

Hearing Date: N/A (Negative Notice)
Objection Deadline: February 13, 2001 @ 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re: :
: **Jointly Administered**
BREED Technologies, Inc., : **Case No. 99-3399 (MFW)**
a Delaware corporation, et al., :
: **Chapter 11**
Debtors. :

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U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

SEVENTH INTERIM AND FINAL APPLICATION OF
BIFFERATO, BIFFERATO & GENTILOTTI FOR ALLOWANCE
OF COMPENSATION AND REIMBURSEMENT OF EXPENSES

Name of Applicant: Bifferato, Bifferato & Gentilotti

Authorized to Provide
Professional Services to: BREED Technologies, Inc., et al.

Date of Retention: December 16, (Nunc Pro Tunc as of September 30, 1999)

Period for which compensation
and reimbursement is sought: September 30, 1999 through December 26, 2000

Amount of Compensation requested: \$22,857.50

Amount of Expense Reimbursement requested: \$5,418.29

This is a(n): monthly interim final application

Attorneys' Blended Hourly Rate: \$195.00

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**SEVENTH INTERIM AND FINAL APPLICATION OF
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Bifferato, Bifferato & Gentilotti ("BB&G"), special counsel to the above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby makes its seventh application for (i) interim allowance of compensation of \$3,192.00 and reimbursement of actual, necessary expenses of \$352.80, for the period November 1, 2000 through December 27, 2000 (the "Seventh Compensation Period"); and (ii) final allowance of compensation of \$22,857.50 and reimbursement of actual, necessary expenses of \$5,418.29 for the period from September 29, 1999 through December 26, 2000 (the "Compensation Period")¹. In support of this Application, BB&G respectfully represents as follows:

BACKGROUND

General

1. On September 20, 1999 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the

¹ The Combined Compensation Period is comprised of the Seventh Compensation Period and the following additional interim compensation periods for which BB&G has previously filed fee applications in these cases (collectively, the "Prior Compensation Periods"): (a) December 1, 1999 through March 31, 2000; (b) April 1, 2000 through May 31, 2000; (c) June 1, 2000 through June 30, 2000; (d) July 1, 2000 through July 31, 2000; (e) August 1, 2000 through August 31, 2000; (f) September 1, 2000 through October 31, 2000.

Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. The Debtors continue in possession of their respective properties and operate and manage their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On October 1, 1999, the United States Trustee for the District of Delaware (the "United States Trustee") appointed a statutory committee of unsecured creditors in these chapter 11 cases (the "Creditors Committee"), pursuant to section 1102 of the Bankruptcy Code.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Bifferato, Bifferato & Gentilotti's Retention

5. On November 1, 1999, the Debtors filed an Application of Debtors and Debtors in Possession for an Order Authorizing Them to Retain and Employ BB&G as special Litigation Counsel, *Nunc Pro Tunc* as of September 30, 1999 (the "Retention Application"), by which the Debtors sought authority to retain and employ BB&G as special litigation counsel in connection with (a) the ongoing litigation styled as *BREED Technologies, Inc. v. AlliedSignal Inc.*, which seeks over \$300 million in damages from the defendant, and any related proceedings and issues related thereto (collectively, the "AlliedSignal Litigation") and (b) to reduce to judgment and enforce the arbitral award previously entered in BREED's favor in the arbitration of *BREED Technologies Inc. v. Tokai Rika Ltd.*, (the "Tokai Rika Arbitration"). On December 16, 1999, the Court entered an order (the "Retention Order") approving the Debtors' retention of BB&G as Special Litigation Counsel *nunc pro tunc* as of September 30, 1999. A copy of the Retention Order is attached hereto as Exhibit A. The Retention Order authorized BB&G to be compensated

for its services on an hourly basis and to be reimbursed for any expenses related to its representation of Debtors. BB&G is charging for its services in accordance with its ordinary and customary hourly rates in effect on the dates that services are rendered. These hourly rates are identical to those charged by BB&G for similar services in other bankruptcy and nonbankruptcy matters.

Status of the Debtors' Chapter 11 Cases

6. A Reorganization Plan has not yet been filed. To the best of BB&G's knowledge, a Plan is expected to be filed this fall.

7. To the best of BB&G's knowledge, the Debtors have filed all monthly operating reports and paid all quarterly fees to the U.S. Trustee.

RELIEF REQUESTED

Authority for Relief

8. BB&G makes this Application pursuant to the following: (a) sections 330(a) and 331 of the Bankruptcy Code; (b) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); (c) the Administrative Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated September 21, 1999 (the "Interim Compensation Order"); (d) certain applicable provisions of the Guidelines for Applications for Compensation and Reimbursement of Expenses of Professionals adopted by the Office of the United States Trustee (the "Guidelines"); and (e) Local Bankruptcy Order #32 (Revising and Rescinding Order #27) of the United States Bankruptcy Court for the District of Delaware ("Local Order 32"). A copy of

the Interim Compensation Order is attached hereto as Exhibit B and incorporated herein by reference.

***Request for Interim Allowance of
Compensation and Reimbursement of Expenses***

9. On May 9, 2000, Debtors filed a Motion to Seal Time Records Relating To Their Special Counsel's Interim Fee Applications. On May 18, 2000, this Court granted the requested relief, authorizing BB&G to file under seal its time records that support its interim fee applications. A copy of this Court's May 18, 2000 Order is attached hereto as Exhibit C.

10. BB&G hereby seeks interim allowance of compensation and reimbursement of expenses for the Compensation Period as follows:

a. Compensation of \$3,192.00 in connection with services rendered during the Seventh Compensation Period. BB&G has identified each of its professionals and paraprofessionals who provided services to the Debtors during the Compensation Period and their respective hourly rates on the professional summary attached hereto as Exhibit D and incorporated herein by reference. Pursuant to this Court's May 18, 2000 Order, BB&G's time detail has been filed under seal as Exhibit E and is incorporated herein by reference; and

b. Reimbursement of actual and necessary expenses of \$352.80 incurred in connection with BB&G's services during the Seventh Compensation Period. A summary and itemization of these expenses is attached hereto as Exhibit F and incorporated herein by reference.

11. In addition, BB&G hereby seeks final allowance of compensation and reimbursement of expenses for the Combined Compensation Period as follows:

a. Compensation of \$22,857.50 in connection with services rendered during the Combined Compensation Period. BB&G has identified each of its professionals and paraprofessionals who provided services to the debtors during the Combined Compensation Period and their respective hourly rates for each month of the Combined Compensation Period were attached to each of its prior Applications.

b. Reimbursement of actual and necessary expenses of \$5,418.29 incurred in connection with BB&G's services during the Combined Compensation Period. Summaries and itemizations of these expenses were attached to each of its prior Applications.

11. BB&G has served this Application in accordance with the Interim Compensation Order. Any objections to this Application must be in writing and filed with the Court and served upon BB&G so as to be received no later than 20 days after the date of service of the Application. If no timely objections are filed and served, BB&G will file a certification of no objection, pursuant to the Court's Certification Procedures for Motions Filed on Negative Notice. The Court may then enter an order granting the compensation and reimbursement of expenses sought by this Application.

SUMMARY OF SERVICES RENDERED BY BB&G

12. BB&G professionals and paraprofessionals have prepared and assisted in the preparation of numerous filings to this and other courts and performed all necessary professional services which are described in the following paragraphs and in further detail in Exhibit E, which has been filed under seal. BB&G'S efforts have been compensate with the size and complexity of the AlliedSignal Litigation, which remains one of the most significant pieces of litigation in the Debtors' chapter 11 cases and currently seeks damages exceeding \$300 million for the Debtors'

estates.

SUMMARY OF SERVICES BY PROJECT

13. As a result of the size, complexity and importance of the AlliedSignal Litigation to the Debtors' estates, the prosecution of the Debtors' claims against AlliedSignal has required significant litigation efforts and substantial work developing the factual basis of the case. Generally, at the present stage of the AlliedSignal Litigation, BB&G's litigation efforts have included: (a) conducting research and in-depth analysis of relevant facts and legal issues concerning both substantive and procedural areas of law; (b) developing various litigation strategies; (c) drafting, revising and conforming various pleadings, motions and briefs; and (d) communicating with co-counsel and Debtors' general counsel concerning the litigation and the status of the client as debtors-in-possession.

EXPENSES INCURRED BY BB&G

14. Section 330 of the Bankruptcy Code authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a chapter 11 case. Accordingly, BB&G seeks reimbursement for actual and necessary expenses (the "Expenses") incurred in rendering services to the Debtors during the Compensation Period. The total amount of the Expenses is \$352.80, as detailed in the attached Exhibit F. BB&G submits that the Expenses were reasonable and necessary in light of the services provided.

15. BB&G maintains the following policies with respect to the Expenses:

- In accordance with its ordinary nonbankruptcy procedures, BB&G calculates its photocopying expenses at a \$0.15 per page rate.

- BB&G calculates its facsimile expenses at a \$1.00 per page rate.
- BB&G calculates its telephone expenses on an actual expense incurred basis.

Adjustment to Fees and Expenses

16. Consistent with its own internal policies and to comply with the "reasonableness" requirements of section 330 of the Bankruptcy Code, BB&G has reviewed its monthly service descriptions and expense detail and has determined that certain fees should not be charged to the Debtors. This Application reflects these adjustments. The adjustments made by BB&G result from, among other things: (a) the deletion of certain time charged by lawyers or paraprofessionals who are not integral providers of services in the AlliedSignal Litigation; (b) the deletion of charges for duplicative or nonproductive services; and (c) other adjustments considered appropriate by BB&G or required by applicable rules.

LEGAL ARGUMENT

17. The professional services rendered by BB&G during the Compensation Period required a high degree of professional competence and expertise so that the numerous issues requiring evaluation and response by the Debtors could be addressed with skill and dispatch. The provision of such services, therefore, has required the expenditure of substantial time and effort. BB&G submits that the services rendered to the Debtors in furtherance of the AlliedSignal Litigation were performed efficiently, effectively and economically and that the results obtained thus far have provided a significant benefit to the Debtors' estates and creditors.

Standards for Allowance of Compensation and Expenses

18. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, for the payment of:

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

To grant a request for compensation pursuant to section 330 of the Bankruptcy Code, this Court must find that such request is reasonable. The reasonableness of a compensation request is determined by taking into account the nature, extent and value of the services provided by the professional and the cost of comparable services in nonbankruptcy contexts. See Zolfo Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 258 (3d Cir. 1995); In re Busy Beaver Building Ctr., Inc., 19 F.3d 833, 849 (3d Cir. 1994). In the "market-driven approach" to compensation requests adopted by the Third Circuit, the primary focus of the inquiry is the cost of comparable services in nonbankruptcy contexts. See Zolfo Cooper, 50 F.3d at 258; see also Busy Beaver, 19 F.3d at 849-50; In re Fine Paper Antitrust Litig., 751 F.2d 562, 583 (3d Cir. 1984) ("The value of an attorney's time generally is reflected in his normal billing rate."). This market-based approach permits flexibility in billing arrangements. The "lodestar" method (hourly rate multiplied by hours worked) is currently the most widely utilized method for compensation arrangements, but regardless of the manner in which compensation is calculated, "the baseline rule is for firms to receive their customary rates." Zolfo Cooper, 50 F.3d at 259.

19. In accordance with its practice in nonbankruptcy matters, BB&G has utilized the lodestar method for calculating its compensation requested in this Application. There is a strong

presumption that the lodestar product is reasonable under section 330 of the Bankruptcy Code.

See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986);

In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991).

20. The rates charged by BB&G in this Application are the same rates charged by BB&G for comparable nonbankruptcy litigation matters and application of the foregoing criteria amply justifies the compensation and expense reimbursement requested herein. Moreover, BB&G's fees are not unusual given the complexity and size of the AlliedSignal Litigation, and they are commensurate with fees that BB&G has been awarded in other chapter 11 cases and similar litigation matters and that other attorneys of comparable experience and expertise charge on a regular basis in chapter 11 cases and similar litigation matters. BB&G's lodestar calculation is based upon hourly rates that are well within the range of rates that are charged by comparable firms in similar litigation matters. Accordingly, BB&G's lodestar calculation is reasonable under section 330 of the Bankruptcy Code. See Drexel Burnham Lambert, 133 B.R. at 22.

BB&G's Fees Are Reasonable

21. BB&G's fees during the Compensation Period were reasonable under the prevailing legal standard and should be allowed on an interim basis. The amount of these fees is not unusual given the size and complexity of the AlliedSignal Litigation, and these fees are commensurate with fees that BB&G and other attorneys of comparable experience and expertise charge in similar non-bankruptcy cases.

BB&G's Expenses Were Actual and Necessary

22. Sections 330(a)(1)(B) and 503(b)(4) of the Bankruptcy Code permit reimbursement for actual, necessary expenses. See Zolfo Cooper, 50 F.3d at 258. As noted above, BB&G has already reviewed the Expenses comprehensively and eliminated those Expenses

for the Compensation Period that it deemed "not necessary." Accordingly, those Expenses for which reimbursement is sought in this Application satisfy the standards set forth in section 330(a)(1)(B) of the Bankruptcy Code and the Guidelines.

Available Funds

23. Based on the financial information provided by the Debtors to date, BB&G believes that the Debtors have sufficient cash on hand to pay the fees and Expenses requested herein immediately upon their approval by the Court.

CONCLUSION

24. The fees and Expenses requested herein by BB&G are based on its ordinary and customary hourly rates and disbursement charges during the Compensation Period for work performed for other clients on both bankruptcy- and nonbankruptcy-related matters.

25. BB&G has received no payment and no promises of payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with the matters covered in this Seventh Application. No agreement or understanding exists between BB&G or any third person for the sharing of compensation, except as allowed by section 504(b) of the Bankruptcy Code and Bankruptcy Rule 2016 with respect to the sharing of compensation between and among the directors of BB&G.

26. All of the services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Debtors, and not on behalf of any other entity. The Certification of Ian Connor Bifferato in accordance with Local Order 32 is attached hereto as Exhibit G.

WHEREFORE, BB&G respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit H, (i) allowing on an interim basis

compensation of \$3,192.00 for services rendered by BB&G in connection with these chapter 11 cases during the Seventh Compensation Period, (ii) allowing on an interim basis reimbursement of Expenses incurred during the Seventh Compensation Period of \$352.80, (iii) allowing on a final basis compensation of \$22,857.50 for services rendered by BB&G in connection with these chapter 11 cases during the Combined Compensation Period; (iv) allowing on a final basis reimbursement of Expenses of \$5,418.29 incurred in connection with BB&G's services during the Combined Compensation Period; (v) authorizing and directing the Debtors to pay to BB&G the unpaid balance of all approved fees and expenses; and (vi) granting such other and further relief as the Court may deem proper.

Dated: January 26 2001

Respectfully submitted,

By: _____

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