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UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In Re:	:	Chapter 11 Cases Nos.
	:	01-40252(AJG) through
	:	01-40290 (AJG)
AI REALTY MARKETING OF NEW YORK, INC., LASER ACQUISITION CORP., DDG I, INC., SUNBEAM AMERICAS HOLDINGS LTD., et al,	:	
	:	(jointly administered)
	:	
Debtors.	:	
	:	

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**COVER SHEET PURSUANT TO UNITED STATES TRUSTEE  
 GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION  
 AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330**

FIFTH AND FINAL APPLICATION

**NAME OF APPLICANT:** Moffett & Dillon, P.C.  
 Counsel for Sunbeam Operating

Entities

CURRENT APPLICATION:	Fees Requested:	\$396993.75
(September 1, 2002-December 18, 2002)	Expenses Requested:	\$25152.07

PRIOR APPLICATIONS:	Fees Previously Requested:	\$1663875.00
(February 6, 2001-August 31,2002)	Fees Previously Awarded:	\$1580681.25
	Expenses Previously Requested:	\$70545.08
	Expenses Previously Awarded:	\$70545.08

FINAL APPLICATION:	Total Fees Requested:	\$2060868.75
	Total Expenses Requested:	\$95697.15

<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>Partners</u>				
Moffett, Stephen	1981	200.00	589.7	117940.00
Moffett, Stephen	1981	125.00	30.2	3775.00
Vitu, Thomas	1986	200.00	549.5	109900.00
Vitu, Thomas	1986	125.00	110.2	13775.00
Battle, Christine	1986	200.00	17.1	3420.00
Battle, Christine	1986	125.00	0	0.00
Total:			1296.7	<b><u>248810.00</u></b>
<u>Associates</u>				
David, George	1979	180.00	434.4	78192.00
David, George	1979	125.00	0	0.00
Hesse, Colleen	2002	160.00	75.9	12144
Hesse, Colleen	2002	125.00	40.83	5103.75
Total:			551.13	<b><u>95439.75</u></b>
<u>Paralegals</u>				
Edwards, Susan		80.00	600.2	48016.00
Lambertz, Judith		80.00	24.1	1928.00
Gliddon, Constance		80.00	35.0	2800.00
Total:			659.3	<b><u>52744.00</u></b>
<b>TOTAL DUE:</b>			<b><u>2507.1</u></b>	<b><u>396993.75</u></b>

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AI REALTY MARKETING OF NEW YORK,	:	01-40290 (AJG)
INC., LASER ACQUISITION CORP., DDG I,	:	
INC., SUNBEAM AMERICAS HOLDINGS	:	
LTD., et al,	:	(jointly administered)
	:	
Debtors.	:	

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**APPLICATION OF MOFFETT & DILLON, P.C., ORDINARY  
COURSE PROFESSIONALS RETAINED BY DEBTOR,  
SUNBEAM PRODUCTS FOR FINAL ALLOWANCE OF COMPENSATION  
FOR PROFESSIONAL SERVICES RENDERED AND FOR  
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES**

TO: THE HONORABLE ARTHUR GONZALES  
UNITED STATES BANKRUPTCY JUDGE:

Moffett & Dillon, P.C., Ordinary Course Professionals hired by Sunbeam Products, Inc., as National Counsel for product liability claims and litigation concerning electrically heated bedding products submits its final application (the “Final Application”), pursuant to sections 330 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 the final allowance of compensation for professional services performed by Moffett & Dillon, P.C. for the period commencing February 6, 2001 through and including December 18, 2002 (the “Final Compensation Period”), and for reimbursement of its actual and necessary expenses incurred during the Final Compensation Period, respectfully represents:

**SUMMARY OF PROFESSIONAL COMPENSATION  
AND REIMBURSEMENT OF EXPENSES REQUESTED**

1. Based on the balance of this application, Moffett & Dillon is requesting a final award of \$2156565.90 plus the amount to be determined under paragraph 13 below. Moffett & Dillon will subtract payments received during the case of \$1957825.31, the amount it is awarded.

2. This Final Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursement for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the “Local Guidelines”), the United States Trustee Guidelines for Review Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. §330, adopted on January 30, 1996 (the “UST Guidelines”) and the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals (the “Administrative Order” and, collectively with the Local guidelines and UST Guidelines, the “Guidelines”). Pursuant to the Local Guidelines, a certification regarding compliance with same is attached hereto as Exhibit “A”.

3. Moffett & Dillon seeks allowance of compensation for professional services rendered to the Debtors during the Final Compensation Period, in the aggregate

amount of \$2060868.75, and for reimbursement of expenses incurred in connection with the rendition of such services in the aggregate amount of \$95697.15. During the Final Compensation Period, Moffett & Dillon attorneys and paraprofessionals expended a total 14045.83 hours for which compensation is requested.

4. Of the foregoing amounts, Moffett & Dillon was awarded an interim allowance of \$1580681.25 for fees and \$70545.08 for disbursements. The amount allowed by the Court represents the full amount of fees and disbursements incurred by Moffett & Dillon from February 6, 2001 through August 31, 2002, less a five percent (5%) holdback pending a final fee hearing. This application includes requests for additional fees of \$396993.75 and additional disbursements of \$25152.07 for the period subsequent to August 31, 2002.

5. Moffett & Dillon also seeks allowance for the 5% holdback pending a final fee hearing, withheld from the fees previously requested in its prior fee application, which amount totals \$103043.44.

6. During the Final Compensation Period, Moffett & Dillon 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 by this Final Application, with the sole exception of interim allowance of compensation for professional services rendered and reimbursement of actual and necessary expenses tendered by the Debtors in accordance with the Administrative Order and approved pursuant to the Order of this Court dated August 31, 2001 in the total amount of \$1651226.33.

7. There is no agreement or understanding between Moffett & Dillon and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in these cases.

8. The fees charged by Moffett & Dillon in these cases are billed in accordance with its existing billing rates and procedures in effect during the Final Compensation Period. The rates Moffett & Dillon charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates Moffett & Dillon charges for professional and paraprofessional services rendered in comparable nonbankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable nonbankruptcy cases in a competitive national legal market.

9 Pursuant to the UST Guidelines, annexed hereto as Exhibit "B" is a schedule setting forth all Moffett & Dillon professionals and paraprofessionals who have performed services in these chapter 11 cases during the Final Compensation Period, the capacities in which each such individual is employed by Moffett & Dillon, P.C., the department in which each individual practices, the hourly billing rate charged by Moffett & Dillon for services performed by such individual, the aggregate number of hours expended in this matter and fees billed therefore, and the year in which each professional was first licensed to practice law.

10. Annexed hereto as Exhibit "C" is a schedule specifying the categories of expenses for which Moffett & Dillon is seeking reimbursement and the total amount for each such expense category.

11. Pursuant to Section II.D. of the UST Guidelines, annexed hereto as Exhibit “D” is a summary of Moffett & Dillon’s time records billed during the Final Compensation Period, including the utilization of project categories as hereinafter described.

12. Moffett & Dillon maintains computerized records of the time spent by all Moffett & Dillon attorneys and paraprofessionals in connection with the prosecution of Debtors’ chapter 11 cases. Subject to redaction for the attorney-client privilege where necessary to protect the Debtors’ estates, copies of these computerized records will be furnished to the Court, the statutory creditors’ committee and the United States Trustee for the Southern District of New York (the “United States Trustee”) in the format specified by the UST Guidelines.

13. To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Final Compensation Period, but were not processed prior to the preparation of this Final Application, Moffett & Dillon reserves the right to request additional compensation for such services and reimbursement of such expenses in a supplement to this Final Application (the “Supplement”). Moffett & Dillon proposes that, subsequent to the hearing on this Final Application, it will provide the Court, the Debtors, the attorneys for the Committee and the United States Trustee for the Southern District of New York with the Supplement and the time records and disbursements, prepared in the format specified by the Guidelines, that form the basis for the additional charges in the Supplement. If, within 15 days of the service of such records, no party upon which such records were served objects to the Supplement, Moffett & Dillon shall

be entitled to receive payment for such fees and expenses from the Debtors' estate without further leave or notice of the Court.

14. Since the commencement of these cases, pursuant to the Administrative Order, Moffett & Dillon provides the Debtors with a monthly fee statement following the month for which compensation is sought. During the Final Compensation Period, Moffett & Dillon has provided the Debtors with 22 fee statements for each of the months between February 6, 2001 and December 18, 2002. With respect to such fee statements for the Final Compensation Period, Moffett & Dillon received payments totaling \$1957825.31.

### **BACKGROUND**

15. On February 2, 2002, (*the "Commencement Date"*), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.

16. By an order of the Court dated March 1, 2001, (*the "Amended Order Pursuant to Sections 327 and 328 Authorizing Employment of Professionals in the Ordinary Course of Business"*), the Debtors were authorized to retain Moffett & Dillon as their attorneys to render legal services in the prosecution of these chapter 11 cases on an interim basis.

17. On February 13, 2001, the Office of the United States Trustee Appointed an official committee pursuant to section 1102(a) of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. The committee was terminated on December 18, 2002.

### **SUMMARY OF SERVICES**



18. As set forth more fully below, Moffett & Dillon rendered a substantial amount of professional services during the Final Compensation Period in furtherance of the Debtors' orderly wind-down of their business and sale of substantially all of their assets. These serves were often performed under severe time constraints, which was necessary to deal with the various critical issues typically faced by a debtor in a chapter 11 case and certain unique needs of the Debtors.

19. The following is a summary of the significant professional services rendered by Moffett & Dillon, P.C. during the Final Compensation Period:

Including, continued representation of Sunbeam Products, Inc. in litigated and non-litigated product liability claims pending throughout the United States various products manufactured by Sunbeam, continued representation of retailers in like product liability actions whose defense and indemnity have been assumed by Sunbeam Products, Inc., under various buyer agreements and vendors endorsements; preparation for and participation in numerous conferences and teleconferences with Sunbeam Products, Inc. regarding defense strategy of product liability actions, retailer relationships and the settlement of certain actions; preparation for and participation in numerous conferences and teleconferences with locally retained defense counsel regarding defense of product liability claims, strategy, discovery, motions, court appearances, depositions and settlement; preparation for and participation in numerous conferences and teleconferences with counsels representing plaintiffs and claimants in product liability actions regarding discovery, motions, court appearances,

depositions, and settlement; preparation for and participation in numerous conferences and telephone conferences with retained defense experts regarding strategy, discovery, depositions, inspections and court appearances; preparation for and attendance at various court hearings, including scheduling conferences, motion hearings, mediations, settlement conferences and pretrial conferences; attendance at various product and accident site inspections with retained defense experts; preparation of various motions and pleadings, including Rule 26(a) initial disclosures and answers to complaints, Affirmative Defenses, discovery motions and responses and motions in limine; preparation of various discovery requests and responses, including interrogatories, request for production and request for admissions; preparation for and participation in discovery depositions of parties, witnesses and experts; preparation of documents for production with associated production and privilege logs; general communications, correspondence, meetings and conferences; legal research and miscellaneous matters.

20. The foregoing professional services performed by Moffett & Dillon were necessary and appropriate to the administration of the Debtors' chapter 11 cases. The professional services performed by Moffett & Dillon were in the best interests of the Debtors and other parties in interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved. The professional services were performed with expedition and in an efficient manner.

21. The professional services performed by Moffett & Dillon on behalf of the Debtors during the Final Compensation Period required an aggregate expenditure of 14045.83 recorded hours by Moffett & Dillon partners, associates and paraprofessionals. Of the aggregate time expended 7391.90 recorded hours were expended by partners of Moffett & Dillon, 1206.43 recorded hours were expended by associates and 5447.50 recorded hours were expended by paraprofessionals of Moffett & Dillon.

22. During the Final Compensation Period, Moffett & Dillon's hourly billing rates for attorneys ranged from \$125.00 to \$200.00 per hour. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive legal market. As noted, attached hereto is a schedule listing each professional and paraprofessional who performed services in these cases during the Final Compensation Period, the hourly rate charged by Moffett & Dillon for services performed by each such individual and the aggregate number of hours and charges by each such individual.

#### **ACTUAL AND NECESSARY DISBURSEMENTS**

23. As set forth in Exhibit "C" hereto, Moffett & Dillon has disbursed \$95697.15 expenses incurred in providing professional services during the Final Compensation Period. With respect to photocopying expenses, Moffett & Dillon charges all of their clients .10 per page. With respect to facsimile expenses, in compliance with the guidelines, Moffett & Dillon does not charge for facsimile transmissions, other than the cost of long distance facsimiles at applicable toll charge rates, which invariably are less than \$1.25 per page as permitted by the Guidelines. Each of these categories of expenses does not exceed the maximum rate set by the Guidelines. These charges are

intended to cover Moffett & Dillon's direct operating costs, which costs are not incorporated in the Moffett & Dillon hourly billing rates. Only clients who actually use services of the types set forth in Exhibit "C" are separately charged for such services. The effective of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and other facilities and services. The amount of the standard photocopying charge is intended to allow Moffett & Dillon to cover the related expenses of its photocopying service. A determination of the actual expenses per page for photocopying, however, is dependent on both the volume of copies and the total expenses attributable to photocopying on an annual basis.

24. The time constraints imposed by the circumstances of these cases have required Moffett & Dillon's attorneys and other employees at times to devote time during the evenings and on weekends to the performance of legal services on behalf of the Debtors. These extraordinary services were essential to meet deadlines, timely respond to inquiries on a daily basis from creditors and other parties in interest, and satisfy the demands of the Debtors' businesses and the administration of the estates. While Moffett & Dillon has not charged the Debtors for any overtime expense, consistent with firm policy, attorneys and other employees of Moffett & Dillon who worked late into the evenings or on the weekends were reimbursed for their reasonable meal costs and their cost for transportation from the office to home. Moffett & Dillon's regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of services. The reimbursement amounts do not exceed those set forth in the Guidelines.

25. In addition, due to the location of the Debtors' businesses in relation to Moffett & Dillon's offices, frequent long distance telephone calls were required. On several occasions, overnight delivery of documents and other materials was required as a result of circumstances necessitating the use of such express services. These disbursements are not included in Moffett & Dillon's overhead for the purpose of setting billing rates. Moffett & Dillon has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were absolutely necessary, reasonable and justified under the circumstances to serve the needs of the Debtors, their estates and creditors.

**THE REQUESTED COMPENSATION SHOULD BE ALLOWED**

26. Section 330 provides that a court may award a professional employed under section 327 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 amount of 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 service was 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).

27. In the instant case, Moffett & Dillon respectfully submits that the services for which it seeks compensation in this Final Application were, at the time rendered, believed to be necessary for, beneficial to, and in the best interests of the Debtors' estates. Moffett & Dillon further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Debtors, their estates and all parties in interest.

28. Whenever possible, Moffett & Dillon sought to minimize the costs of Moffett & Dillon's services to the Debtors by utilizing junior attorneys and paraprofessionals to handle the more routine aspects of case administration. Moreover, some motions and applications were submitted by Moffett & Dillon on behalf of the Debtors in the form of "presentment" after Moffett & Dillon had obtained a consensus among parties in interest as to the substantive relief sought. That served to minimize the amount of time and expense related to attend hearings.

29. In sum, the services rendered by Moffett & Dillon were necessary and beneficial to the Debtors' estates, 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.

**MEMORANDUM OF LAW**

30. Moffett & Dillon submits that the relevant legal authorities are set forth herein and that the requirement pursuant to Local Bankruptcy Rule 9013-1 that Moffett & Dillon file a memorandum of law in support of this Final Application is satisfied.

### **NOTICE**

31. Notice of this Final Application has been provided to the United States Trustee and the attorneys for the Committee. Moffett & Dillon submits that no other or further notice need be provided.

### **CONCLUSION**

WHEREFORE, Moffett & Dillon, P.C. respectfully requests (1) final allowance of compensation for professional services rendered during the Final Compensation Period in the amount of \$2060868.75 and reimbursement for actual and necessary expenses Moffett & Dillon incurred during the Final Compensation Period in the amount of \$95697.15; (2) the allowance of such compensation for professional services rendered and reimbursement of actual and necessary expenses incurred be without prejudice to Moffett & Dillon's right to seek additional compensation for services performed and expenses incurred during the Final Compensation Period, which were not processed at the time of this Application; (3) the Court grant Moffett & Dillon such other and further as is just.

Date: January 31, 2003

MOFFETT & DILLON, P.C.

By: \_\_\_\_\_/S/\_\_\_\_\_  
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