

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re) Chapter 11 Cases
)
) Case No. 98-00197 (PJW)
APS HOLDING CORPORATION, et al.,)
)
Debtors.) Jointly Administered
)

APPLICATION FOR COMPENSATION AND
FOR REIMBURSEMENT OF EXPENSES

Name of Applicant: Willkie Farr & Gallagher

Authorized to Provide
Professional Services to: Debtors and Debtors in Possession

Date of Retention: February 2, 1998

Period for which Compensation
and Reimbursement is Sought: February 2, 1998 through and
including October 29, 1999

Amount of Compensation Sought
as Actual, Reasonable and Necessary: \$3,603,299.50

Amount of Expense Reimbursement Sought
as Actual, Reasonable and Necessary: \$ 263,615.88

This is an: ___ interim ___ X final application.

The total time expended for the preparation of this
application is approximately 10 hours. No time spent in
preparing this application is included herein.

This is Willkie Farr & Gallagher's fifth and final fee
application.

FILED/RECEIVED
DEC 13 AM 03
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

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FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11 Cases
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APS HOLDING CORPORATION, <u>et al.</u> ,)	Case No. 98-00197 (PJW)
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Debtors.)	Jointly Administered
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APPLICATION OF WILLKIE FARR & GALLAGHER AS ATTORNEYS
FOR DEBTORS AND DEBTORS IN POSSESSION FOR FINAL
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM FEBRUARY 2,
1998 THROUGH OCTOBER 29, 1999, INCLUSIVE

TO THE HONORABLE PETER J. WALSH,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Willkie Farr & Gallagher ("WF&G"), as principal
bankruptcy counsel for the above-captioned debtors and debtors in
possession (collectively, the "Debtors"), as and for its
application (the "Application") for the final allowance of
compensation for professional services rendered and reimbursement
of expenses incurred from February 2, 1998 through October 29,
1999, inclusive (the "Application Period"), respectfully
represents:

PRELIMINARY STATEMENT

1. The road that eventually led to the October 29,
1999 effective date (the "Effective Date") of the Debtors' First
Amended Joint Liquidating Plan of Reorganization (the "Plan") was
hardly smooth. The Debtors, as a national wholesale automotive
parts distributor, operated in a highly competitive market with
comcomitantly thin profit margins. Prepetition, the Debtors had
experienced severe liquidity shortages as a result of, among
other things, rapid expansion, market pressures due to continuing

changes in the automotive parts aftermarket, and their failure to maintain state of the art information technology systems. The commencement of the Debtors' cases aggravated the Debtors' operational problems, and created additional liquidity issues that could not be fully addressed by the Debtors' postpetition financing facility.

2. The foregoing circumstances, as well as the modest size of the Debtors' in-house legal staff, meant that from the outset of the Debtors' cases, WF&G, as Debtors' counsel, was required to react quickly and frequently to the crises and near-crises that arose in the immediate postpetition period. WF&G did so efficiently, generally achieving the best results that the particular circumstances allowed.

3. Thereafter, when it became clear that the interests of the Debtors' and their creditors would be best served by the pursuit of "going concern" sales of the Debtors' assets, WF&G, along with the Debtors' financial advisors, spearheaded the effort to develop and implement an efficient disposition program that resulted in the sale of the vast majority of the assets for the highest recoveries achievable. Because of the size, scope, and relative complexity of the Debtors' operations, the Debtors were required to draw upon WF&G's expertise in a wide variety of practice areas, including bankruptcy, corporate, commercial litigation, employee benefits, real estate, tax, environmental, and intellectual property. The Debtors' success in selling most of their assets on a "going concern" basis, and other assets at prices that otherwise

exceeded their simple liquidation values, is in large measure attributable to the perseverance, determination, and professional skills of WF&G.

4. The Plan that ensued was a result of arduous negotiations among the Debtors, the Debtors' Official Committee of Unsecured Creditors (the "Committee"), and the Debtors' secured bank lenders (the "Secured Lenders"), pursuant to which the Secured Lenders agreed to make some assets available to general unsecured creditors, even though the Secured Lenders would not be paid in full under the Plan and were otherwise funding all administrative and priority claims in full and in cash. WF&G believes its performance as the Debtors' counsel contributed substantially to the successful formulation, confirmation, and implementation of the Plan.

BACKGROUND

5. On February 2, 1998 (the "Petition Date"), APS Holding Corporation and nine of its direct and indirect subsidiaries (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors remained in possession of their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. These chapter 11 cases have been jointly administered pursuant to an order of this Court, and were later substantively consolidated pursuant to the Confirmation Order (defined below).

6. No trustee or examiner was appointed in these cases. On February 13, 1998, the United States Trustee for the

District of Delaware (the "United States Trustee") appointed the Committee.

7. The Debtors principally served the wholesale segment of the automotive parts aftermarket through the sale of a broad array of nationally recognized replacement parts, tools, equipment, supplies and accessories. As of the Petition Date, the Debtors supplied approximately 1,670 parts stores owned by associate jobbers, 276 Big A® company-owned stores and 214 Installers' Service Warehouses ("ISWs") through their 27 distribution centers and 2 re-distribution centers located in 28 states. As of the Petition Date, the Debtors employed approximately 5,400 full and part-time personnel.

8. By separate orders each dated February 2, 1998, this Court approved the Debtors' retention of WF&G and Morris, Nichols, Arsht & Tunnell ("MNA&T") as their attorneys in their chapter 11 cases.

9. By order (the "Confirmation Order") dated October 19, 1999, the Plan was confirmed by this Court. The Confirmation Order was entered on this Court's docket on October 25, 1999.

10. This Court has jurisdiction of this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and this motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. WF&G submits this Application in accordance with section 330(a) of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rule 32 and the "Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures For Interim Compensation and

Reimbursement of Professionals," dated February 2, 1998 (the "Administrative Order").

THE APPLICATION

11. By this Application, WF&G requests that the Court authorize: (a) the final allowance of compensation for professional services WF&G rendered during the Application Period for the Debtors in the amount of \$3,603,299.50; and (b) the reimbursement of actual and necessary expenses WF&G incurred in connection with the rendition of such professional services for the Debtors in the amount of \$263,615.88. WF&G attorneys expended approximately 10,420 hours on these cases during the Application Period, and legal assistants and other paraprofessionals expended approximately 1,085 hours.

12. The professional services and related expenses for which WF&G requests allowance of compensation and reimbursement of expenses were rendered and incurred in discharge of WF&G's professional responsibilities as attorneys for the Debtors in their chapter 11 cases. WF&G's services have been substantial, necessary and beneficial to the Debtors and their estates, creditors and other parties in interest. The variety and complexity of issues involved in these cases and the need to act or respond on an expedited basis to those issues have required substantial time on a daily basis, often requiring night and weekend work.

13. WF&G has received no payment or promise of payment for the services rendered in these cases other than the monthly payments described below. Pursuant to the Administrative Order,

Administrative Order, WF&G filed four interim fee applications during the pendency of the Debtors' cases, covering the periods through and including May 31, 1999, which contained as exhibits the detailed records described above and which are incorporated herein by reference. Thus, annexed hereto as Exhibit "B" are the written records for the period from June 1, 1999 through the Effective Date (the "Current Period"). Also, a schedule setting forth the number of hours expended by the individual attorneys and paraprofessional personnel during the Current Period and the standard hourly rates which WF&G generally charges for such services in non-bankruptcy matters is prefixed to this Application in accordance with Local Bankruptcy Rule 32.

16. WF&G also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule of the categories of expenses and amounts for which reimbursement is sought for the Current Period, made from records maintained in the ordinary course of business, is annexed hereto as Exhibit "C."

17. WF&G has worked diligently to assure an appropriate division of labor among the various professionals representing the Debtors to minimize duplication of effort and to efficiently move these cases forward. WF&G believes the division of labor among the professionals has been careful and appropriate and the Debtors have been well served by the varied expertise

WF&G has submitted monthly statements to the Debtors until and including October, 1999. No objections to the monthly statements were filed by any party and, accordingly, the Debtors have paid, or will shortly pay, WF&G 80% of the fees requested and 100% of the requested expense reimbursements for such months.¹

14. No agreement or understanding exists between WF&G and any other entity for the sharing of compensation to be received for services rendered in or in connection with these cases. See Affidavit of Marc Abrams, Esq., pursuant to section 504 of the Bankruptcy Code and Bankruptcy Rule 2016, annexed hereto as Exhibit "A."

15. WF&G has maintained written records of the time expended by attorneys and paraprofessionals in these cases in accordance with Local Bankruptcy Rule 32. Those time records are maintained contemporaneously with the rendition of services by each of WF&G's attorneys and paraprofessionals in the ordinary course of business. Such records set forth in detail the services rendered on behalf of the Debtors (except as redacted for privilege and/or confidentiality reasons), the dates upon which such services were rendered, the nature of the services, the time spent and the identity of the attorney or paraprofessional who performed such services. Pursuant to the

¹ According to WF&G's records, to date, WF&G has received payment from the Debtors in the amount of \$3,029,189.23 for the period through September, 1999. At the time WF&G submitted this Application, WF&G had not sought to be compensated for services rendered during the month of October, 1999.

brought to bear by their counsel of choice.

SUMMARY OF SERVICES RENDERED

18. Recitation of each and every item of professional services that WF&G performed during the Application Period would unduly burden the Court. Hence, the following summary highlights the major areas in which services were rendered, with particular emphasis on the Current Period. (Summaries of other services performed are set forth in detail in the first through fourth interim fee applications on file with the Court.) The full breadth of WF&G's services for the Current Period are reflected in WF&G's annexed time records.

- Plan of Reorganization. With the sale of most of their assets completed, the Debtors, during the Current Period, focused their attention on the negotiation of a liquidating plan to provide recoveries for general unsecured creditors and bring the Debtors' cases to an orderly conclusion. WF&G assisted the Debtors and their professionals throughout this process, and prepared numerous drafts of the Plan and the related agreements arising thereunder. WF&G also prepared the many other pleadings and notices essential to the Plan confirmation process, including the Disclosure Statement, Disclosure Statement approval order, voting procedures motion, confirmation order, liquidation trust agreement, notices of disclosure statement hearing, confirmation notices, and affidavits. WF&G also responded quickly to the eight objections that were filed in respect of Plan confirmation, successfully resolving all of them prior to the Confirmation Hearing, thereby facilitating an organized, expeditious Confirmation Hearing that resulted in the Plan's confirmation. Subsequent to the confirmation of the Plan, WF&G assisted the Debtors in their efforts to promptly "go effective," which resulted in the occurrence of the Effective Date less than a week after the Confirmation Order was entered on the Court's docket.

- Employee Issues. During the Current Period, WF&G drafted and negotiated, on behalf of the Debtors, a Settlement Agreement and Release of All Claims with the PBGC that released Brinkman's, Inc. ("Brinkman's"), a

control group member, from any liability resulting from the termination of the Debtors' pension plans. As consideration for this release, A.P.S., Inc. paid PBGC the sum of \$10,000. This release allowed the sale of the Debtors' approximately 80% equity interest in Brinkman's for \$203,000. WF&G also counseled the Debtors on day to day issues that arose with respect to the termination of the Debtors' pension plans. In September, 1999, WF&G responded to a request for documentation from the PBGC regarding such plans.

- **Auto Parts Express Sale.** WF&G advised the Debtors regarding several substantial post-closing disputes that arose in connection with the February 1999 sale of four distribution centers and 76 associated company-owned stores and ISWs to Auto Parts Express, LLC, an entity formed by three former members of the Debtors' senior management. Ultimately, the parties successfully resolved their open issues without the need for Court intervention.

- **Claims.** During the Current Period, WF&G helped secure a bar date for the filing of administrative claims against the Debtors, prepared the related notices and forms, and coordinated with the Debtors and Bankruptcy Services, LLC ("BSI"), the Debtors' Court-appointed claims agent, to effectuate appropriate service of notices. WF&G assisted (and continues to assist) the Debtors in their review of the thousands of administrative proofs of claim that ensued, and prepared nine omnibus claims motions objecting to unsupported or otherwise invalid claims. WF&G provided legal advice with respect to secured, priority and administrative claims as well as responded to numerous inquiries from creditors regarding the status of these cases.

- **Asset Sales Procedures.** By order dated February 26, 1999, this Court approved the proposed process for the orderly disposition of such remaining assets. Since then, and continuing into the Current Period, WF&G has assisted the Debtors in preparing notices of numerous transactions, and in the closing of such transactions, which have resulted in the Debtors' disposing of all of its remaining inventory in addition to a significant portion of their outstanding accounts receivable and promissory notes.

- **Extension of Time to Assume or Reject Leases.** On June 18, 1999, the Court entered an order further extending the time by which the Debtors had to assume their remaining leases, until September 30, 1999.

Although the Debtors, in consultation with WF&G and MNA&T, continued their rapid progress in their analysis of the various leases during the Current Period, and rejected numerous leases, there remained three leases with respect to which the Debtors required additional time. Accordingly, WF&G prepared a motion seeking a short additional extension of their time to assume or reject the remaining leases, which motion was granted by order dated September 23, 1999.

- **Retentions.** WF&G assisted the Debtors in retaining and monitoring the numerous professionals utilized by the Debtors during these cases and in the ordinary course of their business. WF&G also assisted the Debtors in their review of the fee applications of other professionals retained in these cases.

- **GKN Indemnification.** Pursuant to a prepetition acquisition, the Debtors acquired certain assets from GKN Parts North America, Inc., an automotive aftermarket parts supplier. In connection with this purchase, the seller indemnified the Debtors with respect to a variety of matters (e.g., certain pending and future litigation, the collectibility of certain purchased accounts receivable, and the salability of certain purchased inventory, among other indemnities). In March, 1999, WF&G commenced damages actions against GKN and its parent for breach of contract, and WF&G has responded to counterclaims asserted by GKN in response to this lawsuit. The parties are litigating the matter in the United States District Court for the Southern District of New York. In connection with the discovery process, which is underway, WF&G has assisted the Debtors in production of the large number of documents required to be made available to GKN.

- **Automotive One** In June, 1999, WF&G prepared and filed pleadings objecting to a \$9.3 million proof of claim filed by Automotive One Parts Source, Inc. During the Current Period, WF&G helped the Debtors achieve a settlement of the objection on terms very favorable to the Debtors, and the matter has been resolved without the need for a time-consuming evidentiary hearing.

- **Vendor Litigation.** On June 30, 1999, the Debtors commenced sixteen individual adversary proceedings against their former suppliers asserting claims for breach of contract, price discrimination and other business torts. Favorable settlements have been achieved with four of the defendants, and twelve adversary proceedings remain. Discovery is proceeding

in the remaining cases in accordance with the schedule set by the Court.

- DIP Facility. WF&G negotiated several amendments and/or consents for the DIP Facility during the Current Application Period.

- Case Administration. These cases have been efficiently administered. Whenever possible, disputes have been resolved consensually without the need for judicial intervention. In addition, the Debtors have sought to establish an efficient working relationship with Court personnel and the Clerk's office. The Debtors also have developed a positive working relationship with the Committee's and DIP Lenders' professionals, which is conducive to the expeditious and consensual resolution of many issues that have arisen and will continue to arise in these cases. Numerous meetings with these constituencies and their professionals have been held, and a substantial volume of data and documents have been supplied to them on a regular and ongoing basis.

- General Counsel. As part of its representation of the Debtors, WF&G has been required to review and analyze several of the Debtors' prepetition financing, real estate, corporate, labor, and employee benefit documents, including leases, mortgages, asset purchase agreements, collective bargaining agreements, and ERISA plans. WF&G has been called upon frequently in this regard in view of the Debtors' limited in-house counsel staff and the exigent circumstances arising as a result of these cases.

19. As noted above, during the Current Period, WF&G provided extensive services to facilitate the Debtors' discharge of their administrative duties as debtors in possession and otherwise move these cases forward to conclusion. In addition to the services provided above, WF&G responded to the numerous inquiries of creditors and other parties-in-interests regarding the status of the case, scheduling of claims and claims administration. WF&G took the lead in drafting all principal motions and responses to motions and coordinated with MNA&T in the presentation of the same before this Court. All of these

services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

WF&G'S REQUEST FOR COMPENSATION

20. WF&G's hourly rates and fees charged by its professionals and paraprofessionals are consonant with the market rate for comparable services. As set forth in the Affidavit of Marc Abrams, Esq., annexed hereto as Exhibit "A," the hourly rates and fees charged are the same as those generally charged to, and paid by, WF&G's other clients.²

21. Moreover, the number of hours expended by WF&G's attorney's and paraprofessionals were actual, necessary and beneficial to the administration of the Debtors' cases. WF&G encountered myriad novel and complex legal issues during the Application Period. WF&G was called upon to respond -- often with immediacy -- to a host of unanticipated issues and demands. WF&G brought to bear legal expertise in many areas, including bankruptcy, corporate, litigation, employee benefits and taxation. WF&G attorneys have rendered advice in all of these areas with the skill and dispatch.

22. WF&G made every effort to coordinate its services with those provided by the Debtors' other professionals (in particular, co-counsel MNA&T). In doing so, WF&G reduced the

² From time to time and in accordance with its usual and customary practices, the rates charged by WF&G for the services performed by certain of its professionals and paraprofessionals were increased.

unnecessary duplication of services that is sometimes present in chapter 11 cases. WF&G has been judicious in limiting the number of Court appearances it has made to only the most important or contested matters. WF&G has delegated significant authority to MNA&T in connection with both routine and more important Court appearances and matters.

23. WF&G submits that the time entries included in Exhibit "B" annexed hereto are in compliance with the requirements of Local Bankruptcy Rule 32. In particular, non-working travel time has not been billed. Accordingly, WF&G hereby requests the final allowance of compensation for services rendered in the amount of \$3,603,299.50. Of this amount \$2,781,897.60 already has been paid to WF&G pursuant to the Administrative Order, leaving a balance due of \$821,401.90.

DISBURSEMENTS

24. As set forth in Exhibit "C" hereto, WF&G has disbursed \$32,995.07 as actual, out-of-pocket expenses incurred in the rendition of professional services during the Current Period. Such expenses were necessary and reasonable in scope and amount and do not include a charge for profit. Moreover, the expenses to be reimbursed comply with the provisions of Local Bankruptcy Rule 32. Accordingly, WF&G respectfully requests that the Court award WF&G final allowance of \$263,615.88 for reimbursement of expenses, which is inclusive of the expenses incurred during the Current Period. Of this amount \$247,291.63 already has been paid to WF&G pursuant to the Administrative Order, leaving a balance due of \$16,324.25.

25. The disbursements for which WF&G seeks reimbursement include the following:

- Duplicating - Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;
- Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.75 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by WF&G for machine maintenance, phone line rental and supplies used by the fax machine;
- Computer Research Charges - WF&G's practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment;
- Overtime Expenses - WF&G's practice is to allow any attorney working later than 8:00 p.m. and any legal assistants working later than 7:30 p.m. to charge a working meal to the appropriate client. The meal charge is limited to \$20 per person;
- Local Car Service - WF&G's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after 8:00 p.m.; and
- Delivery Services - WF&G's practice is to charge postal, overnight delivery and courier services at actual cost.

26. WF&G has voluntarily excluded the "word processing" charges, which are not part of its normal overhead, in the amount of \$1,368.90 from its request of reimbursement of expenses.

PREPETITION RETAINER

27. In connection with WF&G's initial retention prior to the Petition Date, WF&G received \$275,000.00 to be applied as professional services were rendered and expenses incurred by WF&G


(the "Retainer"). Fees and expenses of \$224,772.75 had been incurred by WF&G prior to the Petition Date in connection with the preparation for, or in contemplation of, these cases. WF&G has applied the Retainer to cover these costs and has \$50,227.25 remaining on account, which it seeks to hold until its services are no longer required by the Plan Administrator.

CONCLUSION

Based on the foregoing, WF&G respectfully requests that the Court award the compensation for services rendered and reimbursement of expenses incurred, as requested herein.

Dated: New York, New York
December 10, 1999

WILLKIE FARR AND GALLAGHER,
Applicant

By: 
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