

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Chapter 11  
 )  
DIAMOND GLASS, INC., *et al.*,<sup>1</sup> ) Case No. 08-10601 (CSS)  
 )  
Debtors. ) Jointly Administered  
 )  
 ) Hearing Date: June 20, 2008 at 2:00 p.m. (ET) (requested)  
 ) Objection Deadline: June 17, 2008 at 4:00 p.m. (ET) (requested)  
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**DEBTORS' MOTION FOR ORDER, PURSUANT TO SECTION 105 OF THE  
BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO LIST EMPLOYEE  
WAGE CLAIMS AT \$0.00 IN THE DEBTORS' SCHEDULES**

Diamond Glass, Inc. ("Diamond Glass") and DT Subsidiary Corp., a wholly-owned subsidiary of Diamond Glass ("DT Subsidiary") (collectively, the "Debtors," and each individually, a "Debtor"), by and through their undersigned counsel, hereby submit this motion (the "Motion") for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (as amended from time to time, the "Bankruptcy Code"), authorizing the Debtors to list the Employee Wage Claims (as defined below) at \$0.00 in the Debtor's Schedules (as defined below). In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION**

1. This Court has jurisdiction to hear the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Section 105(a) of the Bankruptcy Code authorizes the relief requested in this Motion.

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<sup>1</sup> 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.

## GENERAL BACKGROUND

2. On April 1, 2008 (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 10, 2008 an Official Committee of Unsecured Creditors (the "Committee") was appointed in this case. No request for appointment of a chapter 11 trustee or examiner has been made.

3. A detailed description of the events leading up to this chapter 11 filing is set forth more fully in the Declaration of William Cogswell in Support of Chapter 11 Petitions and First Day Motions, filed in this case on April 1, 2008 [D.I. 2].

## RELEVANT BACKGROUND

4. As a component of the "first day" relief afforded to the Debtors, on April 2, 2008, the Court entered the *Order Authorizing (I) Payment Of Wages, Compensation, And Employee Benefits And (II) Financial Institutions To Honor And Process Checks And Transfers Related Thereto* [D.I. 31] (the "Employee Wage Order"). Pursuant to the Employee Wage Order, the Debtors were authorized to pay, among other things, certain employee prepetition claims related to wages, salaries and commissions. Since the entry of the Employee Wage Order, the Debtors believe that they have paid all pre-petition employee claims related to wages, salaries, commissions and the like and that as of the date hereof, no amounts on accounts of such pre-petition obligations remain outstanding.

5. On May 8, 2008, the United States Trustee (the "Trustee") convened the meeting of creditors pursuant to section 341 of the Bankruptcy Code (the "341 Meeting"). Because the Debtors had yet to file their schedules of assets and liabilities and statements of financial affairs, however, the Trustee continued the 341 Meeting to May 23, 2008.

6. On May 23, 2008, the Debtors filed their schedules of assets and liabilities (the “Schedules”) and statements of financial affairs (the “SOFA’s”).<sup>2</sup> In Schedule E to their Schedules, the Debtors individually listed their employees by name, however, due to concerns over the personal privacy of their employees and certain business considerations discussed below, the Debtors listed the prepetition claims with respect to employee wages, salaries and commissions (the “Employee Wage Claims”) in the aggregate amount of \$1,559,685.36 and did not list the prepetition amounts owed to each employee as of the Petition Date on an individual basis.

7. On May 23, 2008, the 341 Meeting was reconvened at which, after reviewing the Schedules, the Trustee expressed an informal objection to the manner by which the employee claims were listed the Debtors’ Schedules. The Trustee asserted that the Schedules should properly list the prepetition amounts due the employees on an individual basis. Although the Debtors expressed their rationale for doing so, the Trustee further continued the 341 Meeting until the issue with respect to the listing of the Employee Wage Claims in the Schedules was resolved.

8. As a result of subsequent discussions, the parties have reached a consensual resolution to the Trustee’s informal objection which provides for the Debtors to amend the Schedules and list the Employee Wage Claims at \$0.00, subject to approval of the Court. The Debtors will additionally include a legend on the revised Schedule E indicating that the Employee Wage Claims are listed in the amount of \$0.00 in light of their payment pursuant to the Employee Wage Order.

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<sup>2</sup> The deadline for the Debtors to file the Schedules and SOFA’s was extended to June 2, 2008 pursuant to an order entered by this Court on May 22, 2008 [D.I. 264].

### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek entry of an order, pursuant to section 105 of the Bankruptcy Code, authorizing the Debtors to list the Employee Wage Claims at zero in the Debtors' Schedules.

### **BASIS FOR RELIEF REQUESTED**

10. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[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).

11. The Debtors submit that the relief requested is in the best interest of the Debtors' estates and their creditors. The Employee Wage Claims were already paid pursuant to the Employee Wage Order. Therefore, the employees currently listed in Schedule E are not currently owed any amounts on account of their Employee Wage Claims and listing such claims in amounts that have already been paid pursuant to Court order would likely create unnecessary confusion for the Debtors' employees. Furthermore, even if the Employee Wage Claims are listed in the individual amounts already paid, the Debtors will, in all likelihood, file and serve each employee with a “Notice of Satisfaction” that would indicate that the scheduled amounts were previously paid, thus adding an additional layer of confusion.

12. The Debtors' employees are likely unfamiliar with the bankruptcy process. By sending them multiple conflicting notices relating to claims that have already been paid in full is not only unnecessarily confusing for the employees, but will require a great deal of management response time in addressing the employee morale and education issues that will surely result. The Debtors' proposed manner of proceeding will avoid such confusion and

unnecessary time consumption and will accurately reflect the Debtors' current state of liability with respect to the Employee Wage Claims.

13. The Debtors additionally submit that the relief requested herein is justified in that employees are not typically privy to the wages, salaries and commissions paid to other employees. Were the Debtors to list the individual amounts of each employee it would effectively reveal the salary and wages paid to each employee possibly instigating employee dissention and morale issues. It is important that the Debtors avoid such issues at this critical stage in their sale process.

14. Finally, the Debtors note that nothing set forth in this Motion or in any order approving it is intended to constitute a binding finding by the Court with respect to the Debtors' liability with respect to any Employee Wage Claim. All employees will receive notice of any bar date set in this case and entry of an order approving this Motion will necessarily be without prejudice to such employees' rights to file a claim in these cases on any basis. The relief requested herein is intended only to implement a procedural mechanism to avoid disruption and confusion in the employee ranks.

15. For the foregoing reasons, the Debtors submit that the relief requested herein is the best interest of the Debtors' estates and their creditors. Moreover, the relief requested also resolves the Trustee's informal objection to the Debtors' Schedules and enable's the Trustee to close the 341 Meeting. Accordingly, the Debtors request that the Court grant the relief requested in the Motion.

#### **NOTICE**

16. Notice of this Motion has been provided to; (i) the office of the united states trustee for the district of delaware; (ii) counsel to Guggenheim, the Debtors' prepetition

