily description of the services performed, by timekeeper, and the hourly rates applicable to each timekeeper is contained in the Monthly Fee Statements that are attached to the Mar Declaration.

7. Morrison classifies the services it performs for the Debtor into project categories. During the First Interim Period, Morrison billed services in the following project categories:

- Case Administration
- Employment and Fees
- PBGC Issues
- Creditor Claims and Objections
- Business Operations

8. Following is a narrative summary of the significant services that Morrison provided to the Debtor during the First Interim Period, by project category:

9. Bankruptcy Administration (Total fees: \$49,415.00). This category reflects the services performed by Morrison relating to the administration of the bankruptcy case.

Secondarily, "Bankruptcy Administration" includes activities that did not readily fit into any other category.

10. The services performed by Morrison in the "Bankruptcy Administration" category during the First Interim Period included the final preparation and filing of the Chapter 11 petition and related documents; advising the Debtor on its duties and responsibilities as a debtor in possession; advising the Debtor on U.S. Trustee and other reporting requirements; providing documents and information requested by the U.S. Trustee; advising and assisting the Debtor in preparing its Schedules of Assets and Liabilities and Statement of Financial Affairs; attending the 341 Meeting of Creditors with the Debtor's representative; assisting the Debtor in preparing its monthly operating reports; and preparing the Debtor's motion to extend exclusivity. In addition, Morrison monitored and reviewed filings in the Chapter 11 cases of the Debtor's affiliates, Techneglas, Inc. and Nippon Electric Glass America, Inc.

11. Employment and Fees (Total fees: \$25,151.00). This category included the preparation of Morrison's employment application, including supplemental disclosure affidavits, and preparation of the Monthly Fee Statements. Morrison also reviewed the employment applications and monthly fee statements of its co-counsel, Kegler Brown. Morrison also advised the Debtor on employment of other professionals and prepared the Debtor's motion for employment of two accounting firms as "ordinary course" professionals to provide tax return and financial statement services.

12. PBGC Issues (Total fees: \$6,502.50). The Debtor faces a potential contingent claim of the Pension Benefit Guaranty Corporation arising out of the unpaid pension liability of the Debtor's affiliate, Techneglas. Morrison provided services to the Debtor related to PBGC issues and the potential PBGC claim.

13. Creditor Claims and Objections (Total fees: \$2,857.50). This category pertains to Morrison's services relating to creditor claims, including analyzing and defending claims against the estate, and general claims administration. No bar date has been set in the Debtor's case, and prepetition claims activity in the case has thus far been minimal.

14. Business Operations (Total fees: \$61,063.00). Morrison provided substantial services to the Debtor in the category of "Business Operations." Such services included consultation with and advice to the debtor on operations issues, including bankruptcy issues affecting the Debtor's operations. Morrison advised the Debtor regarding bank accounts and approved depositories; prepared a motion to allow the Debtor to maintain its prepetition accounts and business forms; advised the Debtor on employee, vendor and customer issues; prepared a motion confirming the Debtor's authority to incur and pay postpetition expenses; and reviewed the Debtor's insurance policies.

15. A major portion of Morrison's fees in the "Business Operations" category related to a fire at the manufacturing facilities of the Debtor's subsidiary, NEG Mexico, in Mexicali, Mexico. Inventory and machinery owned by the Debtor and located at the Mexicali facility were totally destroyed by the fire, as was the building owned by NEG Mexico. The fire caused a cessation of the Debtor's manufacturing operations at the Mexicali facility and required that the Debtor make major changes in its business operations.

16. Morrison's services to the Debtor included advising the Debtor on disposition of its fire-damaged property, preparing a motion authorizing the Debtor to dispose of the inventory and machinery; advising the Debtor with respect to a \$500,000 loan to NEG Mexico to enable the subsidiary to pay severance benefits to its employees as required by

Mexican law; preparing a motion to authorize the loan to NEG Mexico, secured by insurance proceeds and attending the hearing on the motion; assisting the Debtor in arranging for additional collateral, consisting of a mortgage on land owned by NEG Mexico, to satisfy the concerns of a creditor regarding the loan; drafting and reviewing loan documents pertaining to the NEG Mexico loan; coordinating with Mexican counsel on the loan; advising the Debtor on potential claims of customers whose inventory was damaged in the fire; and meeting with the Debtor to discuss fire-related issues and the effect of the fire on the Debtor's future business plans.

IV. SUMMARY OF COSTS AND EXPENSES

17. Morrison is seeking reimbursement of \$4,096.76 in costs and expenses that it incurred during the First Interim Period. Of the costs, \$3,348.13 was attributable to travel costs incurred by Morrison counsel Patricia S. Mar, whose office is located in San Francisco, to attend court hearings and the First Meeting of Creditors in Columbus and a client meeting in San Diego. All airfare was based on economy class fares. The only other costs totaling over \$100 during the First Interim Period were photocopy costs (\$215.25, based on \$.21 per page) and LEXIS charges (\$382.06).

V. REQUEST FOR INTERIM COMPENSATION

18. 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.

19. Morrison submits 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.

VI. CONCLUSION

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

WHEREFORE, Morrison respectfully requests that the Court enter an order:

(1) allowing and approving interim compensation to Morrison in the amount of \$144,989.00 in fees for professional services rendered and \$4,096.76 in expenses and costs incurred during the First Interim Period, for a total of \$149,085.76 in fees and expenses; (2) approving the payments already received by Morrison, or expected to be received by time of the hearing on the Application, of \$120,087.96; (3) authorizing payment of the unpaid balance owed to Morrison of \$28,997.80; and (4) granting to Morrison such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. A form of proposed order is attached hereto as Exhibit 2.

Dated: January 2 2005



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