

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

In re:)	
)	Chapter 11
ATRIUM CORPORATION, <i>et al.</i> , ¹)	Case No. 10-10150 (BLS)
)	
Debtors.)	Joint Administration Requested
)	

**DEBTORS' APPLICATION FOR ENTRY OF AN
ORDER AUTHORIZING THE EMPLOYMENT AND
RETENTION OF KIRKLAND & ELLIS LLP AS ATTORNEYS
FOR THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

Atrium Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”),² respectfully represent:

Jurisdiction

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Atrium Corporation (4598); ACIH, Inc. (7822); Aluminum Screen Manufacturers, Inc. (6750); Atrium Companies, Inc. (2488); Atrium Door and Window Company – West Coast (2008); Atrium Door and Window Company of Arizona (2044); Atrium Door and Window Company of the Northeast (5384); Atrium Door and Window Company of the Northwest (3049); Atrium Door and Window Company of the Rockies (2007); Atrium Enterprises Inc. (6531); Atrium Extrusion Systems, Inc. (5765); Atrium Florida, Inc. (4562); Atrium Vinyl, Inc. (0120); Atrium Windows and Doors of Ontario, Inc. (0609); Champion Window, Inc. (1143); North Star Manufacturing (London) Ltd. (6148); R.G. Darby Company, Inc. (1046); Superior Engineered Products Corporation (4609); Thermal Industries, Inc. (3452); and Total Trim, Inc. (8042). The Debtors’ main corporate address is 3890 W. Northwest Highway, Suite 500, Dallas, Texas 75220.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this application and the Debtors’ restructuring, are set forth in greater detail in the Declaration of Gregory T. Faherty, President and Chief Executive Officer of Atrium Corporation, in Support of First Day Motions (the “*First Day Declaration*”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), on January 20, 2010 (the “*Petition Date*”). Simultaneously with the commencement of these chapter 11 cases, Debtor North Star Manufacturing (London) Ltd. sought relief under the Companies’ Creditors Arrangement Act in the Ontario Superior Court of Justice in Toronto, Ontario, Canada (the “*CCAA Proceeding*”).

3. The bases for the relief requested herein are sections 327(a) and 330 of title 11 of the Bankruptcy Code, Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2014-1, 2016-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”).

Relief Requested

4. By this application, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the employment and retention of Kirkland & Ellis LLP (“*K&E*”) as attorneys for the Debtors in connection with their chapter 11 cases, *nunc pro tunc* to the Petition Date, in accordance with the terms and conditions set forth in the engagement letter between the Debtors and K&E dated as of August 14, 2009 (the “*Engagement Letter*”), a copy of which is annexed as **Exhibit 1** to **Exhibit A** attached hereto. In support of this application, the Debtors submit the declaration of Richard M. Cieri, a partner at K&E (the “*Cieri Declaration*”), a copy of which is attached hereto as **Exhibit B**.

K&E’s Qualifications

5. K&E is both well-qualified and uniquely able to represent the Debtors in these chapter 11 cases in an efficient manner. K&E has extensive experience representing financially distressed companies reorganizing under chapter 11 of the Bankruptcy Code. Moreover, K&E is extremely familiar with the Debtors’ businesses and management team, having represented the Debtors in restructuring matters since August 2009.

6. K&E has been actively involved in major chapter 11 cases and has represented debtors in many cases, including, among others: *In re The Majestic Star Casino, LLC*, Case No. 09-14136 (Bankr. D. Del. Nov. 23, 2009); *In re Stallion Oilfield Services Ltd.*, Case No. 09-

13562 (Bankr. D. Del. Nov. 16, 2009); *In re The Readers Digest Assoc., Inc.*, Case No. 09-3529 (Bankr. S.D.N.Y. Sep. 17, 2009); *In re Lear Corp.*, Case No. 09-14326 (Bankr. S.D.N.Y. Jul. 31, 2009); *In re UTGR, Inc. d/b/a/ Twin River, et al*, Case No. 09-12418 (Bankr. D.R.I. Jul. 30, 2009); *In re ION Media Networks, Inc.*, Case No. 09-13125 (Bankr. S.D.N.Y. Jun. 23, 2009); *In re Visteon Corp.*, Case No. 09-11786 (Bankr. D. Del. Jun. 19, 2009); *In re DBSD North America, Inc.*, Case No. 09-13061 (Bankr. S.D.N.Y. Jun. 9, 2009); *In re General Growth Props., Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 26, 2009); *In re Norwood Promotional Products Holdings, Inc.*, Case No. 09-11547 (Bankr. D. Del. May 5, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 29, 2009); *In re Source Interlink Companies, Inc.*, Case No. 09-11424 (Bankr. D. Del. Apr. 28, 2009); *In re Charter Comm'ns, Inc.*, Case No. 09-11435 (Bankr. S.D.N.Y. Apr. 15, 2009); *In re Masonite Corp.*, Case No. 09-10844 (Bankr. D. Del. Apr. 15, 2009); *In re Muzak Holdings LLC*, Case No. 09-10422 (Bankr. D. Del. Feb. 10, 2009); *In re Tronox, Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); *In re Flying J Inc.*, Case No. 08-13384 (Bankr. D. Del. Jan. 15, 2009); *In re Portola Packaging, Inc.*, Case No. 08-12001 (Bankr. D. Del. Sep. 22, 2008); *In re Hines Horticulture, Inc.*, Case No. 08-11922 (Bankr. D. Del. Sep. 10, 2008); *In re Pierre Foods Inc.*, Case No. 08-11480 (Bankr. D. Del. Aug. 14, 2008); *In re ACG Holdings, Inc.*, Case No. 08-11467 (Bankr. D. Del. Aug. 11, 2008); *In re Kimball Hill, Inc.*, Case No. 08-10095 (Bankr. N.D. Ill. May 13, 2008); and *In re Wellman, Inc.*, Case No. 08-10595 (Bankr. S.D.N.Y. Feb. 22, 2008).

Services to Be Provided

7. Subject to further order of the Court and consistent with the Engagement Letter, K&E will, among other things:

- a. advise the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- b. advise and consult on the conduct of the chapter 11 cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attend meetings and negotiate with representatives of the Debtors' creditors and other parties in interest;
- d. take all necessary actions to protect and preserve the Debtors' estates, including prosecute actions on the Debtors' behalf, defend any action commenced against the Debtors and represent the Debtors' interests in negotiations concerning all litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- e. prepare all pleadings, including motions, applications, answers, orders, reports and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. represent the Debtors in connection with obtaining any postpetition financing;
- g. advise the Debtors in connection with any potential sale of assets;
- h. appear before the Court and any appellate courts or other courts to represent the interests of the Debtors' estates before those courts;
- i. consult with the Debtors regarding tax matters;
- j. take any necessary action on behalf of the Debtors to negotiate, prepare on behalf of the Debtors and obtain approval of a chapter 11 plan and all documents related thereto; and
- k. perform all other necessary or otherwise beneficial legal services for the Debtors in connection with the prosecution of these chapter 11 cases, including (i) analyze the Debtors' leases and contracts and the assumptions, rejections or assignments thereof; (ii) analyze the validity of liens against the Debtors; and (iii) advise the Debtors on corporate and litigation matters.

8. Contemporaneously with this application, the Debtors also have filed an application to retain and employ Klehr Harrison Harvey Branzburg LLP ("*Klehr Harrison*") as

co-counsel to K&E in these chapter 11 cases. The Debtors intend for Klehr Harrison to represent the Debtors in matters that Klehr Harrison can handle more efficiently than K&E or which cannot be handled by K&E due to conflicts of interest.

9. Thus, the services of Klehr Harrison will complement, and not duplicate, the services to be rendered by K&E. Indeed, K&E is extremely mindful of the need to avoid duplication of services and will implement appropriate procedures to ensure that there is minimal, if any, duplication.

Professional Compensation

10. K&E intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the guidelines established by the United States Trustee for the District of Delaware (the "*U.S. Trustee*") and any other applicable procedures and orders of the Court. To that end, contemporaneously herewith, the Debtors filed the *Debtors' Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement for Professionals*, pursuant to which K&E intends to submit requests for compensation, on an hourly basis (the "*Proposed Interim Compensation Procedures*").

11. The hourly rates and corresponding rate structure that K&E will use in these chapter 11 cases are equivalent to the hourly rates and corresponding rate structure that K&E predominantly uses for other restructuring matters, as well as similar complex corporate, securities and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and the rate structure reflect take into consideration that

corporate restructuring and other complex matters typically are national in scope and involve great complexity, high stakes and severe time pressures.

12. K&E operates in a dynamic, national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm's expertise, performance and reputation, the nature of the work involved and other factors. Because the sub-markets for legal services are fragmented and are affected by a variety of individualized and interdependent factors, K&E has no one rate for an individual biller that applies to all matters for all clients. K&E's rates for an individual biller may vary as a function of the type of matter, geographic circumstance, nature of certain long-term client relationships and various other factors.

13. K&E's hourly rates are set at a level designed to fairly compensate K&E for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. K&E's hourly rates vary with the experience and seniority of the individuals assigned and are subject to periodic adjustments to reflect economic and other conditions. K&E intends to provide information regarding the billing rate of each of the partners, associates and paraprofessionals providing services to the Debtors on a monthly basis in accordance with the monthly fee statements required under the Proposed Interim Compensation Procedures or any other procedures approved by the Court in these chapter 11 cases. In particular, K&E's current hourly rates for the individual experts to perform services during these chapter 11 cases range as follows:³

³ For professionals and paraprofessionals residing outside of the U.S., hourly rates are billed in the applicable currency. When billing a U.S. entity, such foreign rates are converted into U.S. dollars at the then applicable conversion rate. After converting these foreign rates into U.S. dollars it is possible that certain rates may exceed the billing ranges listed in the chart herein.

Billing Category	Range
Partners	\$580-\$995
Of Counsel	\$435-\$995
Associates	\$340-\$670
Paraprofessionals	\$135-\$285

14. The following professionals are presently expected to have primary responsibility for providing services to the Debtors: Richard M. Cieri (\$995), Joshua A. Sussberg (\$660) and Brian E. Schartz (\$505). In addition, and as necessary, other K&E professionals and paraprofessionals will provide services to the Debtors.

15. It is K&E's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also K&E's policy to charge its clients only the amount actually incurred by K&E in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, overtime expenses, computer-assisted legal research, photocopying, airfare, meals and lodging.

16. To ensure compliance with all applicable deadlines in these chapter 11 cases, from time to time, K&E utilizes the services of overtime secretaries. K&E charges fees for these services (as set forth in the Engagement Letter), which permit K&E to bill the Debtors for overtime secretarial charges that arise out of business necessity. In addition, K&E professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

17. K&E currently charges between \$0.10 and \$0.15 per page for standard duplication in its offices in the United States. Notwithstanding the foregoing and consistent with the Local Rules, K&E will charge no more than \$0.10 per page for standard duplication services in these chapter 11 cases. K&E does not charge its clients for facsimile transmissions. K&E has

negotiated a discounted rate for Westlaw computer-assisted legal research, which is used whenever the researcher determines that using Westlaw is more cost-effective than using traditional (non-computer-assisted) techniques.

18. Moreover, pursuant to Bankruptcy Rule 2016(b), K&E has not shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates and contract attorneys associated with K&E or (b) any compensation another person or party has received or may receive.

Compensation Received by K&E from the Debtors

19. Consistent with the terms of the Engagement Letter, on September 24, 2009, the Debtors advanced K&E \$350,000 as a classic retainer. The foregoing retainer payment constituted a “classic retainer” payment as defined in *In re Prod. Assocs., Ltd.*, 264 B.R. 180, 184-85 (Bankr. N.D. Ill. 2001) and *In re McDonald Bros. Constr., Inc.*, 114 B.R. 989, 997-99 (Bankr. N.D. Ill. 1990). As such, K&E earned the classic retainer upon receipt and consequently, K&E placed that amount into its general cash account. The amounts K&E has invoiced the Debtors against the classic retainer for professional services and for the reimbursement of reasonable and necessary expenses incurred in connection therewith are set forth in the chart below. As of the Petition Date, the retainer balance was approximately \$50,000.00.

20. During the 90-day period before the Petition Date, the Debtors paid K&E the following amounts:

Type of Transaction	Invoice Number	Invoice Date	Billed Amount	Payment Date	Payment Amount	Retainer Balance
Initial Retainer				9/24/2009	\$350,000.00	\$350,000.00
Invoice	3487124	10/1/2009	\$53,244.34			\$296,756.66
Retainer Replenishment				10/26/2009	\$53,244.34	\$350,000.00
Invoice	3499639	10/27/2009	\$234,945.70			\$115,054.30
Retainer Replenishment				11/4/2009	\$234,945.70	\$350,000.00
Invoice	3505796	11/6/2009	\$131,442.97			\$218,557.03
Retainer Replenishment				11/12/2009	\$131,442.97	\$350,000.00
Invoice	3509931	11/19/2009	\$155,917.76			\$194,082.24
Retainer Replenishment				11/23/2009	\$155,917.76	\$350,000.00
Invoice	3515766	12/4/2009	\$157,344.44	12/4/2009		\$192,655.56
Retainer Replenishment				12/11/2009	\$157,344.44	\$350,000.00
Invoice	3522099	12/17/2009	\$195,884.56			\$154,115.44
Retainer Replenishment				12/23/2009	\$195,884.56	\$350,000.00
Invoice	3525277	1/4/2010	\$181,345.93			\$168,654.07
Retainer Replenishment				1/5/2010	\$181,345.93	\$350,000.00
Invoice	3529971	1/7/2010	\$224,465.00			\$125,535.00
Retainer Replenishment				1/12/2010	\$224,465.00	\$350,000.00
Invoice	3534452	1/14/2010	\$254,466.98			\$95,533.02
Retainer Replenishment				1/15/2010	\$254,466.98	\$350,000.00
Invoice	3535270	1/19/2010	\$268,847.30			\$81,152.70
Retainer Replenishment				1/19/2010	\$268,847.30	\$350,000.00
Application of Retainer		1/20/2010	\$300,000.00 ⁴			\$50,000.00

21. As of the Petition Date, the Debtors did not owe K&E any amounts for legal services rendered before the Petition Date. Although certain expenses and fees may have been incurred, but not yet applied to K&E's classic retainer, such amounts, if any, would be less than the balance of K&E's classic retainer as of the Petition Date.

⁴ To the extent, after final reconciliation, prepetition fees and expenses for this period are less than \$300,000.00, K&E will reallocate the unused portion to unapplied cash.

K&E's Disinterestedness

22. To the best of the Debtors' knowledge and as disclosed herein and in the Cieri Declaration, K& E (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code; (b) does not hold or represent an interest adverse to the Debtors' estates; and (c) has no connection to the Debtors, their creditors or their related parties except as may be disclosed in the Cieri Declaration.

23. K&E will periodically review its files during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, K&E will use reasonable efforts to identify such further developments and will file a supplemental declaration as required by Bankruptcy Rule 2014(a).

Supporting Authority

24. The Debtors seek retention of K&E as their attorneys pursuant to section 327(a) of the Bankruptcy Code, which provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a).

25. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee.

Fed. R. Bankr. P. 2014.

26. Finally, Local Rule 2014-1 states as follows:

Any entity seeking approval of employment of a professional person ... shall file with the Court a motion, a supporting affidavit or verified statement of the professional person and a proposed order for approval. Promptly after learning of any additional material information relating to such employment (such as potential or actual conflicts of interest), the professional employed or to be employed shall file and serve a supplemental affidavit setting forth the additional information.

Del. Bankr. LR 2014-1.

27. The Debtors submit that, for all the reasons stated above and in the Cieri Declaration, the retention of K&E as counsel to the Debtors is warranted and appropriate.

Notice

28. The Debtors have provided notice of this application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition credit facility; (e) counsel to the ad hoc group of lenders under the Debtors' prepetition credit facility; (f) counsel to the agent under the Debtors' accounts receivable securitization facility; (g) counsel to Kenner & Company, Inc.; (h) the indenture trustee for each of the Debtors' outstanding bond issuances; (i) the monitor appointed in the CCAA Proceeding; (j) the Internal Revenue Service; (k) the Securities and Exchange Commission; (l) the Delaware Secretary of State; and (m) the Delaware Secretary of Treasury. In light of the nature of the relief requested in this application, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

29. No prior application for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to employ and retain K&E as their attorneys in connection with these chapter 11 cases, *nunc pro tunc* to the Petition Date, in accordance with the terms and conditions set forth in the Engagement Letter, and (b) granting such other and further relief as may be appropriate.

Dated: January 20, 2010
Wilmington, DE

Atrium Corporation
ACIH, Inc.
Aluminum Screen Manufacturers, Inc.
Atrium Companies, Inc.
Atrium Door and Window Company – West Coast
Atrium Door and Window Company of Arizona
Atrium Door and Window Company of the
Northeast
Atrium Door and Window Company of the
Northwest
Atrium Door and Window Company of the Rockies
Atrium Enterprises Inc.
Atrium Extrusion Systems, Inc.
Atrium Florida, Inc.
Atrium Vinyl, Inc.
Atrium Windows and Doors of Ontario, Inc.
Champion Window, Inc.
North Star Manufacturing (London), Ltd.
R.G. Darby Company, Inc.
Superior Engineered Products Corporation
Thermal Industries, Inc.
Total Trim, Inc.

/s/ Gregory T. Faherty

Gregory T. Faherty
Chief Executive Officer and President