

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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

**FIRST INTERIM FEE APPLICATION OF  
KEGLER, BROWN, HILL & RITTER CO., LPA  
FOR ALLOWANCE AND PAYMENT OF COMPENSATION  
AND REIMBURSEMENT OF COSTS AND EXPENSES FOR THE  
PERIOD SEPTEMBER 1, 2004 THROUGH NOVEMBER 30, 2004;  
DECLARATION OF KENNETH R. COOKSON IN SUPPORT THEREOF**

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 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”). 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 \$35,207.07 representing \$32,835.50 in professional services rendered and \$2,371.57 in expenses and costs incurred during the First Interim Period; (2) approving the payments already received by Kegler

Brown of \$28,639.97; (3) authorizing payment of the unpaid balance owed to Kegler Brown of \$6,567.10; and (4) granting to Kegler Brown such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate. 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.

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 and participating in strategic planning. 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 COMPENSATION REQUEST**

### **A. Professional and Hourly Rates.**

The professionals who were principally responsible for rendering services to the Debtor during the First Interim Period were Attorneys Kenneth R. Cookson and Lisa M. Diem and Paralegals Robin Hayes and Sally Jeffrey. 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 First Interim Period. Attached as Exhibit 3 are the billing rates for each of those individuals during the First Interim 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 First Interim 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 first interim application that Kegler Brown has filed with the Court in accordance with the Fee Order. During the First Interim Period, Kegler Brown submitted three (3) Monthly Statements covering the months of September, October, and

November 2004. No party objected to any of the Monthly Statements, and the Debtor paid Kegler Brown in accordance with the Fee Order.

During the First Interim Period, Kegler Brown professionals spent a total of 140.60 hours rendering services to the Debtor. Kegler Brown also incurred \$2,371.57 in costs and expenses in connection with those services, including hotel stays for Morrison and Foerster attorneys which are billed at the special discount rate negotiated by Kegler Brown for the hotel adjacent to its offices. The following table summarizes the monthly fees and expenses incurred and payments made during the First Interim 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>
September, 2004	\$ 17,533.50	\$ 1,166.78	\$ 18,700.28	\$ 15,193.58
October, 2004	8,898.50	729.50	9,628.00	7,848.30
November, 2004	<u>6,403.50</u>	<u>475.29</u>	<u>6,878.79</u>	<u>5,598.09<sup>1</sup></u>
Total Fees and Expenses Incurred	\$ 32,835.50	\$ 2,371.57	\$ 35,207.07	\$ 28,639.97
Total Unpaid Pursuant to 20% Holdback	\$ 6,567.10			

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.

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<sup>1</sup> Not eligible for payment until after January 18, 2005.

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

<u>Period</u>	<u>Total Amount Withheld From Payment</u>
September, 2004	\$ 3,506.70
October, 2004	1,779.70
November, 2004	1,280.70
Total Holdbacks	\$ 6,567.10

The total amount that was withheld from payment to Kegler Brown pursuant to the 20% holdback is \$6,567.10. 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 \$7,903.50 for 36.90 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 First Interim 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. Over the next few months, the Debtor will focus on developing a plan of reorganization and its emergence from bankruptcy protection.

#### **IV. SUMMARY OF COSTS AND EXPENSES**

Kegler Brown is seeking reimbursement of \$35,207.07 in costs and expenses that it incurred during the First Interim 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 First Interim Period, Kegler Brown incurred \$0.00 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 First Interim Period, Kegler Brown incurred \$635.93 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 First Interim Period were \$228.69.

**D. Telephone (Long Distance).**

While representing the Debtor, Kegler Brown has incurred long distance telephone charges of \$13.55 for which Kegler Brown is seeking reimbursement.

**E. Hotel Charges**

While representing the Debtor, Kegler Brown incurred hotel expenses for overnight stays in Columbus of Morrison & Foerster attorneys. Kegler Brown has negotiated reduced room rates at the Hyatt on Capitol Square which is adjacent to Kegler Brown's offices. Kegler Brown is seeking reimbursement for the actual charges incurred.

**F. Parking and Meals.**

Kegler Brown charges its clients for parking costs incurred by its professionals in connection with services rendered and for working session meals. During the First Interim Period, Kegler Brown incurred \$5.00 in parking costs and \$106.95 in working session meals.

**VI. REQUEST FOR INTERIM 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.<sup>2</sup>

As detailed in the Exhibits attached to the Cookson Declaration, based on its normal guideline hourly rates, Kegler Brown seeks interim allowance of \$35,207.07 in fees and costs incurred during the First Interim Period. Kegler Brown also seeks payment of \$6,567.10, the unpaid balance of the foregoing amounts.

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<sup>2</sup> 11 U.S.C. § 330(a)(3).



## VII. CONCLUSION

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

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 that the Court enter an order: (1) allowing and approving interim compensation to Kegler Brown in the amount of \$35,207.07 representing \$32,835.50 in professional services rendered and \$2,371.57 in expenses and costs incurred during the First Interim Period; (2) approving the payments already received by Kegler Brown of \$28,639.97; (3) authorizing payment of the unpaid balance owed to Kegler Brown of \$6,567.10; and (4) granting to Kegler Brown such other and further relief that is consistent with the foregoing that the Court deems necessary and appropriate.

Dated: January 13, 2005

Respectfully submitted,

/s/ Kenneth R. Cookson

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Kenneth R. Cookson (0020216)  
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**NOTICE OF MOTION AND CERTIFICATE OF SERVICE**

Nippon Electric Glass Ohio, Inc. has filed the foregoing *First Interim Fee Application Of Kegler, Brown, Hill & Ritter Co., LPA For Allowance And Payment Of Compensation And Reimbursement Of Costs And Expenses For The Period September 1, 2004 Through November 30, 2004; Declaration Of Kenneth R. Cookson In Support Thereof* 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 February 7, 2005, 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 Kegler Brown Hill & Ritter 65 East State St., Suite 1800 Columbus, OH 43215	Adam Lewis Patricia Mar Morrison & Foerster LLP 425 Market St., 33 <sup>rd</sup> Floor San Francisco, CA 94105-2482
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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 *First Interim Fee Application Of Kegler, Brown, Hill & Ritter Co., LPA For Allowance And Payment Of Compensation And Reimbursement Of Costs And Expenses For The Period September 1, 2004 Through November 30, 2004; Declaration Of Kenneth R. Cookson In Support Thereof* was served by regular U.S. Mail, postage prepaid, or by electronic filing, as indicated on the receipt of filing, on January 13, 2005, on the parties listed below.

/s/ Kenneth R. Cookson

\_\_\_\_\_  
Kenneth R. Cookson (0020216)  
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