

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
DIAMOND GLASS, INC., *et al.*,¹) Chapter 11
Debtors.) Case No. 08-10601
) Jointly Administered
) Ref. Docket Nos.: 83 & _____

**ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY
CODE AUTHORIZING THE RETENTION AND EMPLOYMENT OF KRONICK
KALADA BERDY & CO. AS AUDITORS AND TAX ADVISORS *NUNC PRO TUNC* TO
PETITION DATE**

Upon consideration of the application (the "Application"),² of Diamond Glass, Inc. and DT Subsidiary Corp., the above-captioned debtors and debtors in possession (the "Debtors"), for an order, pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 11 *et seq.* (the "Bankruptcy Code"), authorizing the Debtors to employ and retain Kronick Kalada Berdy & Co. ("KKB") as the Debtors' auditors and tax advisors in these chapter 11 cases, *nunc pro tunc* to the Petition Date; and upon the Foley Affidavit, annexed to

ORDERED, that the Application is approved to the extent set forth herein; and it is further

ORDERED, that, pursuant to sections 327(a) and 328 of the Bankruptcy Code, the Debtors are hereby authorized to retain and employ KKB as their auditors and tax advisors, *nunc pro tunc* to the Petition Date; on the terms set forth in the attached Engagement Agreements, as modified by this Order; and it is further

ORDERED, that with respect to the fees to be paid under the Tax Engagement Agreement and all expenses to be paid under the Tax Engagement and the Audit Engagement Agreement, KKB shall be compensated and reimbursed in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code, such Federal Rules of Bankruptcy Procedures as may be applicable from time to time, the rules of this Court and such other procedures as may be fixed by order of this Court, including the requirement to file interim and final fee applications; and it is further

ORDERED, that with respect to fees to be paid under the Audit Engagement Agreement, KKB shall be relieved from any requirement to file applications for interim compensation for such fees under section 331 of the Bankruptcy Code, and Debtors shall be authorized to pay KKB such fees consistent with the terms and conditions set forth in the Audit Engagement Agreement upon KKB's completion of the auditing services; provided, however, that KKB shall be required to obtain final approval of this Court for all fees paid in accordance with the Audit Engagement Agreement by filing and serving a first and final application for compensation (the "Audit Fee Application"); and it is further

ORDERED, that with respect to KKB's auditing services, KKB shall maintain summary time records for time spent by their professionals on a monthly basis per professional

and in the aggregate in connection with the rendering of such services for the Debtors. For tax-related services, however, which are billed on an hourly basis, KKB will maintain detailed billing records in accordance with the United States Trustee Guidelines, the relevant provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and any order of this Court; and it is further

ORDERED, that notwithstanding the approval of the Fee Structure as set forth in the Engagement Agreements, all of KKB's fees and expenses in this case will be subject to approval of the Court upon proper application by KKB in accordance with Sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, the fee and expense guidelines established by the U.S. Trustee and any other applicable requirements. However, pursuant to section 328(a) of the Bankruptcy Code, the Court may not subsequently allow KKB's compensation for auditing services, as set forth in the Audit Fee Application, on terms different from the approved fee structure with respect to KKB's auditing services unless such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the Fee Structure originally was approved, provided however, that the United States Trustee retains the right to object to the Final Fee Application based on the reasonableness standard provided for in section 330 of the Bankruptcy Code; and it is further

ORDERED, that any fees or expenses paid to KKB during the chapter 11 cases but not approved by the Court pursuant to a final fee application under 11 U.S.C. 330 shall be promptly returned by KKB to the Debtors; and it is further

ORDERED, that the Indemnification Provision is approved, subject to the following modifications:

- a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, KKB, in accordance with the

Engagement Agreements, for any claim arising from, related to or in connection with their performance of the services described in the Engagement Agreements;

- b) KKB shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreements for services other than auditing and tax services provided under the Engagement Agreements, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court;
- c) Notwithstanding anything to the contrary in the Engagement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege breach of KKB's obligations under the Engagement Agreements, or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreements as modified by this Order;
- d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing this chapter 11 case, KKB believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreements (as modified by this Order), including without limitation the advancement of defense costs, KKB must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the court shall have jurisdiction over any request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limited the duration of the Debtors' obligation to indemnify KKB;

and it is further

ORDERED, notwithstanding anything to the contrary contained in the Engagement Agreements, all disputes regarding the interpretation, enforcement or implementation of the Engagement Agreements shall be subject to the exclusive jurisdiction of the Bankruptcy Court prior to the closing of these cases; and it is further

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

Dated: Wilmington, Delaware
May 5, 2008



Christopher S. Sontchi
United States Bankruptcy Judge