

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:) CASE NO. 10-60702
) (Jointly Administered)
SCHWAB INDUSTRIES, et al.)
) CHAPTER 11
Debtors.)
) JUDGE KENDIG

**MANATEE COUNTY PORT AUTHORITY’S LIMITED OBJECTION TO DEBTOR’S
PROPOSED SALE AND TO STATED CURE AMOUNT**

On May 14, 2010, the Court filed an Order approving *Revised Notice of (I) Potential Assumption and Assignment of Executory Contracts (II) Requirement to Provide Information as to Cure Amounts, and (III) Process for Determining Cure Amounts with Respect to Executory Contracts to be Assumed and Assigned* (Doc # 408). The notice contained a Cure Amount related to Manatee Count Port Authority’s (“Port Authority”) unexpired lease with Debtor, Eastern Cement Corp. (“Eastern Cement”). The Port Authority objects to the stated Cure Amount because it is inaccurate.

The Port Authority additionally objects to the Sale to the extent that Eastern Cement has failed to provide adequate assurance of the future performance of the lease, as required under 11 U.S.C. §365(f)(2), should a bidder other than the stalking-horse bidder, Cement Resources, LLC, become the purchaser of Eastern Cement’s assets and the assignee of Eastern Cement’s lease with the Port Authority.

A. Limited Objection to Incorrect Cure Amount

1. Eastern Cement and the Port Authority entered into a series of lease agreements which are restated and memorialized in the Amended and Restated Land Lease (the “Lease”)

executed on or about December 17, 2009. (See Exhibit “B” attached to the Affidavit of Robert J. Armstrong, Manatee County Port Authority’s Chief Financial Officer and Director of Business, Exhibit “A”).

2. Under the Lease, Eastern Cement agreed to pay to the Port Authority rent, minimum wharfage and cement charges, and administrative fees associated with its operation of the Port Authority’s property and facilities. (Armstrong Aff. at ¶¶ 4-12; Exhibit “B”).

3. On February 28, 2010, Eastern Cement Corp. filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code (“Petition Date”).

4. Eastern Cement continues to operate and manage its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. Pursuant to the *Agreed Order Approving Motion For Revised Bidding Procedures Approving (1) Executed Stalking Horse Asset Purchase Agreement; (2) Proposed Break-Up Fee And Expense Reimbursement; (3) Revised Bidding Procedures; (4) The Form And Manner Of Service Of These Sale Hearing And Auction; And (5) The Form And Manner Of Service Of Notice Of The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Which Revises Order (1) Approving Auction And Bidding Procedures And An Auction Date; (2) Scheduling Date And Time For Sale Hearing; (3) Approving The Form And Manner Of Service Of Notice Of The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; And (5) Granting Related Relief* (“Agreed Order”), the Port Authority received the Cure Claim Notice which states that the Cure Amount is \$480, 010.10. This Cure Amount is incorrect.

6. At the time Eastern Cement filed for bankruptcy, Eastern Cement owed to the Port Authority a number of outstanding charges and payments, including but not limited to, lease

payments due under the Amended and Restated Land Lease. These charges include the following:

Description	Invoice Number(s)	Exhibit	Amount
Unpaid wharf charges	59912	Exhibit "F"	\$144.22
Wharfage-Cement (2009)	62842	Exhibit "E"	\$167,390.89
Administrative charge for employee identification	62866	Exhibit "G"	\$150.00
Lease payment	-	Exhibit "B"	\$300,000.00
Unpaid rent (2 months at \$12,716.10/mo.)	63225, 63398	Exhibit "C"	\$25,432.20
Total Cure Amount as of May 19, 2010 -			\$493,117.31

(Armstrong Aff. at ¶¶ 4-12; Exhibits B - G).

7. These charges and the supporting invoices are more fully described in the Affidavit of Robert J. Armstrong, the Port Authority's Chief Financial Officers and Director of Business. (See, Exhibits "A" through "G").

8. Eastern Cement's June rental payment of \$12,716.10 is due on June 1, 2010. This rental amount will be included in the Cure Amount should the Sale fail to close prior to June 1, 2010. (Armstrong Aff. at ¶ 7; Exhibit "D").

B. Debtors have failed to provide adequate assurances of future performance of the Lease for qualified bidder other than the stalking-horse bidder.

9. In order to assume and assign an unexpired lease agreement, Eastern Cement must provide to the Port Authority adequate assurance of the assignee's future performance of the lessee's obligations under the Lease. See, 11 U.S.C. § 365(f)(2)(B).

10. Eastern Cement must provide assurances that the Port Authority will receive the full bargained-for benefit under the Lease from the future assignee. *In re U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982) (finding while "adequate assurance" is not defined in the bankruptcy Code, Congress intended that contracting parties will receive the full benefit of the bargain through the performance of the trustee or debtor in possession).

11. Eastern Cement has provided adequate assurances that Cement Resources, LLC (the stalking-horse bidder) would operate the Port Authority's facilities as a going concern and thereby providing the full benefit of the bargain of the Lease. To date, Eastern Cement has not provided the same assurances from the other potential bidders. In fact, the identity of the bidders for the Lease and the proposed assignee thereof will not be known until the Auction on May 27, 2010.

12. Accordingly, the Port Authority objects to the Sale to the extent that adequate assurance of future performance of the Lease by the potential qualified bidders and proposed assignee has not been provided to the Port Authority and may not occur prior to the Sale Hearing of May 28, 2010.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

By: /s/ Joshua D. Nolan
Patrick J. Keating #0023481
Matthew Duncan #0076420
Joshua D. Nolan #0084592
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333
Telephone: (330) 376-5300
Facsimile: (330) 258-6559
pkeating@bdblawn.com
mduncan@bdblawn.com
jnolan@bdblawn.com

Counsel for Manatee County Port Authority

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2010, a true copy of the foregoing Manatee County Port Authority's Limited Objection to Debtor's Proposed Sale and to Stated Cure Amount was electronically filed upon the following parties listed in the Court's Electronic Mail Notice List. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

- Jeffrey Baddeley jbaddeley@ulmer.com
- David D Black dblack@cdf.com, reeccee@yahoo.com
- Wanda Borges borgeslawfirm@aol.com
- Amelia A Bower abower@plunkettcooney.com, mlangworthy@plunkettcooney.com
- Kate M Bradley kbradley@brouse.com, tpalcic@brouse.com;mmiller@brouse.com
- Carrie M Brosius cmbrosius@vorys.com, mborr@vorys.com
- Beth A Buchanan bbuchanan@fbtlaw.com, ahammerle@fbtlaw.com
- Jon Chatalian chatalian.jon@pbgc.gov, efile@pbgc.gov
- D. Elaine Conway econway@jw.com, tdenton@jw.com
- Brian G Dattilo Brian@TSOhiolaw.com
- Anthony J DeGirolamo ajdlaw@sbcglobal.net
- Daniel A DeMarco dademarco@hahnlaw.com, hlpcr@hahnlaw.com
- Matthew R. Duncan mduncan@bdbl.com
- James W. Ehrman jwe@kjk.com, rlh@kjk.com;newpleadings@gmail.com
- David G. Finley david@dfinleylaw.com,
denise@dfinleylaw.com,matthew@dfinleylaw.com,pat@dfinleylaw.com
- Patricia B Fugee pfugee@ralaw.com, tburgin@ralaw.com,cbaker@ralaw.com
- Emily S Gottlieb emily.gottlieb@gardencitygroup.com,
jeffrey.miller@gardencitygroup.com,elizabeth.vrato@gardencitygroup.com,heather.montgomery@gardencitygroup.com,PACERTeam@gardencitygroup.com
- Aaron L. Hammer ahammer@freebornpeters.com, bkdocketing@freebornpeters.com
- Vaughn A Hoblet hoblet@marshall-melhorn.com, bartoe@marshall-melhorn.com
- Reginald W Jackson rwjackson@vorys.com, cdfricke@vorys.com
- Michael J Kaczka mkaczka@mcdonaldhopkins.com,
bkfilings@mcdonaldhopkins.com;jpolinko@mcdonaldhopkins.com
- Alan R Lepene alan.lepene@thompsonhine.com
- Douglas L Lutz dlutz@fbtlaw.com, ahammerle@fbtlaw.com
- Marc Merklin mmerklin@brouse.com, tpalcic@brouse.com
- Lawrence E Oscar leoscar@hahnlaw.com, hlpcr@hahnlaw.com
- Mark E Owens marko@sonkinkoberna.com
- Christopher W Peer cpeer@hahnlaw.com, hlpcr@hahnlaw.com

- Craig W Relman crelman@aol.com
- Paul M. Rosenblatt prosenblatt@kilpatrickstockton.com, mhindman@kilpatrickstockton.com
- Michael P Shuster mshuster@porterwright.com
- Diana M Thimmig dthimmig@ralaw.com, cwoodruff@ralaw.com;casedocket@ralaw.com
- Lawrence E Tofel letofel@tofellow.com, jworden@tofellow.com;mallison@tofellow.com
- United States Trustee (Registered address)@usdoj.gov
- Curtis L. Tuggle curtis.tuggle@thompsonhine.com
- Cheryl Wear cheryl.wear@ohioattorneygeneral.gov

The following parties were sent a copy by federal express on May 19, 2010:

United States Bankruptcy Court
 Federal Building & U.S. Courthouse
 Frank T. Bow Building
 201 Cleveland Ave., S.W.
 Canton, OH 44702

Debtors

c/o Laurence V. Goddard, Chief Restructuring Officer
 THE PARKLAND GROUP
 1375 East 9th St., Suite 1350
 Cleveland, OH 44114

Lawrence E. Oscar, Esq.
 Daniel A. DeMarco, Esq.
 Christopher W. Peer, Esq.
 HAHN, LOESER & PARKS, LLP
 200 Public Square, Suite 2800
 Cleveland, OH 44114

and

David Cesar
 Mark D. Kozel
 THE PARKLAND GROUP
 1375 East 9th St., Suite 1350
 Cleveland, OH 44114

and
Agent

c/o Alan R. Lepene, Esq.
Curtis L. Tuggle, Esq.
THOMPSON HINE LLP
3900 Key Center
127 Public Square
Cleveland, OH 44114

Committee

c/o Douglas L. Lutz, Esq.
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182

And

Aaron L. Hammer, Esq.
Freeborn & Peters, LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606

The Stalking Horse Bidder

Cement Resources, LLC
c/o GarMark Advisors LLC
One Landmark Square, 6th Floor
Stamford, CT 06901
Attn: Steven C. Pickhardt

And

Cement Resources LLC
c/o Atlas Holdings FRM LLC
One Sound Shore Drive, Suite 203
Greenwich, CT 06830
Attn: Timothy J. Fazio

with a copy to:

Jones Day
North Point
901 Lakeside Ave.
Cleveland, OH 44114
Attn: David G. Heiman, Esq.

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case have been served a copy by regular mail on May 19, 2010:

Atwell, LLC
30575 Bainbridge Rd., Suite 180
Cleveland, OH 44118

Brouse McDowell
388 S. Main Street Suite 500
Akron, OH 44311

Ken Burton
Manatee County Tax Collector
PO Box 25300
Bradenton, FL 34206-5300

Cincinnati Industrial Auctioneers, Inc.
2020 Dunlap St.
Cincinnati, OH 45214-2310

Conery Valuation Group
1437 Bayberry Dr
Jamison, PA 18929

David R. Exley

Gillott Appraisal Services Inc.
3136 Windmoor Dr N
Palm Harbor, FL 34685

Morris-Depew Associates Inc.
2914 Cleveland Ave
Fort Myers, FL 33901

The Chartwell Group
1301 East 9th Street
Cleveland, OH 44114

/s/Joshua D. Nolan

Patrick J. Keating #0023481
Matthew Duncan #0076420
Joshua D. Nolan #0084592
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333
Telephone: (330) 376-5300
Facsimile: (330) 258-6559
pkeating@bdblawn.com
mduncan@bdblawn.com
jnolan@bdblawn.com

Counsel for Manatee County Port Authority

«AK3:1028561_v2»