

Hearing Date: December 14, 2000
Time: 11:00 a.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :

AMERICAN BANKNOTE CORPORATION, : Chapter 11

Debtor. : Case No. 99-B-11577 (PCB)

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**APPLICATION OF: (I) ANDREWS & KURTH L.L.P., COUNSEL TO
THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS,
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT
OF EXPENSES PURSUANT TO SECTION 330 OF THE
BANKRUPTCY CODE; AND (II) CERTAIN MEMBERS OF THE
EQUITY COMMITTEE FOR REIMBURSEMENT OF EXPENSES**

Andrews & Kurth L.L.P. (“A&K”), counsel to the Official Committee of Equity Security Holders (the “Committee”) of American Banknote Corporation (the “Debtor”), for (i) its application for compensation and reimbursement of expenses pursuant to Section 330 of Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”); and (ii) certain members of the Committee’s application for reimbursement of expenses, respectfully represents:

INTRODUCTION

1. By this application A&K, as counsel to the Committee, seeks allowance of compensation for legal services rendered in the amount of \$216,684.00 together with expense reimbursement in the amount of \$8,585.32 for the period April 24, 2000 through November 27, 2000 (the “Fee Period”). A&K also seeks allowance of up to \$20,000 for future services to be rendered by A&K to the Committee from November 28, 2000 to twenty (20) days after the Distribution Date.¹

2. In addition, by this application two members of the Committee seek reimbursement of expenses they incurred in the performance of their duties as Committee members in the aggregate amount of \$1,670.85.

JURISDICTION

3. This Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(a) and (b).

BACKGROUND

4. On December 8, 1999 (the “Petition Date”), the Debtor filed with this Court its petition for relief under the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession.

5. On April 12, 2000, the Office of the United States Trustee appointed the Committee.

¹Article XIV I. of the Plan provides that the Committee continues to exist for twenty (20) days after the Distribution Date. The undersigned anticipates that A&K will perform significant services prior to this time relating primarily to issues concerning consummation and distribution under the Plan.

6. By application filed April 27, 2000, the Committee sought to retain A&K as its counsel, which application was granted by order entered August 21, 2000. Attached hereto as Exhibit A is a copy of A&K's retention order.

Events Leading To The Chapter 11 Case.

7. The Debtor is a holding company which, through its subsidiaries (the "Subsidiaries"), provides secure products and systems primarily in three product lines: transaction cards and systems; printing services and document management; and security printing solutions. The Subsidiaries are located in the United States, Brazil, Argentine, Australia, New Zealand and France. None of the Subsidiaries filed a petition for relief under Chapter 11 of the Bankruptcy Code.

8. As of the Petition Date, ABN had issued and outstanding: (i) \$56.5 million in principal amount of 10 ³/₈% Senior Notes due 2002; (ii) \$8 million in principal amount of 11 ⁵/₈% Senior Notes due 2002; (iii) \$95 million in principal amount of 11 ¹/₄% Senior Subordinated Notes due 2007; (iv) \$3.7 million in accreted value of Convertible Subordinated Notes; (v) 2,404,845 Series B preferred stock; (vi) 24,000 cumulative preferred stock; and (vii) 25,089,230 shares of common stock. The Debtor's common stock was listed on the New York Stock Exchange.

9. Prior to the Petition Date, the Debtor embarked upon an international expansion program whereby it purchased companies in foreign countries for cash. Restrictive borrowing requirements in the local markets which the Debtor's Subsidiaries operated prohibited the Subsidiaries to upstream cash to the Debtor. This, combined with the devaluation of currencies in Australia and Brazil, caused the Debtor to be unable to receive sufficient cash to service its debt which was denominated in US dollars. To add further strain on the Debtor, its domestic subsidiary faced declining sales in certain key product lines.

10. Holders of more than 85% and 56% in principal aggregate amount of the Debtor's 11¼% Senior Subordinated Notes and 10¾% Senior Notes, respectively, formed an *ad hoc* noteholders committee (the "Noteholders Committee"). Prior to the Petition Date, the Noteholders Committee negotiated a consensual plan of reorganization with the Debtor.

The Spin-Off Of ABNH And The Securities Litigation

11. In mid-1998, the Debtor sold its 100% interest in American Bank Note Holographics, Inc. ("ABNH") through an initial public offering (the "IPO"). The Debtor raised approximately \$106.7 million from the proceeds of the IPO.

12. On November 15, 1999, ABNH publicly announced that it had to reinstate its financial statements for the period immediately prior to the IPO.

13. Various litigations were commenced against ABN, ABNH and their directors and officers and the Debtor's former auditors, Deloitte & Touche LLP ("D&T"), as a result of the restatement of ABNH's financial statements. On May 10, 1999, the various actions were consolidated in two purported class action lawsuits in the United States District Court for the Southern District of New York (the "Class Actions").

The Chapter 11 Case

14. On the Petition Date, the Debtor filed with this Court a disclosure statement and a plan of reorganization. The plaintiffs in the Class Actions (the "Class Action Claimants") objected to the Debtor's proposed plan.

15. After the formation of the Committee, extensive negotiations ensued between the Class Action Claimants, the Committee, the Noteholders and the Debtor to formulate a consensual plan of reorganization.

16. A&K was integral in negotiating a settlement between the Committee and the Class Action Claimants which resulted in the existing equity holders receiving in excess of 60% of the Equity Pool, which was set aside in the plan to be shared between the Class Action Claimants and the existing equityholders.

17. A&K also played a key role in negotiating a settlement between the Committee and Morris Weissman, the Debtor's former chief executive officer, whereby Weissman agreed to give to existing equity holders certain securities of the reorganized Debtor he was going to receive under the Debtor's proposed Plan in exchange for a release.

18. Furthermore, in order to arrive at a consensual plan, the parties, including A&K on behalf of the Committee, negotiated settlements with (i) certain of the Debtor's former directors and officers, including Weissman; (ii) certain beneficiaries of a Rabbi Trust, which the Debtor revoked; and (iii) the Bank of Lithuania which had commenced an arbitration against the Debtor. A&K also monitored, and is continuing to monitor, settlement negotiations between the Debtor and the Securities and Exchange Commission and the United States Attorney's Office.

The Disclosure Statement And Proposed Plan

19. After protracted negotiations between the Debtor, the Noteholders Committee, the Committee, and other parties in interest, the parties agreed to the terms of a proposed plan of reorganization for the Debtor.

20. In addition to negotiating a consensual plan of reorganization, the parties agreed to the terms of a settlement of the Class Actions. Initially D&T was not a party to the settlement. After further negotiations with D&T, however, a settlement was reached with D&T.

21. On or about September 12, 2000, the Debtor filed its Disclosure Statement With Respect to Second Amended Reorganization Plan of American Banknote Corporation with this Court.

22. On November 3, 2000, this Court entered an order confirming the Third Amended Reorganization Plan of American Banknote Corporation (the "Plan"), dated November 3, 2000.

23. Pursuant to the Plan, as of the Distribution Date, the equity security holders are entitled to receive, in exchange for every 1000 shares of Old Common Stock:

(a) Approximately 21.21 shares of New Common Stock of reorganized Debtor;

(b) Approximately 7.22 New Series One Warrants. Each warrant entitles the holder to purchase one (1) share of New Common Stock at an exercise price of \$10.00. The term of the New Series One Warrants is five (5) years;

(c) Approximately 7.22 New Series Two Warrants. Each warrant entitles the holder to purchase one (1) share of New Common Stock at an exercise price of \$12.50. The term of the New Series Two Warrants is five (5) years;

(d) At least 3.3 Equity Options entitling the holder to purchase one (1) share of New Common Stock at an exercise price of \$2.50 per share exercisable at such time as the New Common Stock trades at an average price of \$5.00 over twenty (20) consecutive trading days. The term of the Equity Options is ten (10) years; and

(e) At least 3.3 Equity Options entitling the holder to purchase one (1) share of New Common Stock at an exercise price of \$2.50 per share exercisable at such time as the New Common Stock trades at an average price of \$7.50 over twenty (20) consecutive trading days. The term of the Equity Options is ten (10) years.

24. Under the Plan, existing common stock holders were entitled to subscribe for their *pro rata* share of certain rights to acquire common stock of the reorganized Debtor at a price of \$8.00 per share (the "Rights"). The Rights, in the aggregate, consist of the right to purchase up

to a maximum of 10% of the issued and outstanding shares of new common stock on a fully diluted basis.

25. Finally, existing common stockholders who fall within the plaintiff's class in the Class Actions may be entitled to a distribution under the Class Actions settlement.

STATUTORY BASIS FOR COMPENSATION

26. The statutory predicate for the relief sought herein is Section 330 of the Bankruptcy Code, as supplemented by Federal Rule of Bankruptcy Procedure 2016. A&K seeks compensation for actual, necessary professional services rendered and reimbursement of reasonable expenses incurred on behalf of the Committee during the Fee Period.

27. Section 330(a)(1) of the Bankruptcy Code allows the following:

- (A) reasonable compensation for actual, necessary services rendered by . . . [an] attorney and by any paraprofessional person employed by such [attorney]; and
- (B) reimbursement for actual, necessary expenses.

28. Section 330(a)(3)(A) of the Bankruptcy Code provides that, “[i]n determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under [Title 11]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and (E) whether the compensation is reasonable based on the customary

compensation charged by comparably skilled practitioners in cases other than cases under this title [11].”

29. Congress intended that bankruptcy attorneys be compensated at the market rate for comparable services in non-bankruptcy cases. *See In re Ames Dep’t Stores, Inc.*, 76 F.3d 66, 71 (2d Cir. 1996) (citing *In re UNR Indus., Inc.*, 986 F.2d 207, 208-09 (7th Cir. 1993)). *See also In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 21-22 (Bankr. S.D.N.Y. 1991). The policy of Section 330 is to ensure that qualified attorneys will “not be deterred from taking bankruptcy cases due to a failure to pay adequate compensation.” *In re Ames Dep’t Stores, Inc.*, 76 F.3d at 72 (citing *In re UNR Indus., Inc.*, 986 F.2d at 210).

30. The court’s examination of the reasonableness of services rendered must be conducted in an “objective manner, based upon what services a reasonable lawyer or legal firm would have performed” *In re Ames Dep’t Stores, Inc.*, 76 F.3d at 72 (citing *In re Matter of Taxman Clothing Co.*, 49 F.3d 310, 315 (7th Cir. 1995)).

SUMMARY OF PROFESSIONAL SERVICES RENDERED

31. The services rendered by A&K on behalf of the Committee can generally be broken down into the following categories:

- (a) Reviewing the pleadings filed in this Chapter 11 case prior to the Committee’s appointment;
- (b) Negotiating settlements between the Committee and the Class Action Claimants;
- (c) Communicating with the Debtor’s financial advisor concerning valuation issues;

- (d) Communicating with the Noteholders Committee concerning various issues in this Chapter 11 case;
- (e) Negotiating the settlement between the Committee and Weissman;
- (f) Monitoring the Class Actions;
- (g) Involvement in negotiating settlements between the Debtor and (i) Weissman, (ii) other former directors and officers, (iii) Bank of Lithuania, (iv) the Class Action Claimants, and (v) the beneficiaries of the Rabbi Trust;
- (h) Involvement in negotiating a settlement between D&T and the Class Action Claimants;
- (i) Monitoring the progress of the Class Action settlement;
- (j) Monitoring the status of the Securities and Exchange and United States Attorney Office investigations and settlements;
- (k) Negotiating the terms of the Plan with the Debtor and other parties in interest;
- (l) Negotiating the terms of the Rights offering;
- (m) Communicating with existing stock holders concerning balloting issues and issues relating to the rights offering under the Plan;
- (n) Communicating with the Debtor's financial advisor concerning the feasibility of the Debtor's proposed plan;
- (o) Working closely with the Debtor in drafting the Plan and Disclosure Statement;
- (p) Reviewing the Debtor's operating statements and communications relating thereto;
- (q) Working with the Debtor in amending its corporate documents including its By-Laws and Certificate of Incorporation;
- (r) Negotiating new employment contracts for certain of the Debtor's directors and officers;

- (s) Addressing corporate governance issues regarding the reorganized Debtor;
- (t) Committee organizational matters;
- (u) Miscellaneous communications with the Committee, other existing stockholders and parties in interest;
- (v) Coordinating and communicating with the Debtor, and its counsel and other parties in interest concerning all phases of this Chapter 11 case;
- (w) Preparing this fee application; and
- (x) Other miscellaneous matters.

FEES FOR PROFESSIONAL SERVICES

32. A summary of hours expended by A&K professionals is annexed hereto as Exhibit B. Exhibit C to this interim fee application contains detailed time summaries of all A&K professionals for the Fee Period in connection with this matter. Such summaries include a detailed chronology of the daily services rendered by each attorney and paraprofessional showing the specific tasks performed and the amount of time expended.

DISBURSEMENTS

33. A&K has incurred out-of-pocket disbursements during the Fee Period in the amount of \$8,585.32. This disbursement sum is broken down into categories of charges itemized in Exhibit D thereto. Each charge incurred by A&K was necessary and incurred as a direct result of A&K's representation of the Committee.

34. Annexed hereto as Exhibit E is a Certification of the undersigned in support of this Application.

ESTIMATED FEES FOR FUTURE SERVICES

35. Pursuant to Article XIV I. of the Plan, the Committee will terminate twenty (20) days after the Distribution Date.

36. A&K estimates that it will render services to the Committee in the amount of approximately \$20,000 between November 28, 2000 and twenty (20) days after the Distribution Date.

37. Accordingly, A&K requests that the Debtor be authorized to pay A&K in the ordinary course of its business in an amount up to \$20,000 for services rendered to the Committee after November 27, 2000. Should the amount sought by A&K exceed \$20,000, A&K will amend this Application accordingly.

REQUEST FOR REIMBURSEMENT OF COMMITTEE MEMBERS' EXPENSES

38. Lloyd I. Miller (as advisor to Miller Trust A-4) was the chairman of the Committee and incurred costs in the amount of \$1,370.85 in the performance of serving on the Committee. Likewise, Morton H. Simkins, a member of the Committee, incurred costs in the amount of \$300.00 in the performance of serving on the Committee.

39. Such costs should be allowed as administrative expenses pursuant to Section 503(b)(F) of the Bankruptcy Code.

CONCLUSION

40. In accordance with the factors enumerated in Section 330 of the Bankruptcy Code, the amount requested herein is fair and reasonable given (a) the complexity of this case, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services other than in a case under Title 11.

WHEREFORE, A&K on behalf of itself and the Committee, respectfully requests (i) an allowance be made to it in the sum of \$216,684.00 as compensation for necessary professional services rendered to the Committee during the Fee Period, and the sum of \$8,585.32 for reimbursement of actual necessary costs and expenses incurred during that period for a total award of \$225,269.32, (ii) an order authorizing the Debtor to pay A&K up to \$20,000 for services rendered to the Committee post November 27, 2000, (iii) an award of \$1,370.85 in favor of Committee member Lloyd I. Miller and an award of \$300.00 in favor of Committee member Morton H. Simkins for reimbursement of actual necessary costs and expenses incurred in connection with the performance of their duties as members of the Committee; and (iv) that the Court grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 27, 2000

ANDREWS & KURTH L.L.P.

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