

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
FASTSHIP, INC., <i>et al.</i> ,	)	Case No. 12-10968 (BLS)
	)	(Joint Administration Pending)
Debtors. <sup>1</sup>	)	
	)	

**APPLICATION FOR ORDER PURSUANT TO SECTION 327(a)  
OF THE BANKRUPTCY CODE AUTHORIZING EMPLOYMENT  
AND RETENTION OF BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP  
AS ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION**

FastShip, Inc., (“FSI”), FastShip Atlantic, Inc. (“FSA”) and Thornycroft, Giles & Co., Inc. (“TCG” and together with FSI and TGC, the “Debtors”) hereby apply (the “Application”) for an order authorizing the employment and retention of Benesch, Friedlander, Coplan & Aronoff LLP (“BFC&A” or the “Firm”) as attorneys for the Debtors under section 327(a) of Title 11 (the “Bankruptcy Code”) of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Application, the Debtors submit the *Declaration of Roland K. Bullard, II in Support of Chapter 11 Petitions and Requests for First Day Relief* and the Verified Statement of Raymond H. Lemisch (the “Lemisch Affidavit”), and respectfully represent as follows:

**JURISDICTION AND VENUE**

1. 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). The venue of the Debtors’ chapter 11 cases and this Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Section

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: FastShip, Inc. (8309), FastShip Atlantic, Inc. (0980) and Thornycroft, Giles & Co., Inc. (1142). The mailing address for the Debtors is 1608 Walnut Street, Suite 501, Philadelphia, PA 19103.

327(a) of the Bankruptcy Code and Bankruptcy Rule 2014 provide the statutory predicates for the relief sought herein.

### **BACKGROUND**

2. Simultaneously herewith (the “Petition Date”), the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their property and assets as debtors in possession. No trustee, examiner or committee of creditors has yet been appointed in the Debtors’ chapter 11 cases.

3. The Debtors are composed of three interrelated entities, each of which is a Delaware corporation. FSI was formed in 1997. Shortly thereafter FSA and TGC were merged into, and then became, wholly-owned subsidiaries of FSI.

4. The Debtors are privately held companies that have sought to raise seed capital to implement a business plan using patented ship technology to revolutionize international freight transportation. The new ships would provide service speeds three times faster than traditional sea freight with previously unheard-of reliability. On a door-to-door basis, the resulting service would be comparable to airfreight at half the cost.

5. TGC holds U.S. and international patents for its unique design (the “Design”) for a ship that operates at high speeds carrying heavy loads of freight in open-ocean conditions in virtually any weather. The Debtors believe the Design will be of significant commercial and military value, particularly in a world of expanding trade, global manufacturing, and just-in-time supply-chain methods.

6. For many years, the Debtors focused their efforts on creating the first commercial service using the Design to demonstrate the value of the new technology in commercial use. To this end, the Debtors developed a business plan for a freight service on the North Atlantic trade

route, which business plan required the Debtors to build four ships using the Design with specialized cargo-handling systems calling on dedicated terminals in Philadelphia, Pennsylvania and Cherbourg, France.

7. In order to construct the ships and fully fund the business plan, the Debtors sought to raise \$2 billion in financing. During the period from 1998 to 2008, the Debtors were close to raising the necessary capital to launch the business plan on three occasions, but were unable to close on the required financing because of political and markets setbacks.

8. The combination of deal fatigue and the collapse of the global economy in 2008-2009 forced the Debtors to abandon their original commercial business plan.

9. At the same time that hope for the commercial business plan faded, the U.S. Navy entered into a contract to build a new class of high speed combat vessels, the first of which was built and delivered at a cost of \$650 million. The Debtors believe that the design of this vessel infringes on TGC's patents. As a result, the Debtors believe a strong claim exists against the U.S. government for patent infringement. The Debtors attempted to reach a negotiated settlement with the U.S. government by filing an administrative claim in April 2008. Fully two years later, the U.S. government summarily denied the Debtors' claim on what the Debtors, and their technical advisors, believe to be meritless grounds.

10. Through the bankruptcy process, the Debtors will create a liquidating trust to pursue and monetize the patent infringement litigation against the U.S. government and distribute the proceeds of such action to their creditors in an orderly fashion.

#### **RELIEF REQUESTED AND REASONS THEREFOR**

11. By this Application, the Debtors seek to employ and retain BFC&A as the Debtors' bankruptcy counsel for the prosecution of the Debtors' chapter 11 cases. Accordingly, the Debtors respectfully request entry of an order under section 327(a) of the Bankruptcy Code

authorizing the Debtors to employ and retain BFC&A as the Debtors' attorneys, effective as of the Petition Date, to perform the legal services that will be necessary during the Debtors' chapter 11 cases, as more fully described below.

12. The Debtors have selected BFC&A as its attorneys because of, among other reasons, the Firm's extensive experience in and knowledge of business reorganizations under chapter 11 of the Bankruptcy Code. BFC&A is well suited for the type of representation required by the Debtors, inasmuch as the Firm possesses substantial bankruptcy, debt restructuring, creditors' rights, environmental, labor, finance and litigation expertise, and BFC&A's attorneys have had significant roles in many large bankruptcy cases and reorganizations under the Bankruptcy Code. Moreover, BFC&A is familiar with the Debtors' business and financial affairs and many of the potential legal issues that may arise in the context of these reorganization cases. Accordingly, the Debtors believe that BFC&A is well qualified and able to represent the Debtors in these cases in a most efficient and responsive manner.

**NECESSITY FOR EMPLOYMENT AND  
PROFESSIONAL SERVICES TO BE RENDERED**

13. The services of BFC&A are necessary to enable the Debtors to discharge their duties as debtors-in-possession. Subject to the jurisdiction and further order of this Court, BFC&A will undertake to render the following services to the Debtors:

- a. Advising the Debtors of their rights, powers, and duties as debtors-in-possession continuing to operate and manage their businesses and properties;
- b. Attending meetings and negotiating with representatives of creditors and other parties in interest;
- c. Preparing on behalf of the Debtors all necessary and appropriate applications, motions, pleadings, draft orders, notices, schedules, and other documents, and reviewing all financial and other reports to be filed with the Court in this chapter 11 case;

- d. Advising the Debtors concerning, and preparing responses to, applications, motions, pleadings, notices, and other papers that may be filed and served in this chapter 11 case;
- e. Advising the Debtors concerning, and assisting in the negotiation and documentation of, the refinancing or sale of their assets, debt and lease restructuring, executory contract and unexpired lease assumptions, assignments or rejections, and related transactions;
- f. Reviewing the nature and validity of liens asserted against the Debtors' property and advising the Debtors concerning the enforceability of such liens;
- g. Advising the Debtors concerning the actions that they might take to collect and recover property for the benefit of their estates;
- h. Counseling the Debtors in connection with the formulation, negotiation, and confirmation of a plan or plans of reorganization and related documents; and
- i. Performing such other legal services for and on behalf of the Debtors as may be necessary or appropriate in the administration of its chapter 11 case and business, including advising and assisting the Debtors with respect to debt restructuring, corporate governance issues related to such restructuring, stock or asset dispositions and general business and litigation matters.

14. It is necessary and essential that the Debtors, as debtors-in-possession, employ the Firm to render the foregoing professional services.

15. BFC&A has indicated a willingness to act on behalf of the Debtors in such capacity.

**CONNECTIONS WITH THE DEBTORS, THEIR CREDITORS, THEIR INSIDERS,  
AND THEIR RESPECTIVE ATTORNEYS AND ACCOUNTANTS**

16. To the best of the Debtors' knowledge, the partners and associates of BFC&A do not have any connection with the Debtors, their creditors, their insiders, their shareholders, or their respective attorneys or accountants, except as set forth in the Lemisch Affidavit, a true and accurate copy of which is annexed hereto as Exhibit A.

17. As set forth in the Lemisch Affidavit:
- a. Neither BFC&A nor any attorney at the Firm holds or represents an interest adverse to the Debtors' estates.
  - b. Neither BFC&A nor any attorney at the Firm is or was a creditor, an equity security holder or an insider of the Debtors.
  - c. Neither BFC&A nor any attorney at the Firm is or was, within two years before the Petition Date, a director, officer, or employee of the Debtors.
  - d. BFC&A does not have an interest materially adverse to the interests of the Debtors' estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, or connection with, or interest in the Debtors, or for any other reason.

18. No attorney at BFC&A is related to any United States District Judge or United States Bankruptcy Judge for the District of Delaware or to the United States Trustee for such district or to any known employee in the office thereof.

### **PROPOSED COMPENSATION**

19. During the 90 days prior to the commencement of this case, BFC&A was not paid approximately any amounts for current legal services provided to the Debtors in connection with (1) the evaluation of the Debtors' financial restructuring alternatives and (2) the Debtors' determination to seek relief under the Bankruptcy Code and preparation of the necessary first-day documents and pleadings.<sup>2</sup> Further, as of the filing of the Debtors' petitions, all amounts owed to BFC&A by the Debtors were released and waived by BFC&A.

20. BFC&A received funds from the Debtors in the amount of \$3,138 to pay for the filing fees associated with filing three chapter 11 petitions.

21. Subject to allowance by the Court, BFC&A will charge the Debtors for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates as in

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<sup>2</sup> BFC&A also rendered prepetition legal services to the Debtors assisting the Debtors in assessing their respective financial conditions and how they could best proceed to maximize the return to their respective creditors.

effect on the date services are rendered. The current hourly rates charged by the primary or lead BFC&A attorneys and paraprofessionals who are expected to provide professional services to the Debtor are as follows:<sup>3</sup>

Partners:	Raymond H. Lemisch	\$625.00
Associates:	Kari B. Coniglio	\$295.00
	Jennifer E. Smith	\$265.00
Paralegals:	Lisa Behra	\$200.00
	Elizabeth Hein	\$240.00

22. The Debtors understand that BFC&A will bill its customary reimbursements as charged generally to bankruptcy and non-bankruptcy clients alike, and in accordance with applicable guidelines. BFC&A is customarily reimbursed for all expenses incurred by it in connection with the representation of a client in a given matter. Such expenses include, without limitation, travel costs, long distance calls, express mail, special or hand deliveries, copying costs, document processing, computerized legal research, court fees, transcript costs and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client.

23. BFC&A intends to apply to this Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and orders of this Court.

### **NOTICE**

24. No trustee, examiner, or creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been given to: (a) the United States Trustee for this region, (b) the Debtors' twenty largest unsecured creditors; and (c) IP Co. LLC, the lender . In light of

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<sup>3</sup> It has been the historical practice of BFC&A to reset its hourly rates annually, effective October of each year.

the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors request entry of an order authorizing the Debtors to employ and retain BFC&A under a general retainer to represent the Debtors in the prosecution of these chapter 11 cases, and that the Court grant the Debtors such other and further relief as is just and proper.

Dated: March 20, 2012

FASTSHIP, INC.,  
Debtor and Debtor in Possession

By: /s/ Roland K. Bullard  
Roland K. Bullard  
President and Chief Executive Officer

FASTSHIP ATLANTIC, INC.  
Debtor and Debtor in Possession

By: /s/ Roland K. Bullard  
Roland K. Bullard  
President

THORNYCROFT, GILES & CO., INC.  
Debtor and Debtor in Possession

By: /s/ Roland K. Bullard  
Roland K. Bullard  
President