

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

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: **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)**
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Name of Applicant: Cozen O'Connor

Role in Case: Ordinary Course Professional:
National Counsel for BRK Brands, Inc., First Alert, Inc.,
Sunbeam Health and Safety, 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: \$125,199.50
Fees Previously Awarded: \$118,939.52

Expenses Previously Requested: \$10,852.33
Expenses Previously Awarded: \$10,852.33

Retainer Paid: None

Current Application

Fees Requested: \$158,180.50

Expenses Requested: \$ 19,674.48

<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>				
Fama, Richard J.	1994	\$165.00	5.6	\$924.00
Hayes, Robert W.	1980	\$260.00	17.6	\$4,576.00
Hawn, Robert	1983	\$225.00	1.0	\$225.00
Heller, James H.	1985	\$230.00	211.7	\$48,691.00
Henry, Michael	1973	\$265.00	.1	\$26.50
Henry, Terry M.	1996	\$175.00	173.2	\$30,310.00
Joseph, Arnold	1987	\$225.00	2.0	\$450.00
McConnaughey, Jefferson C.	1978	\$190.00	42.4	\$8,056.00
Partos, Michael J.	1989	\$215.00	25.3	\$5,439.50
Zuckerman, Benjamin E.	1966	\$260.00	85.4	\$22,204.00
Total for Members				\$121,531.00
<u>Associates:</u>				
Pagano, Marlo	1999	\$155.00	35.0	\$5,425.00
Robbins, Rachel	2000	\$164.72	71.9	\$11,843.50
Total for Associates				\$17,268.50
<u>Paraprofessionals:</u>				
Baker, Trish		\$90.00	1.9	\$171.00
Cordisco, Rita		\$105.00	17.5	\$1,839.50
Kunkle, Tate		\$70.00	96.2	\$6,734.00
McQuillen, Christa		\$100.00	65.8	\$6,580
Rizzo, Joseph R.		\$140.00	18.9	\$2,646.00
Terry, Christine		\$85.00	16.6	\$1,140.50
Total for Paraprofessionals				19,381.00
TOTAL				\$158,180.50

Summary of Application

1. Cozen O'Connor seeks allowance of interim compensation for professional services rendered to BRK Brands, Inc., First Alert, Inc., Sunbeam Products, Inc., Sunbeam Health and Safety, Inc. and Coleman Company, Inc. during the Compensation Period in the aggregate amount of \$158,180.50 and for reimbursement of expenses incurred in connection with such services in the aggregate amount of \$19,674.48

General Nature of Activities

2. During the Compensation Period, Cozen O'Connor performed legal services for First Alert, Inc., BRK Brands, Inc., Sunbeam Products, Inc., Sunbeam Health and Safety, 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 counsel, retained experts, opposing counsel and courts; participating in Case Management Conferences on matters not stayed by the Chapter 11 cases; investigating new claims; preparing dispositive motions in matters not stayed by the Chapter 11 cases; preparing for trials not stayed by the Chapter 11 cases; participating in inspections of incidents involving debtors' products; providing litigation-related advice regarding Debtors' new products and related marketing literature; and preparing for and attending meetings with Debtors and third parties regarding product performance and potential litigation.

The Fees and Expenses Requested are Reasonable and Proper

3. Pursuant to this Honorable Court's order of February 6, 2001, for months where fees and expenses for services rendered by Cozen O'Connor exceeded \$25,000.00, Cozen O'Connor submitted monthly fee statements (each a "Fee Statement" and, collectively the "Fee Statements") to Debtors, counsel for 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. Attached hereto as Exhibit “A” are summaries of the fees and expenses incurred per litigation matter, per month.

4. Pursuant to the Fee Statements and the Administrative Order, Cozen O’Connor has received an aggregate of \$146,792.20 in fees, constituting 93 percent of Cozen O’Connor’s total fees during the Compensation Period for which allowance is sought, plus \$15,661.86 in expenses, constituting 80 percent of the expenses incurred during the Compensation Period in respect of services rendered during these Chapter 11 cases.

5. 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 “B.”

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

7. During the Compensation Period, Cozen O’Connor attorneys and paraprofessionals expended a total of 892.1 hours for which compensation is requested. A schedule setting forth the number of hours expended by each of the partners, associates and paraprofessionals of Cozen O’Connor who rendered services to Debtors, their respective hourly rates, and the year of bar admission for each Cozen O’Connor attorney is attached hereto as

Exhibit “C.” A schedule specifying the categories of expenses for which Cozen O’Connor is seeking reimbursement and the total amount for each such expense category is attached hereto as Exhibit “D.”

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

9. Cozen O’Connor maintains computerized records of the time devoted by all Cozen O’Connor attorneys and paraprofessionals to represent Debtors during the pendency of Debtors’ Chapter 11 cases. Subject to redaction for the attorney-client privilege where necessary to protect Debtors’ Estates, for months where fees and expenses incurred by Cozen O’Connor exceeded \$25,000.00, copies of these computerized records were furnished to 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. Summaries of the monthly fees and expenses are attached hereto as Exhibit “A.”

10. 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 Second Fee Application, Cozen O’Connor reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

Background

11. On February 6, 2001 (the “Petition 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., Sunbeam Health and Safety, Inc. and Coleman Company, Inc. in the United States Bankruptcy Court for the Southern District of New York.

12. 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

13. 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 O’Connor

14. During the Compensation Period, Cozen O’Connor undertook an investigation into several possible claims against Debtors arising out of fires or other accidents or incidents involving personal injury and/or property damage. Cozen O’Connor became aware of these potential claims by receipt of notice from the claimants or their representative directly or through Debtors. To determine any potential liability exposure to Debtors, Cozen O’Connor investigated the circumstances of each incident, identified the product at issue and took whatever additional actions were required to protect the interests of Debtors. In those matters where claimants instituted formal legal proceedings, Cozen O’Connor also took up the defense of

claims being asserted against Debtors, responded to pleadings or took whatever other action was required.

15. At Debtors' request, Cozen O'Connor also reviewed new products and associated marketing materials to provide advice concerning how Debtors' new products and marketing materials may affect ongoing and future litigation.

16. Cozen O'Connor also provided analysis and legal advice concerning interpretation of and response to an article published by a nationally distributed consumer products magazine involving adverse information about one of Debtors' products.

17. In certain matters already in litigation or as to which the bankruptcy stay was lifted, Cozen O'Connor was required to continue its efforts to defend Debtors to ensure that Debtors' rights were protected during the Chapter 11 cases and so that 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 Morales v. First Alert, Cozen O'Connor successfully moved the U.S. District Court for the Eastern District of Texas (Texarkana) to transfer the matter to the U.S. District Court for the Western District of Texas (Amarillo). Cozen O'Connor also began an intensive investigation of the facts underlying the lawsuit and retained and met with experts to support Debtors' defense. During the Compensation Period, Cozen O'Connor prepared and served extensive discovery requests and responded to the discovery requests served on Debtors by plaintiffs. In conjunction with its preparation of discovery responses, however, Cozen O'Connor also prepared and filed a motion for protective order to protect Debtors from overly broad, unduly burdensome and expensive discovery.

(b) In Poorman v. First Alert, Debtors are defending their retail vendor, West End Lumber Company. During the Compensation Period, Cozen O'Connor continued to investigate issues material to the defense.

(c) In Collins v. First Alert, a case pending in a Maryland state court, Cozen O'Connor moved forward with Debtors' defense. Cozen O'Connor planned expert discovery, pursued discovery matters before the court, coordinated dispositive motions among defense counsel and consulted with experts. Following the trial court's dismissal of co-defendants, Cozen O'Connor negotiated a stipulation staying the matter pending outcome of plaintiffs' appeal of the dismissal, thus saving Debtors additional expense.

(d) In Cruz v. BRK Brands, Inc., pending in the U.S. District Court for the Southern District of Texas, Brownsville Division, Cozen O'Connor began planning for the *Daubert* hearing and trial and attended a status conference to resolve scheduling issues. In anticipation of plaintiffs pursuing expert discovery, Cozen O'Connor began preparing to defend Debtors' experts. Cozen O'Connor also started preparing its *Daubert* related motions which were filed per Court Order just subsequent to the Compensation Period.

(e) In Tarlow v. Sunbeam Health and Safety, a new matter currently pending in the United States District Court for the Central District of California, Cozen O'Connor undertook the defense of Debtors. After causing the matter to be removed to federal court, Cozen O'Connor answered the complaint, retained experts, conducted an inspection of the product at issue and began an investigation of the facts underlying the incident upon which plaintiffs' claims are based.

(f) In Williams v. Coleman Co., a case pending in New Jersey state court, Cozen O'Connor is defending Debtors' retail distributor on a claim that a lantern was defective. During the Compensation Period, Cozen O'Connor responded to and prepared

substantial discovery requests. Cozen O'Connor undertook its own investigation, pursuing detailed informal discovery and conducting numerous witness interviews.

Requested Compensation Should be Allowed

18. 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).

19. In the instant case, Cozen O'Connor respectfully submits that the services for which it seeks compensation in this Application were necessary for and beneficial to 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 O'Connor. Cozen 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.

20. The particular circumstances of the litigation involving Debtors required Cozen 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 O'Connor's most experienced, senior attorneys. Nonetheless, whenever possible, Cozen O'Connor sought to minimize the cost of its services to Debtors by using talented junior attorneys and paraprofessionals to handle the more routine aspects of the cases.

21. In sum, the services rendered by Cozen O'Connor were necessary and beneficial to 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 O'Connor

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

23. No agreement or understanding exists between Cozen 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 O'Connor share or agree to share the compensation paid or allowed from Debtors' Estates for such services with any other persons. The foregoing constitutes the statement of Cozen O'Connor pursuant to § 504 of the Bankruptcy Code and Bankruptcy Rule 2016(a).

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

25. 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

26. 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 O'Connor respectfully requests that the Court waive the requirement that Cozen O'Connor file a Memorandum of Law in support of this Application.

Notice

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

WHEREFORE, Cozen 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., Sunbeam Health and Safety, Inc. and Coleman Company, Inc. in the amount of \$158,180.50 in fees for the period of October 1, 2001 to February 28, 2002 of which \$146,792.20 has already been paid by Debtors; (ii) reimbursement of actual and necessary disbursements incurred by Cozen O'Connor in the amount of \$19,674.48 of which \$15,661.86 has already been paid by Debtors; and (iii) such other and further relief as is just and appropriate.

COZEN O'CONNOR

BY: /s/ James H. Heller
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