

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11 Cases Nos.
: :
AI REALTY MARKETING OF NEW YORK, : 01-40252 (AJG)
INC., LASER ACQUISITION CORP., DDG I, : :
INC., SUNBEAM AMERICAS HOLDINGS : :
LTD., et al., : :
: :
Debtors. : (Jointly Administered)
: :
-----X

Name of Applicant: Cozen and O'Connor

Role in Case: Ordinary Course Professional:
National Counsel for BRK Brands, Inc., First Alert, Inc.
and Sunbeam Products, Inc. (for smoke detectors, fire
extinguishers and other product liability litigation) and
Coleman Company, Inc. (for select product liability
claims).

Fees Previously Requested: None (First Application)
Fees Previously Awarded: None

Expenses Previously Requested: None (First Application)
Expenses Previously Awarded: None

Retainer Paid: None

Current Application

Fees Requested: \$125,199.50

Expenses Requested: \$10,852.33

<u>Names of Professionals/ Paraprofessionals</u>	<u>Year Admitted to Practice</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total for Application</u>
<u>Members:</u>				
Cohen, Linda J.	1993	\$190.00	3.10	\$589.00
Fama, Richard J.	1994	\$165.00	8.50	\$1,402.50
Hayes, Robert W.	1980	\$260.00	31.30	\$8,138.00
Heller, James H.	1985	\$230.00	316.40	\$72,772.00
Henry, Michael	1973	\$265.00	1.20	\$318.00
Lang, Douglas B.	1982	\$275.00	1.80	\$495.00
Kelly, Sarah	1985	\$280.00	.60	\$168.00
Mitchell, Cynthia	1976	\$200.00	2.20	\$484.00
McConnaughey, Jeffrey	1978	\$190.00	3.50	\$665.00
Riches, Joseph	1984	\$240.00	1.90	\$456.00
Woodhouse, Samuel	1993	\$185.00	1.00	\$185.00
Zuckerman, Benjamin E.	1966	\$260.00	27.50	\$7,150.00
Total for Members				\$92,822.50

<u>Names of Professionals/ Paraprofessionals</u>	<u>Year Admitted to Practice</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total for Application</u>
<u>Associates:</u>				
Chang, Vahn	1998	\$155.00	13.50	\$2,092.50
Henry, Terry M.	1996	\$175.00	129.10	\$22,592.50
Hunter, Dustin K.	1998	\$160.00	1.30	\$208.00
Kelleher-Pagano, Marlo	1999	\$155.00	3.90	\$604.50
Robbins, Rachel	2000	\$155.00	10.00	\$1,550.00
Richard Polner	1998	\$155.00	1.20	\$186.00
Total for Associates				\$27,233.50

<u>Names of Professionals/ Paraprofessionals</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total for Application</u>
<u>Paraprofessionals:</u>			
Baker, Patricia	\$90.00	.50	\$45.00
Lawson, Mary	\$80.00	1.50	\$120.00
Melvin, Barbara	\$90.00	32.90	\$2,961.00
Montanye, Phoebe	\$80.00	16.80	\$1,344.00
Rizzo, Joseph R.	\$140.00	4.50	\$630.00
Stuart Taubes	\$90.00	.40	\$36.00
Smith, Terri	\$75.00	.10	\$7.50
Total for Paraprofessionals			\$5,143.50

TOTAL **\$125,199.50**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11 Cases Nos.**
: **01-40252 (AJG)**
: **AI REALTY MARKETING OF NEW YORK,**
: **INC., LASER ACQUISITION CORP., DDG I,**
: **INC., SUNBEAM AMERICAS HOLDINGS**
: **LTD., et al.,**
: **Debtors.** : **(Jointly Administered)**
: **(Jointly Administered)**
: **(Jointly Administered)**
-----X

**FIRST APPLICATION OF COZEN AND O’CONNOR, NATIONAL COUNSEL
FOR BRK BRANDS, INC., FIRST ALERT, INC., SUNBEAM PRODUCTS, INC. AND
COLEMAN COMPANY, INC. FOR ALLOWANCE OF INTERIM COMPENSATION
FOR SERVICES RENDERED FROM FEBRUARY 6, 2001 THROUGH MAY 31, 2001,
AND FOR REIMBURSEMENT OF EXPENSES**

To the Honorable Arthur J. Gonzalez
U.S. Bankruptcy Judge:

Cozen and O’Connor, National Counsel for BRK Brands, Inc., First Alert, Inc. and Sunbeam Products, Inc. (for smoke detectors, fire extinguishers and other product liability litigation) and Coleman Company, Inc. (for select product liability claims) (the “Debtors”) submits, its First Application for Allowance of Interim Compensation for Services Rendered from February 6, 2001 Through May 31, 2001 and for Reimbursement of Expenses (the “First Fee Application”), pursuant to sections 330(a) and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for allowance of interim compensation for professional services rendered to the Debtors from February 6, 2001 (the “Petition Date”) through May 31, 2001 (the “Compensation Period”) and for reimbursement of expenses incurred in connection with such services, and in support thereof, respectfully represents:

Summary of Application

1. Cozen and O'Connor seeks allowance of interim compensation for professional services rendered to BRK Brands, Inc., First Alert, Inc., Sunbeam Products, Inc. and Coleman Company, Inc. during the Compensation Period in the aggregate amount of \$125,199.50 and for reimbursement of expenses incurred in connection with such services in the aggregate amount of \$10,852.33.¹

General Nature of Activities

2. During the Compensation Period, Cozen and O'Connor performed legal services for First Alert, Inc., BRK Brands, Inc., Sunbeam Products, Inc. and Coleman Company, Inc., including the defense of litigation matters not stayed by the Chapter 11 cases; preparing for and participating in numerous conferences with local and opposing counsel and courts; participating in Case Management Conferences on matters not stayed by the Chapter 11 cases; investigating new claims; responding to Motions filed by opposing parties; preparing for trials not stayed by the Chapter 11 cases; participating in inspections of incidents involving debtors' products; attending meetings held by National Institute of Standards and Technology regarding its 2000 Smoke Detector Project; providing legal advice regarding a competitor's defamatory statements concerning, among other entities, First Alert, Inc.; reviewing, analyzing and providing legal advice concerning approximately 30 pre-existing matters for which Cozen and O'Connor

¹ After Cozen and O'Connor submitted Fee Statements for the months of February and March, 2001, seeking compensation for professional services rendered and expenses incurred, it was learned that such Fee Statements included a request for compensation and reimbursement of expenses on litigation matters which should have been invoiced directly to the Debtors' Estates' insurance companies. As a result, Amended and Second Amended Fee Statements were filed redacting the requests for compensation and expense reimbursement for such litigation matters. As of the date of the filing of this First Fee Application, Cozen and O'Connor's April Fee Statements had not been revised and therefore, the compensation and expense reimbursement requested in this First Fee Application and which is referenced in paragraph 1 herein redacts and corrects for compensation and expense reimbursement for litigation matters more appropriately invoiced directly to the Debtors' Estates' insurance companies for services rendered and expenses incurred through April 30, 2001.

has, during the Compensation Period, taken over the defense; preparing for and attending meetings with the Debtors and third parties regarding product performance and potential litigation; and preparing for mediation of a matter not stayed by the Chapter 11 cases.

The Fees and Expenses Requested are Reasonable and Proper

3. Cozen and O'Connor has previously submitted monthly fee statements (each a "Fee Statement" and, collectively the "Fee Statements") to the Debtors, counsel for the Debtors, the United States Trustee and counsel to the pre-petition and post-petition senior lenders in accordance with the Administrative Order as defined in paragraph 6 below.

4. For the months of February 2001 (February 6, 2001 - February 28, 2001) and March 2001, Cozen and O'Connor filed Amended and Second Amended Fee Statements. True and correct copies of the Fee Statements are attached hereto as Exhibits "A" and "B".

5. Pursuant to the Fee Statements and the Administrative Order, Cozen and O'Connor has received an aggregate of \$88,692.99 in fees, constituting 71 percent of Cozen and O'Connor's total fees during the Compensation Period for which allowance is sought pursuant hereto, plus \$10,738.76 in expenses, constituting 99 percent of the expenses incurred during the Compensation Period in respect of services rendered during these Chapter 11 cases.

6. This Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York bankruptcy cases adopted by the Court on April 19, 1995 (the "Local Guidelines"), the United States Trustee Guidelines for reviewing applications for compensation and reimbursement of expenses filed under 11 U.S.C. § 330, adopted on January 30, 1996 (the "UST Guidelines" and collectively with the Local Guidelines, the "Guidelines"), and this Court's Administrative Order pursuant to §§ 327 and 328 of the Bankruptcy Code authorizing employment of professionals utilized in the ordinary course of business dated February 6, 2001 (the "Administrative Order").

Pursuant to the Local Guidelines, a Certification regarding compliance with same is attached hereto as Exhibit “C”.

7. By this Application, Cozen and O’Connor seeks the Court’s allowance of the fees and disbursements requested.

8. During the Compensation Period, Cozen and O’Connor attorneys and paraprofessionals expended a total of 565.90 hours for which compensation is requested.² A schedule setting forth the number of hours expended by each of the partners, associates and paraprofessionals of Cozen and O’Connor who rendered services to the Debtors, their respective hourly rates, and the year of bar admission for each Cozen and O’Connor attorney is attached hereto as Exhibit “D”. A schedule specifying the categories of expenses for which Cozen and O’Connor is seeking reimbursement and the total amount for each such expense categories is attached hereto as Exhibit “E”.³

9. All of the services provided by attorneys and paraprofessionals of Cozen and O’Connor during this Compensation Period and all of the expenses incurred during this Compensation Period relevant to this First Fee Application, were incurred while Cozen and O’Connor was performing Litigation services as that term is defined in the U.S. Trustees Program, Exhibit “A” - Project Categories, Guideline for Reviewing Applications for Compensation & Reimbursement of Expenses filed under 11 U.S.C. § 330.

10. Cozen and O’Connor maintains computerized records of the time devoted by all Cozen and O’Connor attorneys and paraprofessionals to represent the Debtors during the

² As more fully described in Footnote 1 herein, the total hours expended by attorneys and paraprofessionals during the Compensation Period has been reduced to account for invoices which should have been sent directly to the Debtors’ Estates’ insurance companies.

³ For this Compensation Period, Cozen and O’Connor filed Fee Statements seeking reimbursement relating to telephone disbursements in the amount of \$2,501.57. After a review of those charges, it has been determined that this amount should be reduced to \$1,000.63.

pendency of the Debtors' Chapter 11 cases. Subject to redaction for the attorney-client privilege where necessary to protect the Debtors' Estates, copies of these computerized records were furnished to the Court, the United States Trustee for the Southern District of New York, and Counsel to the pre-petition and post-petition senior lenders in the format specified by the UST Guidelines.

11. While it believes that all applicable time and disbursement charges have been included herein, to the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Compensation Period, but were not processed prior to the preparation of this Application, Cozen and O'Connor reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

Background

12. On February 6, 2001 (the "filing date"), a voluntary Chapter 11 Bankruptcy Petition was filed by, among other of Sunbeam Corporation's domestic operating subsidiaries, BRK Brands, Inc., First Alert, Inc., Sunbeam Products, Inc., and Coleman Company, Inc. in the United States Bankruptcy Court for the Southern District of New York.

13. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a Trustee or an Examiner.

Jurisdiction and Venue

14. The Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334, and the standing order of referral of cases to Bankruptcy Court Judges of the District Court for the Southern District of New York dated July 10, 1984 (Ward, acting C.J.). Consideration of the Application is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409.

Services Rendered by Cozen and O'Connor

15. During the Compensation Period, Cozen and O'Connor undertook the investigation of certain matters that may give rise to claims that the Debtors may pursue and necessary to protect Debtors' ongoing business and goodwill, including the following:

(a) After receiving information that a popular and nationally distributed consumer magazine with a large circulation intended to publish an article relating to past and pending litigation against the Debtors, Cozen and O'Connor assisted in an investigation to determine the type of article the magazine intended to publish, the facts upon which the article was based, the validity of the facts and the magazine's history of publishing articles about the Debtors.

(b) Cozen and O'Connor investigated and assisted the Debtors in responding to defamatory statements made by a chief competitor of the Debtors. Cozen and O'Connor assisted the Debtors by reviewing a competitor's defamatory statements, provided a factual basis for objecting to the statements and assisted in preparing a demand letter to the competitor.

16. During the Compensation Period, Cozen and O'Connor initiated or continued its investigation into possible claims against the Debtors, including an investigation into a fire in Coventry, Rhode Island that claimed the life of three young children. Cozen and O'Connor undertook to coordinate inspection of physical evidence removed from the fire scene to evaluate the circumstances of the fire and assist the Debtors in preparing a defense in the event a claim is brought. This investigation could not be delayed because of issues related to the preservation of evidence and because all other interested parties were participating in the inspection of evidence in the possession of the local Fire Marshal.

17. During the Compensation Period, Cozen and O'Connor continued its defense of those cases where the Debtors were required to defend Pittway Corporation under the

terms of a 1992 Asset Purchase Agreement and the Stipulation and Order granting Pittway Corporation relief from the automatic stay dated April 12, 2001.

(a) In the matter of Collins v. First Alert, Cozen and O'Connor defended, on behalf of the Debtors, Pittway Corporation and provided legal advice to the Debtors concerning plaintiffs' Motion for Relief from Bankruptcy Stay. Cozen and O'Connor also communicated with numerous co-defendants about the extent and effect of the automatic stay on the overall litigation, prepared for and attended mandatory settlement and scheduling conferences and prepared confidentiality agreements for discovery among the parties.

(b) In the companion cases Adams v. First Alert and Seagle v. First Alert, Cozen and O'Connor continued to defend Pittway Corporation under the terms of the 1992 Asset Purchase Agreement and the Stipulation and Order Granting Pittway Corporation Relief From the Automatic Stay, dated April 17, 2001 to the extent necessary to permit the Debtors to fulfill those obligations. Cozen and O'Connor also provided advice to the Debtors on the motion of co-defendant Claw, Inc. to lift the stay as to its claims, which this Court granted. Consequently, during the Compensation Period, Cozen and O'Connor has assisted in pursuing the discovery and in resolving discovery disputes.

18. In cases involving Pittway Corporation in which the Debtors have no defense or indemnity obligation and are not named parties, the witnesses or issues may so closely mirror those in which the Debtors are involved that the Debtors must either monitor the case, assist Pittway's counsel on substantive issues or assist in providing discovery to ensure a continuity of legal defenses and to preserve their rights or defenses in other matters. For example, during the Compensation Period, in the matter of Howell v. Pittway Corp., Cozen and O'Connor assisted Pittway's counsel in preparing for taking the deposition of a key fact witness. Similarly, in this same matter, during the Compensation Period, Cozen and O'Connor assisted

the Debtors in responding to a subpoena *duces tecum* served prior to the commencement of the Chapter 11 cases.

19. During the Compensation Period Cozen and O'Connor received, reviewed and analyzed sixty files and assumed responsibility for existing claims asserted against the Debtors and any new claims alleged.

20. Cozen and O'Connor attended a meeting at the National Institute for Standards and Technology (NIST) in Gaithersburg, Maryland related to the NIST 2000 Smoke Detector Project. Cozen and O'Connor's attendance at the meeting was necessary to gather information concerning the present "state of the art" for smoke detectors for use in defending allegations being asserted against the Debtors.

21. Cozen and O'Connor also provided analysis and legal advice concerning the various claims currently in litigation in which opposing parties moved the Bankruptcy Court for relief from the automatic Stay. Specifically, Cozen and O'Connor provided the Debtors advice ranging from the nature of the claims in specific cases, potential exposure if the automatic stay is lifted, any substantive or procedural basis for objecting to a Motion for Relief from the Stay and general facts about the underlying cases.

22. In certain matters already in litigation, Cozen and O'Connor was required to continue its efforts to defend the Debtors to ensure that the Debtors' rights were protected during the Chapter 11 cases and so that the Debtors would not forfeit any rights after the Chapter 11 cases were resolved. Some of those specific activities included the following:

(a) In the matter of Wadkins v. First Alert, Cozen and O'Connor assisted in numerous delicate communications with Debtors' insurer concerning the status and possible resolution of this very serious wrongful death case. Relevant to this litigation, Royal Insurance Company issued an excess insurance policy providing coverage above the Debtors'

Estates' aggregate SIR and above the primary insurance coverage which was provided by Steadfast Insurance Company. Prior to the "Compensation Period", the Debtors' Estates' aggregate SIR and primary insurance coverage were exhausted. Also, prior to the "Compensation Period", Royal Insurance Company retained counsel to represent its interests in this litigation. During the Compensation Period, Cozen and O'Connor assisted Royal Insurance Company's counsel in preparation for the mediation and conclusion of discovery.

(b) In the matter of Morales v. First Alert, Cozen and O'Connor negotiated a stipulation indefinitely extending the obligation of the other defendants, including Pittway Corporation, to answer or otherwise respond to the Complaint filed in federal court just prior to the commencement of the Chapter 11 cases, thus achieving an informal stay of the entire case.

(c) In Poorman v. First Alert, the Debtors are defending their retail vendor, West End Lumber Company. During the Compensation Period, Cozen and O'Connor responded to the initial proceedings, communicated with plaintiffs and the numerous co-defendants concerning the Chapter 11 cases, investigated the background facts of the case, retained experts for the required inspection of the product, retained local counsel to assist in the defense, attended the inspection of the product and participated in conferences with the court.

(d) In the matter of Bran v. First Alert, Cozen and O'Connor provided advice to the Debtors related to plaintiffs' motion to enforce a settlement that was reached with the Debtors prior to the commencement of the Chapter 11 cases.

(e) In Matuszak v. First Alert, a case pending in state court, Cozen and O'Connor has prepared for and attended mandatory court scheduling conferences related to pending dispositive motions filed prior to the Bankruptcy case.

Requested Compensation Should be Allowed

23. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates substantive standards of § 330 to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 provides that a Court may award a professional employed by the debtor under § 1103 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered.... and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

In determining the reasonable compensation to be awarded, the Court should consider the nature, 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 services rendered toward the completion of, a case under this title;
- (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 U.S.C. § 330(a)(3).

24. In the instant case, Cozen and O'Connor respectfully submits that the services for which it seeks compensation in this Application were necessary for and beneficial to the Debtors at the time at which such services were rendered. These services were performed

without duplication of effort or expense incurred by professionals and paraprofessionals employed by Cozen and O'Connor. Cozen and O'Connor's request for compensation for the foregoing services is reflective of a reasonable and appropriate amount of time expended in performing such services commensurate with the complexity, importance and nature of the problem, issue or task involved.

25. The particular circumstances of the litigation involving the Debtors required Cozen and O'Connor to engage in extensive investigations, communications, drafting of court papers and negotiations. Because of the complexity, sensitivity, confidentiality and importance of these matters, it often required the services of Cozen and O'Connor's most experienced, senior attorneys. Nonetheless, whenever possible, Cozen and O'Connor sought to minimize the cost of its services to the Debtors by using talented junior attorneys and paraprofessionals to handle the more routine aspects of the cases.

26. In sum, the services rendered by Cozen and O'Connor were necessary and beneficial to the Debtors and were consistently performed in a timely manner commensurate with the complexity, importance and nature of the issues involved and approval of the compensation sought herein is warranted.

Statements of Cozen and O'Connor

27. As set forth in the Certification of James H. Heller attached hereto as Exhibit "F", the compensation requested by Cozen and O'Connor is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code.

28. No agreement or understanding exists between Cozen and O'Connor and any other person for sharing of compensation received or to be received for services rendered in or connection with these Chapter 11 cases, nor shall Cozen and O'Connor share or agree to share

the compensation paid or allowed from the Debtors' Estates for such services with any other persons. The foregoing constitutes the statement of Cozen and O'Connor pursuant to § 504 of the Bankruptcy Code and Bankruptcy Rule 2016(a).

29. No agreement or understanding prohibited by 18 U.S.C. § 155 has been or will be made by Cozen and O'Connor.

30. A copy of this Application has previously been provided to Kenneth Bell, Esquire, Senior Vice President for legal affairs of the Debtors. He has reviewed this Application and approved it.

Waiver of Memorandum of Law

31. Pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b), because there are no novel issues of law presented by this Application, Cozen and O'Connor respectfully requests that the Court waive the requirement that Cozen and O'Connor file a Memorandum of Law in support of this Application.

Notice

32. Pursuant to the Administrative Order, copies of this Application have been given to the Debtors, counsel for the Debtors, the United States Trustee and counsel to the pre-petition and post-petition senior lenders.

WHEREFORE, Cozen and O'Connor respectfully requests (i) an interim allowance of compensation for professional services rendered as attorneys for BRK Brands, Inc., First Alert, Inc., Sunbeam Products, Inc. and Coleman Company, Inc. in the amount of \$125,199.50 in fees for the period of February 6, 2001 through May 31, 2001, of which \$88,692.99 has already been paid by the Debtors; (ii) reimbursement of actual and necessary disbursements incurred by Cozen and O'Connor in the amount of \$10,852.33, of which \$10,738.76 has already been paid by the Debtors; and (iii) such other and further relief as is just and appropriate.

COZEN AND O'CONNOR

BY: _____
James H. Heller, Esquire
Robert W. Hayes, Esquire
Terry M. Henry, Esquire
The Atrium
1900 Market Street
Philadelphia, PA 19103
Attorneys for Debtors
BRK Brands, Inc., First Alert, Inc, Sunbeam
Products Inc., and Coleman Company, Inc.. and

PHILA1\1453059\2 074582.000