

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: : Chapter 11
: :
SCHWAB INDUSTRIES, INC., *et al.*,¹ : Case No. 10-60702
: (Jointly Administered)
Confirmed Debtors. :
: Judge Russ Kendig
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**FIRST AND FINAL APPLICATION OF BRUNER-COX LLP FOR COMPENSATION
FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
AS ACCOUNTANTS FOR DEBTORS**

Bruner-Cox LLP (“Bruner”), accountants for Schwab Industries, Inc., and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), hereby submits this *First and Final Application of Bruner-Cox LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Accountants for Debtors* (the “Application”) for the period from February 28, 2010² through December 15, 2010 (the “First and Final Application Period”).

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525), Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

² Bruner is requesting approval of fees and expenses for services rendered immediately prior to or on the Petition Date in the amount of \$7,583.77 for Fees and Expenses. Due to the urgency in filing the chapter 11 proceedings, Bruner was not fully compensated for pre-petition services rendered and reimbursement of costs advanced. Said Fees and Expenses are itemized on Invoice No. 127367. Bruner is also seeking compensation for services rendered immediately following the Confirmation Date in the amount of \$59.50 relating to pension plan issues.

I. INTRODUCTION:

A. Background

1. On February 28, 2010 (the "Petition Date") Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code. Debtors conducted their businesses and managed their properties as debtors-in-possession. No trustee or examiner was appointed in the above-captioned cases (the "Chapter 11 Cases").

2. Pursuant to an order of this Court dated March 3, 2010, Debtors' Chapter 11 Cases are being jointly administered [Docket No. 41].

3. On March 9, 2010 the United States Trustee (the "UST") appointed an Official Committee of Unsecured Creditors (the "Committee") [Docket No. 81].

B. Retention of Bruner

4. On March 25, 2010 the Court entered an Order authorizing the retention of Bruner effective *nunc pro tunc* as of the Petition Date (the "Retention Order"). A copy of the Retention Order is attached to this First and Final Application as Exhibit A [Docket No. 208].

C. Prior Compensation

5. Bruner received retainer payments in the amounts of \$20,000 on both February 4, 2010 and February 12, 2010 (the "Initial Retainer") from Debtors which were intended for services leading up to a Chapter 11 filing and were applied for services subsequently performed. On February 26, 2010 Bruner received a further retainer of \$30,000 (the "Chapter 11 Retainer") and together with the Initial Retainer, the "Retainers") which has been held as a retainer for a portion of the expected fees and expenses incurred in the Cases. The

Chapter 11 Retainer is being held in trust by Bruner to be applied to amounts due and as authorized by the Court.

6. Pursuant to and in compliance with this Court's *Order Granting Motion of Debtors and Debtors in Possession for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 201] and as amended on July 9, 2010 [Docket No. 530] (the "Interim Compensation Order") Bruner has received periodic payments generally equal to 80% of the Fees and 100% of the expenses (the "Periodic Payments"). The Periodic Payments have been made by the Debtors in accord with approved budgets and from funds carved out from the collateral by Debtors' secured lenders pursuant to, among other things, *Interim Order (I) Authorizing Post-Petition Secured Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 363 and 364, (II) Modifying the Automatic Stay and (III) Scheduling a Final Hearing* [Docket No. 407] (the "DIP Financing Order") and *Order (1) Authorizing the Sale of Substantially all of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers Pursuant to Bankruptcy Code §§363 and 365; (2) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases; (3) Waiving the Fourteen-Day Period Provided by Bankruptcy Rule 6004(h); and Granting Related Relief* [Docket No. 455] (the "Sale Order"). Attached hereto on Exhibit B is an accounting of the current Fees accrued and Expenses incurred, along with the Periodic Payments received.

D. Confirmation of the First Amended Joint Plan of Liquidation Dated October 26, 2010

7. On October 26, 2010, Debtors and the Committee filed their First Amended Joint Plan of Liquidation Dated October 26, 2010 [Docket No. 655] (the "Plan").

8. On December 9, 2010, the Court held a hearing to consider confirmation of the Plan (the “Confirmation Hearing”).

9. At the Confirmation Hearing, the Court orally confirmed the Plan.

10. On December 15, 2010 (the “Confirmation Date”), the Court entered the *Findings of Fact, Conclusions of Law and Order: (I) Approving First Amended Disclosure Statement with Respect to First Amended Joint Plan of Liquidation of Schwab Industries, Inc. et al Pursuant to 11 U.S.C. §1125; and (II) Confirming First Amended Joint Plan of Liquidation Dated October 26, 2010* (the “Confirmation Order”) [Docket No. 698].

11. Among other things, the Confirmation Order stated that professionals were directed to file final fee applications no later than thirty (30) days following entry of the Confirmation Order.

E. Compensation and Reimbursement of Expenses Requested

12. In accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court, Bruner in this First and Final Fee Application seeks authorization for payment to Bruner by Debtors for professional services rendered in the amount of \$136,764.06 (the “Fees”) and reimbursement of expenses incurred in connection with those services in the amount of \$2,625.51 (the “Expenses”). Having already been paid \$92,144.85, Bruner seeks (i) authority to apply the Chapter 11 Retainer to unpaid Fees and Expenses; (ii) actual payment of an additional \$17,244.72; and (iii) approval of all Fees and Expenses³.

³ In addition, Bruner seeks approval for and payment of up to \$5,000.00 for fees and expenses relating to services performed for Debtors after the Confirmation Date. Bruner will submit invoices to the Creditor Trustee appointed through the Plan for payment of such sums, if any.

II. SUMMARY OF SERVICES RENDERED

13. As accountants for Debtors, Bruner performed accounting services on behalf of Debtors and as authorized in the Retention Order. A complete description of Bruner's services during the First and Final Application Period is set forth in the time detail and invoices contained in attached Exhibit C.

14. As a summary of services rendered during the First and Final Application Period, Bruner assisted Debtors by completing, among other things, the following:

- completion and preparation of presently due or overdue federal, state and local tax returns;
- assisting Debtors in revising previously filed tax returns to increase refund amounts and properly capture valuable net operating losses;
- assisting Debtors in the preparation of tax, accounting and financial schedules as they became due;
- assisting Debtors in preparing the Plan and Disclosure Statement relating to the Plan;
- assisting Debtors in performing audits as needed, including audits on Debtors' retirement plans;
- assisting Debtors in addressing internal tax management concerns designed to allow Debtors to better manage tax resources;
- advising Debtors' other professionals on all tax, accounting and audit matters;
- attending meetings and court hearing as necessary;
- advising Debtors, any other parties with respect to existing tax refunds expected to be paid to Debtors' estates; and
- performing tax and accounting services as Debtors requested with respect to any matter, including, but not limited to, employee benefits, creditors' rights, tax planning, tax preparation, tax representation and audit matters (collectively, the "Services").

III. COMPENSATION AND REIMBURSEMENT REQUESTED AND RELEVANT LEGAL STANDARDS

A. Compensation.

15. To grant a request for compensation pursuant to Bankruptcy Code Section 330, the Court must find that such request is reasonable. Bruner's has agreed to provide the Services at its ordinary and customary hourly rates in effect on the date services are rendered for services (the "Hourly Fees"). Accordingly, the compensation sought by Bruner hereunder is reasonable under section 330 of the Bankruptcy Code. As reflected on the Fee Statements attached as Exhibit C, Bruner has charged Debtors \$136,764.06 for Fees.

B. Expenses

16. Sections 330(a)(2) and 503(b)(4) of the Bankruptcy Code permit reimbursement for actual, necessary expenses. The Expenses expended by Bruner were only such Expenses that were necessary to perform the Hourly Fees. Bruner's expenses in connection with the provision of services to Debtors are minimal and Bruner used commercially reasonable efforts to eliminate expenses that could be deemed "duplicative." The Expenses are included in the time and fee statements that are attached as Exhibit C.

IV. NO FEE SHARING/DISINTERESTED PERSON

17. Except as set forth above, Bruner has neither received nor been promised any payments for services rendered or to be rendered in any capacity whatsoever in connection with the Debtors' Chapter 11 Cases. Also, Bruner has not entered into any agreement, express or implied, with any party-in-interest, including any creditor or any representative or any creditor, or with any attorney for any such party-in-interest, for the purpose of fixing the fees or other compensation to be paid by any party-in-interest or to any attorney or other professional for any

party-in-interest for services rendered in connection with these cases from the assets of the estates.

18. During the First and Final Application Period and throughout the course of Bruner's employment as accountants for Debtors, Bruner has been a disinterested person and has not represented or held an interest adverse to the interests of Debtors or their estates with respect to the matters for which Bruner was employed.

V. STANDARD OF REVIEW

19. Pursuant to Section 330 of the Bankruptcy Code, when determining the amount of reasonable compensation to be awarded, the court shall consider certain facts, including (i) the time spent on the services; (ii) the rates charged for the services; (iii) whether the services were necessary and beneficial to the administration of the estate; (iv) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task; (v) whether the professional has expertise in the bankruptcy field; and (vi) whether the compensation is reasonable compared to other comparably skilled practitioners. 11 U.S.C. §330.

20. Bruner states that (i) the time spent on the services corresponded directly to the tasks that were being performed and that Bruner staffed each such task with personnel of appropriate experience and fee rate to accomplish the required tasks. The services were necessary and beneficial as they assisted the Debtors in completing their tax reporting and calculation obligations, which directly impacted Debtors' ability to successfully liquidate. Bruner has experience with bankrupt entities, and this skill was on display in the instant case. Bruner states that the compensation requested is commensurate with that which would otherwise

be awarded in other chapter 11 debtor cases. Payment of the Hourly Fees is reasonable and appropriate in the instant cases.

VI. CONCLUSION

21. Bruner seeks an allowance of compensation for Fees and Expenses during the First and Final Application Period in the amount of \$139,389.57, with \$136,764.06 allocable to Fees and \$2,625.51 allocable to Expenses.

22. Bruner respectfully submits that it is entitled to receive as reasonable compensation for Fees and Expenses the full amount requested herein, as such Fees and Expenses are related to services that were valuable to the Debtors' estates and are reasonable and commensurate with the rates and charges for professional services prevailing in the community for accountants of like standing and experience.

23. Bruner has complied with the Court and U.S. Trustee Guidelines in making this request for compensation; *see* Certification of First and Final Application of Bruner-Cox LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Accountants for Debtors, attached hereto as Exhibit D.

WHEREFORE, Bruner requests that the Court enter an Order:

(i) awarding Bruner compensation for accounting services rendered to the Debtors in the sum of \$136,764.06 and reimbursement of Expenses incurred in the amount of \$2,625.51;

(ii) authorizing and directing the Debtors Estates to pay Bruner all sums awarded to Bruner in accordance herewith, net of payment already made to and received by Bruner pursuant to the Retention Order;

(iii) authorizing Bruner to indefeasibly retain the Chapter 11 Retainer and apply it to unpaid Fees and Expenses; and

(iii) granting Bruner such other and further relief as is just and proper.

Dated: January 14, 2011
Cleveland, Ohio

Respectfully Submitted,

See attached signature page

Ronald J Manse
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Filed by:

/s/ Daniel A. DeMarco


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*Counsel for Debtors and Debtors-in-
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(iii) granting Bruner such other and further relief as is just and proper.

Dated: January 14, 2011
Cleveland, Ohio

Respectfully Submitted,


~~See attached signature page~~
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