

Objection Deadline: Not determined
Hearing Date: Not determined

FILED/RECEIVED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

1998 FEB 13 P 3 01

In re: APS HOLDING CORPORATION, <u>et al.</u> , Debtors.	: Chapter 11 : : Case No. 98-197 (PJW) : : (Jointly Administered)
---	---

FIFTH INTERIM AND FINAL FEE APPLICATION FOR
COMPENSATION AND FOR REIMBURSEMENT OF EXPENSES

Name of Applicant: The Bayard Firm

Authorized to Provide Professional Services to: The Official Committee of Unsecured Creditors

Date of Retention: Order entered 3/17/98 (nunc pro tunc as of February 18, 1998)

Period for which compensation and reimbursement is being sought: 06/01/99 through 10/29/99

Amount of Compensation requested: \$25,342.50

Amount of Expense Reimbursement requested: \$1,829.43

The total time expended for the preparation of this fee application and likely to be expended attending a hearing on this final application and the interim applications filed previously is estimated to be 30.1 hours and the corresponding compensation requested is \$5,566.00 plus disbursements.

1350

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
APS HOLDING CORPORATION, <u>et al.</u> ,)	Case No. 98-197 (PJW)
)	
Debtors.)	Jointly Administered

**FIFTH INTERIM AND FINAL APPLICATION OF
THE BAYARD FIRM FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure, and the Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Administrative Order"), The Bayard Firm hereby moves for entry of an order awarding it reasonable compensation in the captioned cases (the "Cases") of APS Holding Corporation, et al. (hereinafter the "Debtors") for professional legal services rendered as co-counsel to the statutory committee of unsecured creditors appointed in the Cases (hereinafter the "Committee") in the amount of \$25,342.50 together with reimbursement for actual and necessary expenses incurred in the amount of \$1,829.43 for the period commencing June 1, 1999 through October 29, 1999 (the "Application Period"). In support of its Application, The Bayard Firm respectfully represents as follows:

Background

1. On February 2, 1998 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the

Debtors have been authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 Cases.

2. On February 13, 1998, the United States Trustee appointed the Committee, to serve as a committee of unsecured claimholders in the Debtors' chapter 11 Cases pursuant to section 1102(a)(1) of the Bankruptcy Code. At its initial meeting, the Committee retained Weil, Gotshal & Manges, LLP ("WGM") as its lead counsel in these Cases.

3. On February 18, 1998, the Committee retained The Bayard Firm as its co-counsel. The Bayard Firm is employed under a general retainer to represent the Committee pursuant to an order, entered March 17, 1998, which approved the Committee's retention of The Bayard Firm, effective *nunc pro tunc* to February 18, 1998.

4. On October 19, 1999, this Court entered an order confirming the First Amended Joint Consolidated Liquidation Plan of Reorganization of the Debtors (the "Plan"). The effective date of the Plan occurred on October 29, 1999.

5. This Final Application is the final fee application to be filed by Bayard in these Cases. In connection with the professional services described below, by this Final Application, Bayard seeks compensation in the amount of \$25,342.50 and expense reimbursement of \$1,829.43, together with Final Fee Application fees and costs in the total estimated amount of \$1,817.00.

6. On June 30, 1998, The Bayard Firm filed a First Interim Fee Application (the "First Interim Application") in the amount of \$44,568.50 for fees and \$7,236.46 for expenses for the period February 18, 1998 through May 31, 1998. On October 30, 1998, Bayard filed a Second Interim Fee Application (the "Second Interim Application") in the

Totals	Fees	Exp
1 2/15/98 - 5/31/98	44,568.50	7,236.46
2 6/1/98 - 9/30/98	45,688.50	8,863.60
3 10/1/98 - 1/31/99	24,309.00	4,339.22
4 2/1/99 - 5/31/99	12,938.00	3,089.29
5 4/1/99 - 10/29/99	25,342.50	1,829.43
	<u>152,846.50</u>	<u>25,358</u>

amount of \$45,688.50 for fees and \$8,863.60 for expenses for the period June 1, 1998

through September 30, 1998. On May 4, 1999, The Bayard Firm filed a **Third Interim Fee Application** (the "Third Interim Application") in the amount of \$24,309.00 for fees and \$4,339.22 for expenses for the period October 1, 1998 through January 31, 1999. On July 22, 1999, The Bayard Firm filed a **Fourth Interim Fee Application** (the "Fourth Interim Application") in the amount of \$12,938.00 for fees and \$3,089.29 for expenses for the period February 1, 1999 through May 31, 1999. The First, Second, Third and Fourth Interim Applications (collectively, the "Interim Applications") are incorporated herein by reference.

7. In addition to seeking final approval of the fees and expenses incurred in the Fifth Application Period, and the Final Fee Application Costs, this Final Application seeks final approval of the Interim Applications.

8. Pursuant to the Administrative Order, The Bayard Firm submitted five monthly fee statements for services rendered and reimbursement of expenses incurred during the Application Period as follows: (a) for the period from June 1, 1999 through June 30, 1999 in the amount of \$1,803.00 for fees and \$232.78 for expenses, (b) for the period July 1, 1999 through July 31, 1999 in the amount of \$2,993.00 for fees and \$479.37 for expenses, (c) for the period from August 1, 1999 through August 31, 1999 in the amount of \$8,651.00 for fees and \$367.66 for expenses, (d) for the period from September 1, 1999 through September 30, 1999 in the amount of \$1,748.50 for fees and \$88.15 for expenses, and (e) for the period from October 1, 1999 through October 29, 1999 in the amount of \$10,147.00 for fees and \$661.47 for expenses.

9. The Bayard Firm submits this application in accordance with sections 330(a) and 331 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy

Procedure, the Administrative Order and this Court's General Order #32. The Court has jurisdiction over this Application pursuant to sections 157 and 1334 of title 28 of the United States Code.

Compensation Paid and Its Source

10. All services for which compensation is requested by The Bayard Firm were performed for or on behalf of the Committee, or in connection with the Interim Applications and this Application.

11. During the Application Period, The Bayard Firm has received interim payments pursuant to the Administrative Order totaling \$102,003.20 for fees and \$23,555.57 for expenses, with \$25,500.80 representing the total holdback covering the first through the fourth fee application periods. Other than payments made pursuant to the Administrative Order, The Bayard Firm has received no payment and no promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with the Cases, and there is no agreement or understanding between The Bayard Firm and any other person, other than members of the Firm, for the sharing of compensation to be received for services rendered to the Committee in the Cases. The Firm has been retained by Burton Weston, Esquire, the trustee of the liquidation trust created pursuant to the Plan, to represent him in his post-confirmation duties as trustee.

12. Attached hereto as Exhibit A are detailed descriptions of the services that The Bayard Firm rendered in connection with the Cases for the Application Period. Exhibit A sets forth the identity of the particular professional (or other timekeeper) performing the services, the date the services were performed, a project category, a brief description of the nature of the services, and the time expended. Exhibit A was prepared

from daily diary entries prepared by each professional (or other timekeeper), with the time being recorded in segments of tenths of an hour. Attached hereto as Exhibit B is a description of the project categories that professionals and other timekeepers at The Bayard Firm use when recording time on matters of this type.

Summary of Services Rendered

13. The Bayard Firm rendered the following services as co-counsel to the Committee during the Application Period:

- (a) participating in Committee meetings and conference calls, including advising the Committee and its professionals regarding case and litigation strategies;
- (b) reviewing financial and operational information;
- (c) representing the Committee at all hearings in the Cases, often, in order to preserve assets of the estate, as the only counsel representing the Committee;
- (d) reviewing all pleadings and papers filed in the Cases;
- (e) drafting or participating in the drafting of pleadings on behalf of the Committee;
- (f) advising the Committee and WGM regarding practice and procedure in this Court;
- (g) coordinating responsibility for filing and service of all pleadings of the Committee relative to the Cases; and
- (h) coordinating weekly (or more frequent) updating of docket sheets, maintaining pleadings files and updating critical dates calendar.

14. On an ongoing basis, in addition to those duties described above, The Bayard Firm has provided local counsel services to WGM and has sought to avoid unnecessary duplication of services. Specifically, the services rendered by Bayard during the Application Period included the following:

(a) Litigation / Adversary Proceedings – AP. Bayard expended time in preparing and filing a stipulation extending the response deadline in regard to the Committee's complaint against Chase Manhattan. In addition, Bayard reviewed the various briefs filed relating to the Committee's complaint to avoid preference transactions and certain liens.

(b) Business Operations – BO. Bayard received and reviewed the Debtors' monthly operating reports, and other financial information.

(c) Case Administration – CA. Bayard performed various tasks necessary to effectively administer this case on behalf of the Committee. Bayard reviewed all correspondence and pleadings relating to the Committee. In coordination with WGM, Bayard orchestrated the filing and service of various pleadings and affidavits of service. Bayard participated in teleconferences with co-counsel regarding the status of the cases and the Committee's position on various issues. In addition to reviewing and updating the docket and indexing pleadings and other documents in this case, Bayard maintained and updated a critical dates list made available to co-counsel, other professionals and the Committee and a rule 2002 service list.

(d) Court Hearings – CH. Bayard prepared for and attended all hearings held in this case. Bayard also conferred with co-counsel and the Committee regarding the matters scheduled at these hearings.

(e) Creditor Inquires – CI. Bayard responded to inquiries from various creditors regarding the status of the case and plan related issues. In addition, the Firm participated in various teleconferences with co-counsel regarding distribution and the status of the case.

(f) Disclosure Statement – DS. Bayard expended time reviewing and providing comments to the Debtors' disclosure statement. Bayard also participated in various teleconferences with co-counsel regarding the disclosure statement and had substantial involvement in the drafting and negotiations of terms of the liquidation trust agreement.

(g) Lease / Executory Contract Issues – EC. Bayard reviewed and discussed with the Committee and co-counsel the Debtors' motions to reject or assume various leases and contracts. Bayard also reviewed the Debtors' motions to extend the time in which to assume or reject executory contracts and unexpired leases.

(h) Retention of Professionals / Fee Application / Fee Objections – FA. Bayard expended time on drafting, revising and discussing with other committee professionals the Fourth Interim Fee Application of Bayard and other committee professionals. Moreover, Bayard also reviewed the Debtors' proposed retention of certain professionals. In addition, Bayard monitored the monthly fee statements of professionals in this case.

(i) Meetings of Creditors – MC. Bayard, in order to effectively communicate with and advise the Committee, participated in various teleconferences and prepared and reviewed various memoranda between itself, the Committee and co-counsel.

(j) Stay Relief Matters – MR. Bayard reviewed and discussed with co-counsel various notices and stipulations regarding stay relief matters, primarily with respect to personal injury and securities related claims.

(k) Claims, Analysis, Objections & Resolutions – PC. Bayard reviewed and discussed with co-counsel various claims issues, including establishing an administrative claim bar date and Debtors' motions to expunge, reclassify or object to various claims.

(l) Plan – PL. Bayard spent considerable time reviewing the proposed plan, the liquidation trust agreement, and confirmation order with co-counsel, the Committee and Debtors' counsel. In addition, Bayard participated in various conferences and teleconferences with co-counsel and the Committee regarding the plan structure and the liquidation trust agreement. Furthermore, Bayard spent time reviewing and making suggested revisions to the various objections to confirmation. Bayard, along with co-counsel, also expended considerable time and effort regarding the trustee selection process.

(m) Use, Sale or Lease of Property – SA. Bayard reviewed the Debtors' motion to sell the Indianapolis property and the sale of assets to the Parts Depot Company. In addition, Bayard reviewed the notices to retain various real estate brokers, along with the Debtors' motion to engage collection agencies.

Compensation Requested

15. For the Application Period, The Bayard Firm seeks allowance of its fees in the amount of \$25,342.50 in connection with the professional services described above.

Disbursements

16. During the Application Period, The Bayard Firm incurred or disbursed the actual and necessary costs and expenses related to the Cases in the amount of \$1,829.43.

Outside Phone Charges	\$ 4.10
Federal Express	\$ 73.80
Telecopier Charges	\$ 163.00
Copies	\$ 1,252.05 ¹
Delivery Charges	\$ 190.00
Telephone Calls	\$ 32.35
Postage	\$ 28.88
Meals/Meetings	\$ <u>85.25</u>
Total:	\$ <u>1,829.43</u>

*This disbursement sum is broken into categories of charges, and a complete review of the expenses incurred for the period is included in Exhibit A.

17. Pursuant to General Order No. 32 of this Court, The Bayard Firm represents as follows with regard to its charges for actual and necessary costs and expenses during the Application Period:

a) Copy Charges are \$.15 per page, which charge is reasonable and customary in the legal industry representing costs of copy materials, acquisition, maintenance, storage and operation of copy machines, together with a margin for recovery of lost expenditures. In addition, The Bayard Firm often utilizes outside copier services for high volume projects, and this Application seeks the recovery of those costs.

(b) Incoming facsimiles are not billed.

(c) Out-going facsimiles are billed at the rate of \$1.00 per page. The costs represents operator time, maintaining several dedicated facsimile telephone lines,

supplies and equipment, and includes a margin for recovery of lost expenditures. Toll telephone charges are not billed. In addition, The Bayard Firm utilizes the services of Sprint fax for high volume, multiple-destination fax transactions, and this Application seeks the recovery of those costs.

18. In accordance with the factors enumerated in section 330 of the Bankruptcy Code, the amount requested is fair and reasonable given (a) the complexity of the Cases, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services other than in a case under this title.


19. A copy of this Application has been sent to the Committee Chairperson

WHEREFORE, The Bayard Firm prays that the fees totaling \$127,504.00 and the expenses totaling \$23,555.57 covered in the first through the fourth interim fee applications be allowed and, allowance be made in the sum of \$25,342.50 as compensation for professional services rendered plus \$5,566.00 for time expended for preparation of this Application, and the sum of \$1,829.43 for reimbursement of actual and

¹ The amount being requested for reimbursement of copies made by Bayard during the Application Period is based on \$.15 per page for copy charges, which is reduced from \$.20 per page as indicated by the detail attached as Exhibit A.

necessary costs and expenses incurred by it in the Cases from June 1, 1999 through October 29, 1999, and the sum of \$1,817.00 for reimbursement of actual and necessary costs related to the filing and service of this application.

THE BAYARD FIRM



Neil B. Glassman (# 2087)
Michael L. Vild (#3042)
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19899
(302) 655-5000

Attorneys for the Official Committee of
Unsecured Creditors

Dated: December 13, 1999