

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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: **Chapter 11 Case Nos.**  
: **01-40252 (AJG)**  
: **(Jointly Administered)**  
: **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) Coleman Company, Inc. and  
Coleman Powermate, Inc. (for select product liability  
claims).

Fees Previously Requested: \$283,380.00  
Fees Previously Awarded: \$269,210.99

Expenses Previously Requested: \$30,526.81  
Expenses Previously Awarded: \$30,526.81

Retainer Paid: None

Current Application

Fees Requested: \$ 427,748.50

Expenses Requested: \$ 61,727.80

<u>Names of Professionals – Paraprofessionals</u>	<b>Year Admitted to Practice</b>	<b>Hours Billed</b>	<b>Hourly Rate</b>	<b>Total for Application</b>
<b><u>Members</u></b>				
Brown, James	1988	1.00	275	\$275.00
Cook, Anne	1995	1.00	185	\$185.00
Eggleston, Tracy	1982	1.20	220	\$264.00
Hayes, Robert	1980	41.30	260	\$10,738.00
Heller, James	1985	366.80	230	\$84,364.00
Henry, Terry	1996	523.50	175	\$91,612.50
Joseph, Arnold	1987	2.50	225	\$562.50
Lang, Kenneth	1977	332.40	225	\$74,790.00
Ledo, Michelle	1997	59.40	190	\$11,286.00
Partos, Michael	1989	7.60	215	\$1,634.00
Sweeney, Martin	1986	4.50	233	\$1,049.99
Zuckerman, Benjamin	1966	25.40	260	\$6,604.00
<i>Total for Members</i>		1366.60		<b>\$283,365.00</b>
<b><u>Associates</u></b>				
Char, Christine	1999	14.60	170	\$2,482.00
Decker, Amy	1998	240.60	150	\$36,090.00
Godina, Sandra	1997	109.40	195	\$21,333.00
Pagano, Marlo	1999	15.60	155	\$2,418.00
Robbins, Rachel	2000	194.60	155	\$30,163.00
Shea, John	1994	1.50	180	\$270.00
Wayland, Wendy	1998	0.20	185	\$37.00
<i>Total for Associates</i>		576.50		<b>\$92,793.00</b>
<b><u>Paraprofessionals</u></b>				
Creekmore, Mary		24.50	135	\$3,307.50
Douglas, Briana		27.50	65	\$1,787.50
Doyal, Elizabeth		4.30	115	\$494.50
Fortner, Karen		237.90	85	\$20,221.50
Kunkle, Tate		146.00	70	\$10,220.00
Marks, Eileen		23.00	65	\$1,495.00
McLaughlin, Sean		12.00	65	\$780.00
McQuillen, Christa		49.40	100	\$4,940.00
Poole, Blair		3.10	65	\$201.50
Rizzo, Gailmarie		11.00	95	\$1,045.00
Rizzo, Joseph		18.20	140	\$2,548.00
Stratton, Grayson		29.80	140	\$4,172.00
Wells, Juanita		4.20	90	\$378.00
<i>Total for Paraprofessionals</i>		590.90		<b>\$51,590.50</b>
<b>Total Fees For Application</b>				<b>\$427,748.50</b>

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

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In re : Chapter 11 Case 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)  
: :  
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**THIRD APPLICATION OF COZEN O’CONNOR, NATIONAL COUNSEL FOR  
BRK BRANDS, INC., FIRST ALERT, INC., SUNBEAM PRODUCTS, INC., SUNBEAM  
HEALTH AND SAFETY, INC., COLEMAN POWERMATE, INC., AND COLEMAN  
COMPANY, INC. FOR ALLOWANCE OF INTERIM COMPENSATION FOR  
SERVICES RENDERED FROM MARCH 1, 2002 THROUGH JULY 31, 2002, AND FOR  
REIMBURSEMENT OF EXPENSES**

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

Cozen O’Connor, National Counsel for BRK Brands, Inc., First Alert, Inc., Sunbeam Products, Inc. and Sunbeam Health and Safety, Inc. (for smoke detectors, fire extinguishers and other product liability litigation) and Coleman Powermate, Inc. and Coleman Company, Inc. (for select product liability claims) (the “Debtors”) hereby submits its Third Application for Allowance of Interim Compensation for Services Rendered from March 1, 2002 through July 31, 2002 and for Reimbursement of Expenses (the “Third 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 Debtors from March 1, 2002 through July 31, 2002 (the “Compensation Period”) and for reimbursement of expenses incurred in connection with such services, and in support thereof, respectfully represents:

### **Summary of Third Fee 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., Coleman Powermate Inc. and Coleman Company, Inc. during the Compensation Period in the aggregate amount of \$427,748.50<sup>1</sup> and for reimbursement of expenses incurred in connection with such services in the aggregate amount of \$61,727.80.

### **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., Coleman Powermate, 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

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<sup>1</sup> This amount represents \$14.00 in additional fees due to an error in computing the monthly fee statement for the month of May, 2002, in which the fee for paraprofessional Tate Kunkle was incorrectly calculated as \$1155.00 instead of \$1169.00.

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 \$261,271 in fees, constituting 61 percent of Cozen O’Connor’s total fees during the Compensation Period for which allowance is sought, plus \$19,490 in expenses, constituting 32 percent of the expenses incurred during the Compensation Period in respect of services rendered during these Chapter 11 cases.

5. This Third Fee 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 Third Fee 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 2,534 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 Third Fee Application, were incurred while Cozen 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.

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 Third 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., Coleman Powermate, Inc. and Coleman Company, Inc. in the United States Bankruptcy Court for the Southern District of New York.

12. Debtors continue to operate their businesses 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 E

13. xaminer.

### **Jurisdiction and Venue**

14. The Court has jurisdiction to consider the Third Fee 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 Third Fee Application is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Services Rendered by Cozen O’Connor**

15. 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 representatives 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.

16. 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.

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 argued in support of a motion for protective order and in opposition to plaintiffs' application for leave to take more than ten depositions. Cozen O'Connor was successful in protecting Debtors from overly broad, unduly burdensome and expensive discovery. In addition, Cozen O'Connor attended and took several key fact witness depositions, including the depositions of plaintiffs, to obtain information for Debtors' experts and to build a record in support of Debtors' eventual motion for summary judgment. Cozen O'Connor also received and analyzed plaintiffs' expert disclosures and worked closely with its own experts to make the required expert disclosures in support of Debtors' defense.

(b) In Cruz v. BRK Brands, Inc., pending in the U.S. District Court for the Southern District of Texas, Brownsville Division, Cozen O'Connor prepared and filed an



extensive *Daubert* motion, seeking to preclude from trial seven of plaintiff's experts. Cozen O'Connor also presented evidence, testimony and argument in support of Debtors' motion at *Daubert* hearing. Cozen O'Connor's *Daubert* motion was successful in that the court either excluded plaintiff's experts or so severely restricted the witnesses' ability to offer testimony as to render the remaining admissible testimony useless. During the Compensation Period Cozen O'Connor also prepared Debtors' expert witnesses for and defended them during their depositions.

(c) In Hammer v. Coleman, a matter pending in Maricopa County, Arizona Superior, the bankruptcy stay was lifted and Cozen O'Connor has deposed firefighters and plaintiff Nancy Hammer. An inspection of the site and product was conducted August 13, 2002. Cozen O'Connor has hosted several conferences by telephone to coordinate additional inspections of the product. Cozen O'Connor also directed and coordinated the activities of a private investigator to develop information and evidence in defense of the case. Cozen O'Connor has served written discovery on opposing parties and Cozen O'Connor is preparing responses to similar discovery requests received from plaintiffs.

(d) In Anderson/Oliver v. Coleman Co., a case pending in Millard County, Utah District Court, the bankruptcy stay was lifted. During the compensation period, Cozen O'Connor has responded to voluminous discovery requests. Cozen O'Connor has also prepared and defended current and former Coleman employees at deposition. Additionally, Cozen O'Connor has worked with Debtors' experts to prepare disclosures and to prepare for upcoming depositions that will be taken in October, 2002.

(e) Cozen O'Connor has also been preparing the defense of Debtors in the matter of Ellis v. Coleman, pending in the United States District Court for the District of Alaska. During the compensation period, Cozen O'Connor has begun its final preparation for

retrial, which includes voluminous motion practice. Cozen O'Connor has paid particular attention to preparation of Debtors' expert witnesses and other lay witnesses expected to testify in the second trial. Cozen O'Connor also prepared for and participated in an unsuccessful mediation held in Wichita, Kansas on September 13, 2002. Cozen O'Connor is still in negotiations with plaintiff's counsel to determine if the matter can be resolved short of trial, which is for November, 2002.

(f) In King v. Coleman Powermate, pending in Jefferson County, Mississippi Circuit Court, the bankruptcy stay was lifted. Cozen O'Connor has conducted several meetings with Debtors' experts and also with co-defendant's counsel for Briggs & Stratton to coordinate defense of this matter. Extensive discovery requests have been served by plaintiff to which Cozen O'Connor began to research and respond during the Compensation Period. Cozen O'Connor also prepared, filed and successfully argued a Motion for Partial Summary Judgement which the court granted requiring Rheem to proceed as the real party (plaintiff) in interest. Cozen O'Connor has also prepared and filed a Motion for Summary Judgement that may dispose of the entire case, and is scheduled to be heard on October 7, 2002.

### **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 Third Fee 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 Third Fee Application has previously been provided to Marc Clements, Esquire, Senior Director, Products Litigation and Compliance of the Debtors. He has reviewed this Third Fee 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 Third Fee 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 Third Fee Application.

**Notice**

27. Pursuant to the Administrative Order, copies of this Third Fee 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. Coleman Powermate, Inc. and Coleman Company, Inc. in the amount of \$427,748.49 in fees for the period of March 1, 2002 to July 31, 2002 of which \$261,271 has already been paid by Debtors; (ii) reimbursement of actual and necessary disbursements incurred by Cozen O'Connor in the amount of \$61,727.80 of which \$19,490 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  
James H. Heller, Esquire (JH 8546)  
Robert W. Hayes, Esquire  
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