

Hearing Date: December 14, 2000  
Hearing Time: 11:00 AM

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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- :  
: Chapter 11  
In re : Case No. 99 B 11577 (PCB)  
: AMERICAN BANKNOTE CORPORATION, :  
: Debtor. :  
: :  
----- X  
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APPLICATION OF MORGAN, LEWIS & BOCKIUS LLP,  
SPECIAL COUNSEL TO AMERICAN BANKNOTE CORPORATION,  
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES  
UNDER 11 U.S.C. § 330 AND FED. R. BANKR. P. 2016

Of Counsel:  
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TO: THE HONORABLE PRUDENCE CARTER BEATTY,  
UNITED STATES BANKRUPTCY JUDGE:

Morgan, Lewis & Bockius LLP (“Morgan Lewis” or the “Firm”), special counsel to American Banknote Corporation (“ABN” or the “Debtor”), debtor in possession in the above-captioned Chapter 11 case, submits this application (the “Application”) seeking final allowance of compensation and reimbursement of expenses under 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016 (i) for the period from December 8, 1999 through November 3, 2000 (the “Application Period”) and (ii) for a portion of the time spent preparing the Firm's monthly statements of fees and disbursements and this Application.

## Preliminary Statement

1. ABN retained Morgan Lewis as special counsel effective December 8, 1999, pursuant to Court Order dated December 21, 1999, to
  - (a) represent the Debtor in two consolidated securities class actions filed against ABN and others in the United States District Court for the Southern District of New York (the “Class Actions”) and any matters related thereto, and in connection with State and Federal governmental investigations related to the facts and circumstances underlying the Class Actions;
  - (b) represent employees of the Debtor in the Class Actions and in connection with State and Federal governmental investigations;
  - (c) respond to requests for documents or information concerning the Debtor in connection with the Class Actions and State and Federal governmental investigations;
  - (d) provide general corporate advice on matters that do not arise under or pursuant to the Bankruptcy Code;
  - (e) advise the Debtor’s board of directors on applicable law and assisting on matters of corporate governance (but not advising the board of directors on any matters arising under or pursuant to the Bankruptcy Code);
  - (f) assist in disclosure issues relating to securities laws, press and related matters; and
  - (g) assist the Debtor on an as-needed basis.
2. As set forth in detail below, the Firm's services benefitted ABN's estate and creditors. Since late January 1999, the Firm has been representing the Debtor in connection with investigations being conducted by the staff (the “staff”) of the Securities and Exchange Commission (“SEC”) and by the United States Attorney’s Office for the Southern District of New York (“USAO”). On January 8, 2000, the staff notified Morgan Lewis that it was prepared to recommend to the SEC that enforcement proceedings be commenced against the Debtor in the

United States District Court for the Southern District of New York seeking (1) a final judgment of permanent injunction barring the Debtor from violating certain provisions of the federal securities laws and (2) an order of monetary disgorgement. That same day, the USAO notified Morgan Lewis that the Debtor was a target of its criminal investigation relating to revenue recognition issues involving ABN's former subsidiary, American Bank Note Holographics, Inc. ("Holographics").

3. After receiving these notifications from the staff of the SEC and the USAO, the Firm devoted substantial time and effort during the Application Period in order to investigate the facts and circumstances underlying the proposed action and the proposed charges as well as the impact to the Debtor of these notifications. As to the SEC, Morgan Lewis engaged in meetings and extensive discussions with the staff over a several month period in an effort to settle the SEC's proposed civil action on terms that would not require any monetary disgorgement by the Debtor, thereby preserving the assets of the Estate. As a result of their extensive discussions, the Debtor and the staff have agreed to a settlement in principle of the proposed enforcement proceedings. Under the terms of the settlement in principle, the SEC will file a complaint against ABN in the United States District Court and, without admitting or denying the allegations of the SEC's complaint, ABN will consent to the entry of a judgment that enjoins it from violating the antifraud provisions of the Securities Act of 1933 (Section 17(a) and the antifraud, periodic reporting, internal accounting controls and record-keeping provisions of the Securities Exchange Act of 1934 (Sections 10(b), 13(a) and 13(b)(2)(A) and (B) and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder. The settlement in principle does not contemplate that the SEC will assert any monetary claim against ABN.

4. As to the criminal investigation being conducted by the USAO, Morgan Lewis similarly devoted substantial time and effort during the application period to respond to the USAO's notification that the Debtor was a target of the criminal investigation relating to the revenue recognition issues involving Holographics. Among other things, the Firm made oral and written presentations to the representatives of the USAO in order to demonstrate that any criminal prosecution of the Debtor was unwarranted. As of the date of this application, the target status of the Debtor remains unchanged, although we have not received any communications from the USAO since July 2000. As was the case with the Firm's discussions with the SEC, the object of the extensive presentations to the USAO has been to mitigate, to the greatest extent possible, the potential impact to the Estate which would flow from a criminal prosecution of the Debtor, including, *inter alia*, a criminal fine.

5. During the application period, Morgan Lewis also provided general corporate advice on matters not arising under the Bankruptcy code, advice to the Debtor's Board of Directors on matters of corporate governance in non-bankruptcy areas and advice to the Debtor on disclosure issues arising under the federal securities laws. Among the services that Morgan Lewis provided were:

- Advice and assistance with the Debtor's preparation of Forms 8-K in connection with material events;
- Advice and assistance to the Debtor's Board of Directors in connection with the status of the Debtor's former Chairman and Chief Executive Officer, Morris Weissman, following the USAO's January 8, 2000 notification that Mr. Weissman was a target of its criminal investigation;
- Advice and assistance to the Debtor's Board of Directors in connection with the termination of Mr. Weissman's employment agreement and the

Debtor's execution of the proposed consulting agreement with Mr. Weissman.

6. Finally, even though these services are not the subject of this fee application since they are subject to coverage under the Debtor's Directors, Officers and Corporate Liability Insurance Policy, it bears noting that Morgan Lewis represented the Debtor and two of its officers in the lengthy and complex negotiations that resulted in the global settlement of the Class Actions which was preliminarily approved by the United States District Court for the Southern District of New York in October, 2000. This global settlement does not require the Debtor to make any monetary payment to the \$15,850,000 million settlement fund.

7. By this application, Morgan Lewis seeks compensation for legal services rendered and reimbursement of expenses incurred on ABN's behalf between December 8, 1999 and November 3, 2000. The value of such services, based on the Firm's standard hourly rates, is \$324,641.00, and the total amount of expenses is \$14,511.00. In addition, Morgan Lewis seeks \$7,000.00, for a portion of the time spent preparing this application.

#### Background

8. Prior to the present matters, Morgan Lewis rendered legal services to ABN in connection with (i) representing ABN and certain of its officers and directors in the Class Actions; (ii) representing ABN in government and regulatory investigations related to the facts and circumstances underlying the Class Actions; and (iii) representing ABN and certain of its subsidiaries on general corporate matters since January 1999. Between 1991 and 1996, Morgan Lewis rendered legal services to United States Banknote Corporation, the predecessor to ABN, and certain of its subsidiaries including Holographics, on corporate, regulatory, environmental and

litigation matters. As a result, Morgan Lewis was familiar with the Debtor's business and corporate structure and was well qualified to represent it as special counsel in a cost-effective and efficient matter.

9. On December 15, 1999, ABN, by and through its bankruptcy counsel, Skadden, Arps, Slate, Meagher & Flom LLP, submitted an application for an order under 11 U.S.C. § 327(e) and 329, and Fed. R. Bankr. P. 2014 and 2016, authorizing the employment and retention of Morgan Lewis as special counsel to the Debtor in this Chapter 11 case, effective *nunc pro tunc* to the date of the filing of the petition.

10. By Order dated December 21, 1999, a copy of which is annexed hereto as Exhibit A, the Court approved the employment and retention of Morgan Lewis under sections 327(e) and 329 of the Bankruptcy Code and Fed. R. Bankr. P. 2014 and 2016 as special counsel for ABN, to perform the following services:

- (a) to represent the Debtor in the Class Actions (if no longer stayed by the automatic stay or if otherwise litigated in the bankruptcy court or elsewhere) and any matters related thereto, and in connection with State and Federal governmental investigations;
- (b) to represent employees of the Debtor in the Class Actions and in connection with State and Federal governmental investigations;
- (c) to respond to requests for documents or information concerning the Debtor in connection with the Class Actions and State and Federal governmental investigations;
- (d) to provide general corporate advice on matters that do not arise under or pursuant to the Bankruptcy Code;
- (e) to advise the Debtor's board of directors on applicable law and assisting on matters of corporate governance (but not advising the board of directors on any matters arising under or pursuant to the Bankruptcy Code);

(f) to assist in disclosure issues relating to securities laws, press and related matters; and

(g) to assist the Debtor on an as-needed basis.

11. Following the December 21, 1999 Order, Morgan Lewis has continued to represent ABN and certain of its officers in the Class Actions and certain related matters.

Professional fees and expenses for such representation have been subject to insurance coverage pursuant to a Directors, Officers, and Corporate Liability Insurance Policy purchased by ABN from National Union Fire Insurance Co., a subsidiary of American International Companies.

Accordingly, a separate matter number was created for the Class Actions, and reimbursement for professional fees and disbursements for such representation is not sought by this application.

12. During the Application period, each month Morgan Lewis provided ABN with a detailed statement of fees and disbursements incurred during the previous month.

13. The Court has jurisdiction over this Application, which is a core proceeding, pursuant to 28 U.S.C. §§ 157(b)(2) and 1334, and the “Standing Order of Referral of Cases to Bankruptcy Judges,” (Ward, Acting C.J.) dated July 10, 1984. Venue of the Debtor’s Chapter 11 case and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

#### Relief Requested

14. Morgan Lewis submits this Application for (a) allowance of compensation in the amount of \$324,641.00 for the professional services rendered by it as attorneys for ABN during the Application Period, which amount is derived solely from the applicable hourly billing rates of the Firm’s personnel who rendered such services, (b) reimbursement of actual and neces-



sary out-of-pocket disbursements and charges in the amount of \$14,511.00 incurred in the rendition of required professional services on behalf of ABN during the Application Period, and (c) payment of \$7,000.00 for a portion of time spent and expenses incurred in preparing the monthly statements and this Application.<sup>1</sup>

15. Morgan Lewis has received no promise of payment for professional services rendered or to be rendered in this case and has not received any payment as compensation for services rendered to, or reimbursement of expenses incurred on behalf of, ABN during the Application Period.<sup>2</sup>

16. Morgan Lewis maintains records of the time it expended in the rendition of all professional and paraprofessional services. The Firm's time records were made concurrently with the rendition of professional services, and attorney and paraprofessional time detail is annexed to this Application.

17. During the Application Period, attorneys and paraprofessionals of Morgan Lewis devoted an aggregate of 997.10 hours to ABN. Of the aggregate time expended,

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<sup>1</sup> The \$7,000.00 requested by Morgan Lewis covers less than half of the actual time spent (95.30 hours, totaling \$19,036.00) and none of the expenses incurred in preparing the monthly bills submitted to ABN and this Application.

<sup>2</sup> Morgan Lewis has not filed any request for allowance of interim compensation or reimbursement of expenses during the Application Period. For the services rendered or to be rendered in contemplation of or in connection with this Chapter 11 case, Morgan Lewis did not receive a retainer. As reported in the Affidavit of Kevin T. Rover, filed on December 15, 1999, in support of the application to retain Morgan Lewis as special counsel in this case, as of December 17, 1999, ABN was indebted to Morgan Lewis on account of services rendered and expenses incurred in the approximate amount of \$852,142.00. Of that amount, approximately \$353,737.00 was subject to insurance coverage. With respect to the remainder, Morgan Lewis has an unsecured, non-priority claim.

approximately 461.50 hours were spent by partners, 13.80 hours by counsel, 335.90 hours by associates, and 185.90 hours by paraprofessionals. The chart immediately preceding the first page of this Application sets forth a schedule showing the name and position of each partner, counsel, associate and paraprofessional working on this case, together with that person's year of admission to the bar (if applicable), hours worked during the Application Period and hourly billing rate.

18. Exhibit B hereto lists the Firm's billing matters (0001 and 0002) to which its services in the case were charged.<sup>3</sup> Exhibits C and D hereto include all professionals' and paraprofessionals' daily time records of services performed during the Application Period for each matter number. The records of disbursements incurred during the Application Period follow the daily time records.

19. An index to all of the Exhibits is attached hereto immediately following (a) the affidavit required under Fed. R. Bankr. P. 2016 and (b) the certification that the Application complies with requirements of the Court's Administrative Order, filed June 24, 1991, as amended April 19, 1995, relating to "Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases," both of which appear at the end of this portion of the Application.

Description Of Services Rendered By Morgan Lewis  
Throughout The Case And Benefits To ABN

20. It is impossible to describe all work performed by Morgan Lewis throughout ABN's case and to detail in narrative form all of the research, drafting, conferences, telephone conversations, negotiating sessions, document review and other matters that occupied

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<sup>3</sup> The Firm's attorneys and paraprofessionals allocated their services in the case to various billing matters that covered discrete activities within the case.

Morgan Lewis. The Firm's time records, which are annexed to this Application, detail the services performed. This section of the Application summarizes the services performed and the role played by Morgan Lewis during the Application Period and highlights parts of the case that required particular dedication by the Firm's attorneys.

A. Matter 0001: General Advice, Including Corporate and Regulatory Advice, on Matters that Do Not Arise Under or Pursuant to the Bankruptcy Code

21. Throughout the case, Morgan Lewis regularly advised ABN's officers and directors with respect to a host of issues concerning corporate governance and general corporate affairs, as well as issues under the federal securities laws. The corporate governance and general corporate advice covered issues ranging from the issuance of press releases describing material developments, the role and responsibilities of the Board of Directors and the audit committee in different contexts and employment law matters, to communications relating to the meaning of the ABN's efforts to reorganize and the impact of those efforts on the its subsidiaries.

22. Morgan Lewis also provided guidance with respect to the reporting, disclosure and other regulatory requirements of the federal securities laws. For example, Morgan Lewis provided advice and assisted in the preparation by ABN of current reports on Form 8-K that disclosed the resignation of Deloitte & Touche LLP as ABN's independent accountant, the retention of Ernst & Young LLP as ABN's independent accountants, the SEC's and the USAO's investigations of ABN's financial reporting and the status of the Debtor's efforts to reorganize. In addition, Morgan Lewis assisted the Debtor with the preparation of other documents filed under the federal securities laws, including reports of ownership by insider of securities issued by ABN

and reports relating to the company's inability to file annual reports on Form 10-K and quarterly reports on Form 10-Q.

23. Morgan Lewis provided advice and assistance to the Debtor's Board of Directors in connection with the status of the Debtor's former Chairman and Chief Executive Officer, Morris Weissman, following the USAO's January 8, 2000 notification that Mr. Weissman was a target of its criminal investigation and in connection with the termination of Mr. Weissman's employment agreement and the Debtor's execution of the proposed consulting agreement with Mr. Weissman.

24. Finally, Morgan Lewis has provided guidance with regard to the registration and reporting requirements of the federal securities laws, including the impact of the registration requirements on the transfer of securities by holders at a time when ABN's registration statement covering such securities was no longer current and on the registration and transfer implications of ABN's issuance of securities in connection with the Debtor's plan of reorganization. With respect to the reporting requirements, Morgan Lewis has provided assistance with the Debtor's consideration of ways in which to comply with the requirements for audited financial statements. In that regard, in October 2000 Morgan Lewis submitted a letter to the SEC requesting a waiver of the requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 that ABN include in its annual report on Form 10-K and in a registration statement filed under Securities Act of 1933 audited financial statements for ABN's 1998 and 1999 fiscal years and of the requirements of including selected financial information for Holographics. The submission described in detail the difficulty in preparing the financial statements due to the lack of available information concerning Holographics, the significant and

disproportionate cost to the Debtor that the preparation of such statement would entail and the impact that the reporting requirements would have on ABN's estate creditors. Morgan Lewis has discussed the submission with the SEC staff and expects to have additional discussions.

B. Matter 0002: SEC and United States Attorney's Office Investigation

25. Since early 1999, the Firm has been representing the Debtor in connection with investigations being conducted by the SEC staff and the USAO. After receiving the notifications from the staff of the SEC and the USAO described at paragraph 2 herein, the Firm has devoted substantial time and effort during the Application Period in order to investigate the impact to the Debtor of these notifications.

26. In addition to above services, the Firm performed other services for the Debtor during the application period. For example, in 1999, ABN had been served with several subpoenas by the SEC, which required the production of thousands of documents. As of December 8, 1999, compliance with the subpoenas had not been completed. Therefore, during the Application Period, the Firm's attorneys reviewed additional documents, conducted a privilege review and responded to request for supplemental productions, and paralegals indexed the response to the subpoenas and prepared a privilege log. Morgan Lewis attorneys also prepared and defended three of ABN's current and former officers for depositions before the SEC.

27. Morgan Lewis also participated in a special meeting of ABN's board in January 2000 to present information concerning the status of the criminal and regulatory investigations. In addition to assisting within ABN, Morgan Lewis frequently provided information and advice to ABN's officers, ABN's bankruptcy attorneys and attorneys

representing the unofficial committee of noteholders regarding the status of the criminal and regulatory investigations being conducted by the USAO and the SEC.

#### Allowance Of Compensation

28. Standing at the bar and experience. The partner in charge of the Morgan Lewis engagement was Howard L. Shecter. Mr. Shecter has had extraordinary experience in providing corporate advice. His practice focuses on a wide variety of domestic and international business transactions, including mergers and acquisitions, public offerings and other types of financings, as well as the negotiated resolution of business disputes. Long active in firm management, Mr. Shecter has served in numerous leadership positions including service as Morgan Lewis's managing partner and chairman. He has served as the chairman of the Firm's 400-lawyer Business and Finance Practice Group and a member of the Firm's Governing Board. He is a frequent lecturer on business law matters, having founded and for 10 years served as chairman of the Practising Law Institute seminar series on "Acquiring and Selling the Privately Held Company," and serves as director of several business corporations and charitable organizations.

29. Kevin T. Rover, a partner in Morgan Lewis's Securities Litigation Practice Group, was the partner in charge of representing the Debtor in the SEC and USAO's investigations as well as the Class Action. Mr. Rover's practice focuses on the defense of securities class actions and corporations and individuals in the defense of investigations conducted by the SEC, the NYSE and the NASD. Mr. Rover has also represented clients in white collar criminal cases. He is a member of the Litigation and Business Law sections of the American Bar Association and served as a co-reporter for the Ad Hoc Committee on Joint and Several Liability

under the Federal Securities Laws. As with Mr. Shecter, Mr. Rover supervised and coordinated the activities of the Firm's attorneys and was involved in all aspects of ABN's case.

30. Linda L. Griggs, a partner in Morgan Lewis's Business and Finance Practice Group, provided specialized advice to ABN on securities issues, including financial reporting and accounting matters and other disclosure requirements under the securities laws. Before joining the Firm, Ms. Griggs served as chief counsel to the chief accountant of the SEC for five years. Prior to that, she worked in the Division of Corporation Finance at the SEC as a special counsel, as an attorney in the Division's rule-writing office, and as a reviewer of registration statements, proxy statements and reports filed by companies covered by federal securities laws. Ms. Griggs is a member of the American Bar Association's Subcommittee on Registration Statement, 1993 Act of the Federal Regulation of Securities, and is a member of the Committee on Law and Accounting of the ABA.

31. Compensation sought. Because of the benefits realized by the estate, the nature of this case, the standing at the bar of the attorneys who rendered services, the amount of work done, the time consumed, the skill required, and the contingent nature of the compensation, Morgan Lewis requests that it be allowed \$324,641.00 in compensation, representing all fees for professional services rendered during the Application Period.

32. In this Application, Morgan Lewis also requests \$7,000.00 compensation for time spent and expenses incurred in preparing the monthly fee statements and this Application.

This amount represents only a fraction of the time spent preparing the monthly statements and the Application. (*See, supra*, n.1)<sup>4</sup>

31. Reimbursement of expenses. Morgan Lewis requests that it be granted final reimbursement of expenses in the amount of \$14,501.00, which represents the following sums for actual and necessary expenses incurred in the rendition of professional services during the Application Period:

Computer Legal Research (e.g., Lexis, Nexis and Westlaw)	\$4,009.00
Long Distance Telephone	\$ 513.00
Outgoing Facsimiles @ 45¢ a page	\$ 354.00
In-House Reproduction @ 12¢ a page	\$2,048.00
Filing/Court Fees	\$ 151.00
Court Reporting	\$3,648.00
Word Processing	\$ 550.00
Local Travel	\$ 660.00
Out of Town Travel	\$1,692.00
Business Meals	\$ 177.00
Overtime Expenses	\$ 267.00
Courier & Express Carriers	\$ 439.00
Postage	\$ 3.00
	<u>\$14,511.00</u>

Exhibits C and D hereto provide further information and detail concerning the Firm's expenses and certain expense billing policies.

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<sup>4</sup> In this district, it is generally accepted that reasonable compensation is appropriate for time spent preparing a fee application. *See, e.g., In re McLean Industries, Inc.*, 1990 U.S. Dist. Lexis 4212, \*4-8 (S.D.N.Y.1990) (“a professional is entitled to compensation, but at a reduced rate, based on the difference between the amount, if any, that it ordinarily charges to prepare and present fee applications for its non-bankruptcy clients, and the amount it spends in preparing and presenting its fee applications in a bankruptcy proceeding”). *See also In re The Bennett Funding Group, Inc.*, 213 B.R. 234, 249 (Bankr. N.D.N.Y. 1997).



32. In the event that a subsequent review reveals that a different amount of professional services has been rendered or expenses have been incurred on behalf of ABN, which were not processed by the Firm's computer system in advance of this Application, Morgan Lewis further reserves the right to seek such different fees and expenses by subsequent application to the Court.

WHEREFORE, Morgan Lewis respectfully requests that the Court enter an order granting it (a) a final allowance of (i) compensation for professional services rendered as attorneys for ABN during the Application Period in the sum of \$324,641.00, plus reimbursement of actual and necessary expenses incurred in the sum of \$14,511.00, and (ii) \$7,000 for fees and costs associated with the preparation of the fee statements and this Application (which represents 100% of the Firm's time charges less a reduction of \$12,036 in time charges for certain services rendered), and (b) such other and further relief as is just.

Dated: New York, New York  
November 27, 2000

MORGAN, LEWIS & BOCKIUS LLP  
Special Counsel for American Banknote Corporation

By: \_\_\_\_\_/s/  
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**INDEX TO EXHIBITS**

Exhibit A ..... December 21, 1999 Order Approving the Appointment  
of Morgan, Lewis & Bockius LLP as Special Counsel

Exhibit B ..... Summary of Matter Numbers

Exhibit C ..... Time and Expense Records for Matter 0001

Exhibit D ..... Time and Expense Records for Matter 0002

**EXHIBIT A**

December 21, 1999 Order Approving the Appointment of Morgan, Lewis & Bockius LLP as Special Counsel

**EXHIBIT B**

Matter 0001--General Advice

Matter 0002--ABN/ABNH SEC and United States Attorney's Office Investigation

**EXHIBIT C**

Time and Expense Records for Matter 0001

**EXHIBIT D**

Time and Expense Records for Matter 0002