

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
DIAMOND GLASS, INC., *et al.*,¹)
) Case. No. 08-10601 (CS)
)
Debtors.) (Joint Administration Requested)
)
) Docket Ref. No.: 11 _____

**ORDER PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(a), 503(b), AND 507(a) AUTHORIZING DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF SUPPLIERS AND VENDORS
OF GOODS ENTITLED TO ADMINISTRATIVE PRIORITY**

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession for entry of an order, pursuant to sections 105(a), 503(b), and 507(a) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing Debtors to pay certain prepetition claims of suppliers of goods entitled to administrative priority; and upon the Cogswell Affidavit; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interest of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted, and it is further

ORDERED that the Priority Vendors shall have administrative expense claims with priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code for those undisputed

¹ The Debtors in these proceedings are: Diamond Glass, Inc. (Tax ID No. XX-XXX8853); and DT Subsidiary Corp., a wholly owned subsidiary of Diamond Glass (Tax ID No. XX-XXX3494), each with a mailing address of 220 Division Street, Kingston, PA 18704. Diamond Glass, Inc. is formerly known as Diamond Glass Companies, Inc. and Diamond Triumph Auto Glass, Inc.

² Capitalized terms used but otherwise not defined herein shall have meaning ascribed to such terms in the Motion.

obligations arising from shipments of Goods delivered, received and accepted by the Debtors in the ordinary course of business within the 20 days before the Petition Date; and it is further

ORDERED that the Debtors are authorized, but not directed, to pay, in the ordinary course, their undisputed obligations to Priority Vendors who have an administrative expense claim with priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code for those undisputed obligations arising from shipments of Goods delivered, received and accepted by the Debtors in the ordinary course of business within the 20 days before the Petition Date in an amount not to exceed \$3.0 million; and it is further

ORDERED that the Debtors are authorized, but not directed, to undertake appropriate efforts to cause Priority Vendors to enter into agreements with the Debtors (the "Trade Agreement") as a condition of payment of each such Priority Vendor's Priority Vendor Claims, including, but not limited to, the following terms:

- (a) The amount of such Priority Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Priority Vendor and the Debtors (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Priority Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Priority Vendor and the Debtors on a historical basis during the period within one hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Priority Vendor;
- (c) The Priority Vendor's agreement to provide goods and services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Priority Vendor in accordance with such terms;

- (d) The Priority Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Priority Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Priority Vendor has previously obtained such a Lien, the Priority Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Priority Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (f) The Priority Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The Priority Vendor's agreement that it has received payment of a prepetition claim but subsequently refuses to supply goods to the Debtors on Customary Trade Terms, any payments received by the Priority Vendor on account of its Priority Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Priority Vendor, and that such Priority Vendor shall immediately repay to the Debtors any payments received on account of its Priority Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation and it is further

ORDERED that the Debtors are authorized, in their discretion, to make payments on account of a Priority Vendor Claim, subject to the other limits set forth herein, even in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that failure to pay such Priority Vendor Claim is likely to result in irreparable harm to the Debtors' business operations; and it is further

ORDERED that if a Priority Vendor refuses to supply Goods to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Priority Vendor Claim (regardless of whether such Priority Vendor has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such Priority Vendor and the Debtors, then the Debtors may, in their discretion and without

further order of the Court, (a) declare that any Trade Agreement between the Debtors and such Priority Vendor is terminated, (b) declare that payments made to such Priority Vendors on account of its Priority Vendor Claims shall be deemed to have been in payment of then-outstanding or subsequently accruing postpetition claims of such Priority Vendor without further order of the Court or action by any person or entity, and (c) recover any payment made to such Priority Vendor on account of its Priority Vendor Claims to the extent that such payments exceeded the postpetition claims of such Priority Vendor, without giving effect to any rights of setoff, claims, provision of payment of reclamation on trust fund claims or other defense. Under any such circumstances, such Priority Vendor shall immediately repay to the Debtors any payment made to it on account of its Priority Vendor Claims to the extent that such payments exceed the postpetition claims of such Priority Vendor then outstanding, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. Nothing herein shall constitute a waiver of the Debtors rights to seek damages or other appropriate remedies against any breaching Priority Vendor; and it is further

ORDERED that notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if:

- (a) the underlying default under the Trade Agreement is fully cured by the Priority Vendor not later than five (5) business days following the Debtors' notification to the Priority Vendor of such default had occurred; or
- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the Priority Vendor.

ORDERED that to the extent any party refuses to sign a Trade Agreement, nothing set forth in this Order is intended to, nor shall it, impair any rights such party may have

under section 503(b)(9) of the Bankruptcy Code, including the right to seek to file a motion seeking to compel payment thereunder; and it is further

ORDERED that nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any Priority Vendor Claim; and it is further

ORDERED that nothing contained in this order shall be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Priority Vendor or to require the Debtors to make any of the payments authorized herein; and it is further

ORDERED that notwithstanding any applicability of Federal Rule of Bankruptcy Procedure 6004(g), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or enforcement of this Order.

Dated: Wilmington, Delaware
April 23, 2008



UNITED STATES BANKRUPTCY JUDGE