

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Chapter 11
)
SCHWAB INDUSTRIES, INC., *et al.*,) Jointly administered under
) Case No. 10-60702-rk
)
)
Debtors.) JUDGE RUSS KENDIG
)

COMMENT OF THE EUCLID CHEMICAL COMPANY IN RESPONSE TO DEBTORS' MOTION SEEKING ENTRY OF ORDER (I) AUTHORIZING POST-PETITION SECURED SUPERPRIORITY FINANCING PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 361, 362, 363(C), 363(E), 364 (C)(1)-(3), 364 (D) AND 364 (E), (II) GRANTING ADEQUATE PROTECTION PURSUANT TO SECTIONS 361, 363 AND 364 OF THE BANKRUPTCY CODE, (III) MODIFYING THE AUTOMATIC STAY AND (IV) SETTING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001.

Unsecured creditor The Euclid Chemical Company (“Euclid Chemical”) hereby submits this Comment in response to Debtors’ Motion Seeking Entry of Order (I) Authorizing Post-Petition Secured Superpriority Financing Pursuant To Bankruptcy Code Sections 105, 361, 362, 363(c), 363(e), 364(c)(1)-(3), 364(d) and 364(e), (II) Granting Adequate Protection Pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, (III) Modifying the Automatic Stay and (IV) Setting a Final Hearing Pursuant to Bankruptcy Rule 4001 (the “Motion”) for the purpose of identifying and providing notice of certain equipment of Euclid Chemical that is in the possession of and being used by certain of the Debtors and Debtors-in-Possession (the “Debtors”) in the ordinary course and operation of their businesses. More particularly, Euclid Chemical states as follows:

1. Euclid Chemical is a global supplier of concrete and masonry admixtures, curing and sealing compounds, concrete repair mortars and toppings, adhesives, architectural and industrial coatings, dry shake floor hardeners, grouts, joint fillers, sealants, liquid densifiers and water repellent sealers and other products and systems to the concrete and construction markets. See Affidavit of Ray Adams (“Adams Aff.”), par. 2, attached hereto and incorporated herein by reference as Exhibit A.

2. Euclid Chemical supplies concrete and masonry admixtures to certain of the Debtors, including, without limitation, Schwab Ready-Mix, Inc., Medina Supply Company, Quality Block & Supply, Inc. and Twin Cities Concrete Company. (Adams Aff., par 3).

3. In connection with the supply of concrete and masonry admixtures, Euclid Chemical has fabricated and installed at various of the Debtors’ locations dispenser equipment used by the Debtors to dispense the required dosage of Euclid Chemicals’ admixtures into the Debtors’ concrete products, which consists of some or all of the following: a tank for each product used, an assembly containing pumps, meters and bottles for visual monitoring, and a shed or trailer that houses this equipment (collectively, the “Euclid Chemical Equipment”). (Adams Aff., par 4). A description of the Euclid Chemical Equipment provided to each of the Debtors by location is attached to Mr. Adams’ affidavit and is incorporated herein by reference. (Adams Aff., par 4).

4. Each individual dispenser, tank, assembly, shed and trailer comprising the Euclid Chemical Equipment is physically tagged by Euclid Chemical with a unique asset number for purposes of internal tracking and control. (Adams Aff., par 5).

5. Euclid Chemical is the exclusive owner of the Euclid Chemical Equipment and services and maintains the Euclid Chemical Equipment as needed at no charge to the Debtors. Upon information and belief, such equipment arrangements are common in the concrete and masonry admixture industry. (Adams Aff., par. 6).

6. Euclid Chemical has not sold or otherwise transferred any ownership interest in or leased any of the Euclid Chemical Equipment to any of the Debtors, and none of the Debtors have purported to purchase or lease from Euclid Chemical any of the Euclid Chemical Equipment, or to otherwise own or have any rights to the Euclid Chemical Equipment. (Adams Aff., par. 7).

7. The Euclid Chemical Equipment is not “property of the estate,” as defined in §541(a) of the Bankruptcy Code, and as used in §§362, 363 and 364 of the Bankruptcy Code.

8. As the Euclid Chemical Equipment is not property of the estate, it may not be used as collateral or be subjected to any security interest, lien or encumbrance in connection with the extension of post-petition credit or DIP financing, as contemplated in the Motion.

9. The Debtors’ post-petition use of and rights in the Euclid Chemical Equipment, as well as Euclid Chemicals’ rights in and remedies with respect thereto as the owner in absolute of the Euclid Chemical Equipment, are not governed by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. Given Euclid Chemical’s absolute ownership rights, the Debtors have no right to the continued post-petition possession and use of the Euclid Chemical Equipment, in the ordinary course of the Debtors’ business or otherwise, and have no right to pledge or otherwise lien or

encumber the Euclid Chemical Equipment, without the consent and authority of Euclid Chemical.

10. The purpose of this Comment is to provide notice of Euclid Chemicals' ownership of the Euclid Chemical Equipment and not to seek at this time the return or possession thereof from the Debtors, or to exercise any other remedy with respect thereto.

Respectfully submitted,

/s/ Mark E. Owens
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Attorney for Creditor,
The Euclid Chemical Company

CERTIFICATE OF SERVICE

Mark E. Owens hereby states that this document was filed electronically with the Court on this 12th day of March, 2010, and that the parties listed on the Court's Electronic Mail Notice List received copies of the same via e-mail from the Court. The following parties also received a copy of this document by facsimile:

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PROPOSED SPECIAL COUNSEL FOR THE DEBTORS AND DEBTORS IN
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TRIAL ATTORNEY FOR U.S. TRUSTEE

/s/ Mark E. Owens
Attorney for Creditor,
The Euclid Chemical Company

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FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Chapter 11
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SCHWAB INDUSTRIES, INC., <i>et al.</i> ,)	Jointly administered under
)	Case No. 10-60702-rk
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Debtors.)	JUDGE RUSS KENDIG
)	
)	AFFIDAVIT OF
)	RAYMOND M. ADAMS
)	

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

RAYMOND M. ADAMS, having been first duly sworn according to law,
hereby deposes and states as follows:

1. I am the Vice President Manufacturing Operations for The Euclid Chemical Company ("Euclid Chemical"), located at 19218 Redwood Road, Cleveland, Ohio 44110, and make this Affidavit on personal knowledge.

2. Euclid Chemical is a global supplier of concrete and masonry admixtures curing and sealing compounds, concrete repair mortars and toppings, adhesives, architectural and industrial coatings, dry shake floor hardeners, grouts, joint fillers, sealants, liquid densifiers and water repellent sealers and other products and systems to the concrete and construction markets.

3. Among the companies that Euclid Chemical supplies concrete and masonry admixtures to are the following: Schwab Ready-Mix, Inc., Medina Supply Company, Quality Block & Supply, Inc. and Twin Cities Concrete Company (collectively referred to hereinafter as the "Debtors").

4. In connection with the supply of concrete and masonry admixtures, Euclid Chemical has fabricated and installed at various of the Debtors' locations dispenser equipment used by the Debtors to dispense the required dosage of Euclid Chemicals' admixtures into the Debtors' concrete products, which consists of some or all of the following: a tank for each product used, an assembly containing pumps, meters and bottles for visual monitoring, and a shed or trailer that houses this equipment (collectively, the "Euclid Chemical Equipment"). A list and description of the Euclid Chemical Equipment supplied to the Debtors by location prepared from records of Euclid Chemical, as maintained in the ordinary course of Euclid Chemical's business, is attached hereto and incorporated herein by reference.


5. Each individual dispenser, tank, assembly, shed and trailer comprising the Euclid Chemical Equipment is physically tagged by Euclid Chemical with a unique asset number for purposes of internal tracking and control.

6. Euclid Chemical is the exclusive owner of the Euclid Chemical Equipment and services and maintains the Euclid Chemical Equipment as needed at no charge to the Debtors. Such equipment arrangements are common in the concrete and masonry admixture industry.

7. Euclid Chemical has not sold or otherwise transferred any ownership interest in or leased any of the Euclid Chemical Equipment to any of the

Debtors, and none of the Debtors have ever indicated to Euclid Chemical any belief or understanding that they had purchased or leased from Euclid Chemical any of the Euclid Chemical Equipment, or to otherwise own or have any rights to the Euclid Chemical Equipment.

FURTHER AFFLIANT SAYETH NOT.



RAYMOND M. ADAMS

SWORN TO BEFORE ME AND SUBSCRIBED before me a Notary

Public and in aforesaid county in my presence this 12 day of March, 2010.



NOTARY PUBLIC

My Commission
Expires: 12/11/12

CAROL A. RODE
Notary Public, State of Ohio
My Commission Expires 12/11/12
(Recorded in Lake County)

EUCLID CHEMICAL EQUIPMENT LIST

Debtor	Location Code	Asset No.	Equipment
Schwab Ready Mix	6016865	12695	6x8' Ranch Shed
	7013372	12685, 12934 18777 - 18783	Shed; 5 Tanks (1,500 gallons each); and 3 Dispensers
	7043289	21400 - 21405	5 Tanks (1,500 gallons each); and 1 Dispenser
	7044371	14507 - 14512	5 Tanks (1,500 gallons each); and 1 Tank (1,000 gallons)
	7013369	13371, 13822 18764 - 18770	6 Tanks (1,500 gallons each); and 3 Dispensers
	7043316	13725 21417 - 21422	4 Tanks (1,500 gallons each); 1 Tank (1,000 gallons); and 2 Dispensers
	7013373	13839 18784 - 18787 21549 - 21550	3 Tanks (1,500 gallons each); 1 Tank (1,000 gallons); 1 Tank (500 gallons); and 2 Dispensers
	7013371	12434, 13095 12932, 22658 18771 - 18776	5 Tanks (1,500 gallons each); 1 Tank (500 gallons); 3 Dispensers; and 8x12' Ranch Shed
	7013370	13630, 14872	1 Tank (550 gallons); and 1 Dispenser.
	7044268	14502, 14603	1500 Tall Ranch Shed; and Full Dispenser
	7045572	15569, 15708 15904 - 15906	3 Tanks; 1 Dispenser; and 1500 Tall Ranch Shed
	7014366	12812, 16178	1 Dispenser; and Dispenser Upgrade
Medina Supply	6016634	14663	1 Dispenser
	7012100	18013 - 18014	1 Tank (1,000 gallons); and 1 Dispenser
	7012095	14037 17999 - 18004	3 Tanks (1,000 gallons each); 2 Tanks (300 gallons each); and 2 Dispensers
	7012094	17988 - 17998	7 Tanks (500 gallons each); 2 Tanks (1,000 gallons each); 1 Tank (1,500 gallons); and

			1 Dispenser
	7012087	17967 – 17973	5 Tanks (300 gallons each); 1 Tank (850 gallons); and 1 Dispenser
	7012096	18005 – 18010	3 Tanks (1,000 gallons each); 1 Tank (1,500 gallons); 1 Tank (500 gallons); and 1 Dispenser
	7012088	14080 – 14085	5 Tanks (850 gallons each); and 1 Dispenser
	7012090	17974 – 17977	3 Tanks (1,000 gallons each); and 1 Dispenser
	7012092	17978 – 17985	5 Tanks (500 gallons each); 1 Tank (1,500 gallons); 1 Tank (850 gallons); and 1 Dispenser
	7012093	17986 – 17987	1 Tank (1,000 gallons); and 1 Dispenser
	7012099	18011 – 18012	1 Tank (1,000 gallons); and 1 Tank (300 gallons)
	7034786	15208	1 Tank (850 gallons)
Twin Cities Concrete	7012199	18144 – 18148 21708 – 21710	3 Tanks (1,000 gallons each); 3 Tanks (500 gallons each); and 2 Dispensers
	7012196	18139 – 18143	2 Tanks (1,000 gallons each); 2 Tanks (500 gallons each); and 1 Dispenser
	7012195	18134 – 18138	3 Tanks (850 gallons each); 1 Tanks (500 gallons); and 1 Dispenser
Quality Block	7012137	13785 18064 – 18068	2 Tanks (850 gallons each); 2 Tanks (500 gallons each); and 2 Dispensers