

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

In re:

BIOPURE CORPORATION,

Debtor.

Chapter 11

Case No. 09-____-____

**APPLICATION BY DEBTOR FOR AUTHORITY TO EMPLOY
CRAIG AND MACAULEY PROFESSIONAL CORPORATION AS COUNSEL
ON AN INTERIM AND FINAL BASIS**

Pursuant to sections 327(a) and 1107(b) of Title 11 of the United States Code (as amended, the “Bankruptcy Code”), Fed. R. Bankr. P. 2014(a) and MLBR 2014-1, Biopure Corporation, the above-captioned debtor and debtor-in-possession (the “Debtor” or “Company”), hereby requests authority to employ the law firm of Craig and Macauley Professional Corporation (“Craig and Macauley”), Federal Reserve Plaza, 600 Atlantic Avenue, Boston, Massachusetts 02210 as counsel to the Debtor. Simultaneously with this filing, the Debtor has filed a motion requesting an emergency hearing to retain Craig and Macauley on an interim basis until such time as a final hearing to consider this Application is scheduled by this Court. In support of this Application, the Debtor respectfully states as follows:

BACKGROUND

1. On July 16, 2009 (the “Petition Date”), the Debtor filed a voluntary petition in this Court under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Neither a trustee nor an official committee of unsecured creditors has been appointed.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408-09. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. The statutory predicates for the relief requested herein are sections 327(a) and 1107(b) of the Bankruptcy Code, Fed. R. Bankr. P. 2014(a) and MLBR 2014-1.

DESCRIPTION OF THE BUSINESS

4. The Debtor is a publicly-held company. Its shares of Class A common stock are registered under Section 12(g) of the Securities Exchange Act of 1934 and traded on The Nasdaq Stock Market.

5. The Company develops pharmaceuticals, called oxygen therapeutics, that are intravenously administered to deliver oxygen to the body's tissues. Since its founding in 1984, the Company has been primarily a research and development company focused on developing Hemopure®, the Company's oxygen therapeutic for human use, and obtaining regulatory approval in the United States and other markets. The Company's research and development expenses have been devoted to basic research, product development, process development, preclinical studies, clinical trials and regulatory activity. In addition, the Company's development expenses in the past included the design, construction, validation and maintenance of a large-scale pilot manufacturing plant in Cambridge, Massachusetts. In 2003 the Company entered into an agreement with the U.S. Naval Medical Research Center (NMRC) in which the NMRC agreed to develop Hemopure® for use in trauma.

6. Prior to 1998, the Company manufactured products solely for use in preclinical and clinical trials. As an offshoot of the research and development for Hemopure®, Oxyglobin®, a similar product, gained marketing approval for veterinary use in the United States

in 1998 and in the European Union in 1999. Following the U.S. approval, Oxyglobin® was produced for sale in the same pilot manufacturing plant that was built and maintained primarily for the development of Hemopure®. More than 200,000 units of Oxyglobin® have been sold to veterinarians. Marketing approval of Hemopure® for human use was granted in South Africa in 2002.

7. During fiscal years 2008 and 2009, the Company took measures to reduce its ongoing cash burn. In November 2008, it effected reductions in force and shut down its manufacturing facility in Cambridge and its processing facility in Pennsylvania. By November 2008, nearly all of its employees had been laid off. Also in 2008, the Company stopped all of its then ongoing clinical trials because of slow enrollment and for cost containment. The Company has continued limited operations since then.

8. In January 2009, the Company sold substantially all its existing inventory of Oxyglobin®. In March 2009, the Company also sold its manufacturing facility in Pennsylvania and entered into a lease of the facility from the purchaser.

Events Leading to Debtor's Filing of its Petition for Relief under Chapter 11 of the Bankruptcy Code

9. In late April 2008, the Journal of the American Medical Association (“JAMA”) published a so-called meta-analysis of hemoglobin based oxygen carriers. The analysis included summary data from Hemopure® trials as well as publicly available data from the trials of four other products, including abandoned investigational products. The Company believes the article to be greatly flawed. The Company published on its website some of its criticisms of the methodology and conclusions in the article, but neither the Company's efforts, objections of other manufacturers in the industry, nor published letters to JAMA by knowledgeable doctors reversed the adverse perception created by the article. Further, some of the article's authors sent

letters to regulatory bodies and doctors in the countries where the Company was conducting clinical trials and in South Africa, where Hemopure® has marketing approval, recommending that Hemopure® clinical trials be stopped and that the registration of Hemopure® in South Africa be revoked. Subsequently, the South African Department of Health's regulatory body, the Medicines Control Council of South Africa, advised the Company of its decision to discontinue the registration of Hemopure®. The Company is appealing that decision.

10. Despite diligent efforts, extensive preclinical studies, responsiveness to concerns of the FDA and over \$20 million in Congressional appropriations, the U.S. Naval Medical Research Center has been prevented by the FDA from proceeding with a development program to use Hemopure® in war injuries or pre-hospital use in civilian trauma patients.

11. Sales of Hemopure® in South Africa were increasing before the publication of the article. However, publicity from the JAMA article adversely affected the trend. Most of the Company's South Africa personnel were terminated in November 2008.

12. In addition, annual losses have existed from operations since the Company's inception. The key drivers of the losses have been cost of revenues, research and development and general and administrative expenses. The Company has not had adequate cash to fund operations since late in fiscal year 2008. At October 31, 2008, the Company had \$1,095,000 in cash and cash equivalents. At December 31, 2008, it had \$356,000 in cash and cash equivalents. Since October 31, 2008, the Company has drastically reduced operations and collected limited revenue. As of March 25, 2009, the Company anticipated that its cash on hand and expected cash inflows could impact its ability to continue to operate. The Company has not been able to generate sufficient financing to resume full operations and ensure payment of its operating expenses going forward.

13. In February 2009, the Company retained an investment banker to advise it with respect to strategic alternatives. The Company has been presented to potential investors and purchasers since that time. After considering alternatives, the Company has entered into an Asset Purchase Agreement pursuant to which it contemplates selling a significant portion of its assets. The Company has filed a motion seeking authority to consummate the transactions contemplated by the Asset Purchase Agreement and to sell its remaining substantial asset under section 363 of the Bankruptcy Code.

RETENTION OF CRAIG AND MACAULEY PROFESSIONAL CORPORATION

14. Shortly prior to the commencement of these proceedings, the Debtor obtained advice and counsel from Craig and Macauley with respect to the possible restructuring of the Debtor's financial affairs. Accordingly, the Debtor wishes to retain Craig and Macauley to represent it in these proceedings.

15. The Debtor has chosen Craig and Macauley because of its (i) familiarity with the Debtor's business and financial affairs and (ii) recognized expertise in bankruptcy law, transactions under section 363 of the Bankruptcy Code, insolvency and the law of debtors' and creditors' rights. The Debtor believes that Craig and Macauley is well qualified to represent it in its chapter 11 case. It is anticipated that Craig and Macauley, as counsel to the Debtor, will perform various services, including but not limited to, the following:

- a. providing the Debtor with legal advice with respect to its rights, duties and powers in this case;
- b. assisting the Debtor in taking all necessary action to protect and preserve its estate and any other matters relevant to this case;
- c. assisting the Debtor in investigating and pursuing avoidance actions and other causes of action or claims the Debtor may have against certain parties;
- d. preparing pleadings, applications and objections as may be necessary in furtherance of the Debtor's interests and objectives;

- e. consulting with any appointed official committee, its counsel, other professionals retained in these cases and the United States Trustee concerning the administration of the estate;
- f. representing the Debtor in hearings and other judicial proceedings; and
- g. performing such other legal services as may be required and are deemed to be in the interest of the Debtor in accordance with those powers and duties set forth in Title 11 of the United States Code.

16. The Debtor believes that Craig and Macauley possesses the necessary knowledge and expertise in the areas of law relevant to this case so as to qualify the firm to act as the Debtor's counsel in all related proceedings.

17. Craig and Macauley has stated its willingness to render the necessary services to the Debtor and to be compensated in accordance with the terms and conditions set forth below and in the accompanying *Affidavit of Christopher J. Panos in Support of Application by Debtor for Authority to Employ Craig and Macauley Professional Corporation as Counsel and Statement Under Fed. R. Bankr. P. 2016*, of even date (the "Panos Affidavit").

18. To the best of the Debtor's knowledge, neither Craig and Macauley, nor any member or associate thereof, has represented or represents any interest adverse to the Debtor's estate with respect to the matter or matters on which Craig and Macauley is to be employed. To the best of the Debtor's knowledge and belief (other than as stated herein and disclosed in the Panos Affidavit), neither Craig and Macauley, nor any member or associate thereof, has any connection of any kind or nature with the Debtor, its creditors, other parties-in-interest or the attorneys or accountants employed by estate representatives, except that Craig and Macauley may have represented or may represent parties-in-interest in other matters wholly unrelated to the Debtor's pending bankruptcy case, in which attorneys or accountants of the Debtor, creditors or other parties-in-interest may also serve or have served as professional persons.

19. The Debtor has been apprised of the representations disclosed in the Panos Affidavit and the Debtor is of the belief that such representations do not in any manner affect or relate to its bankruptcy case and therefore will not impair Craig and Macauley's ability to represent it. The Debtor believes that the Craig and Macauley lawyers are "disinterested persons," as such term is defined in section 101(14) of the Bankruptcy Code.

20. Subject to court approval and in accordance with section 330(a) of the Bankruptcy Code, the Debtor has agreed to compensate Craig and Macauley for its services at its usual hourly rates in effect at the time such services are rendered. The Debtor has also agreed to reimburse Craig and Macauley in full for its cash disbursements and for such expenses as Craig and Macauley customarily bills to its clients. The Debtor has agreed that Craig and Macauley may apply its retainer in this case to its fees and expenses as they accrue post-petition, but that such compensation and reimbursement of expenses is subject to allowance by the Court upon appropriate application and upon notice and a hearing. The principal attorneys presently designated to assist the Debtor and their present respective hourly rates are:

Name	Position	Rate/Hour
Christopher J. Panos	Shareholder	\$495
Kathleen A. Rahbany	Associate	\$285
All other Shareholders		\$350-\$525
All other Associates		\$195-\$350
Of Counsel		\$400-\$495
Paralegals		\$125-\$150

21. The hourly rates set forth above are subject to periodic adjustment to reflect economic and other conditions.

22. As set forth in the Panos Affidavit, the Debtor has paid Craig and Macauley \$78,534.50 on account of prepetition services and has reimbursed Craig and Macauley

\$2,227.09 on account of prepetition expenses. Craig and Macauley has agreed to represent the Debtor in connection with its Chapter 11 case, and the Debtor has provided Craig and Macauley with a retainer of \$45,188.41 to be held and applied for payment for such services subject to Court approval. The Debtor has also agreed to seek authority to pay Craig and Macauley on a current basis and to use debtor-in-possession financing to pay fees as incurred. Craig and Macauley has also agreed to provide certain basic services as may be required upon conversion or dismissal of the Debtor's chapter 11 case (the "Post-Conversion/Post-Dissmissal Services"). Craig and Macauley has agreed to perform any Post-Conversion/Post-Dissmissal Services for a flat fee of \$25,000 (the "Flat Fee") in order to comply with the dictates of *Lamie v. United States Trustee*, 540 U.S. 526 (2004). Craig and Macauley has earned and been paid the Flat Fee. Craig and Macauley and the Debtor have agreed that, if for any reason the Flat Fee or any portion of it is refunded, it shall be held by Craig and Macauley as a pre-petition retainer.

23. The Debtor believes that the employment of Craig and Macauley is in the best interests of it and its creditors.

24. For purposes of the hearing to consider various "first day motions," the Debtor requests that the Court grant interim relief with respect to this Application. The Debtor believes that if the Debtor is not able to retain Craig and Macauley at the very least on an interim basis it will suffer irreparable harm.

25. Craig and Macauley has not agreed to share with any person or firm the compensation to be paid for services rendered in connection with the Debtor's case.

NOTICE

26. Notice of this application has been given via electronic mail transmission, facsimile, hand delivery, overnight mail or first-class mail to: (i) the Office of the United States Trustee and (ii) the holders of the twenty (20) largest unsecured claims against the Debtor.

NO PRIOR REQUEST

27. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order:

- (i) authorizing the Debtor to employ Christopher J. Panos and the law firm of Craig and Macauley Professional Corporation as counsel pursuant to 11 U.S.C. §§ 327(a) and 1107(b), Fed. R. Bankr. Rule 2014(a) and Local Bankruptcy Rule 2014-1, and
- (ii) granting such other and further relief as is just and proper.

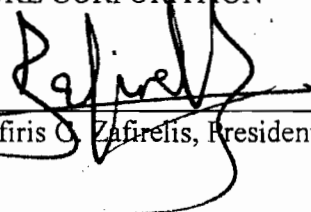
[Signature Page Follows]

[Application to Employ Craig and Macauley Professional Corporation]

July 16, 2009

BIOPURE CORPORATION

By:



Zafiris C. Zafirelis, President

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

In re:

BIOPURE CORPORATION,

Debtor.

Chapter 11
Case No. 09-____ - ____

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
CRAIG AND MACAULEY PROFESSIONAL CORPORATION
AS COUNSEL TO THE DEBTOR ON AN INTERIM AND FINAL BASIS**

Upon the application (the “Application”) of the above-captioned debtor and debtor-in-possession (the “Debtor”) for an order under 11 U.S.C. §§ 327(a) and 1107(b), Fed. R. Bankr. P. 2014(a) and MLBR 2016-1 authorizing the employment and retention of Craig and Macauley Professional Corporation (“Craig and Macauley”) as counsel to the Debtor; and upon the Affidavit of Christopher J. Panos; and this Court having determined that granting the relief requested in the Application is in the best interests of the Debtor, its estate and creditors; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. That subject to the terms and conditions of this Order, the Application is granted on an interim basis.
2. The Debtor is authorized to employ and retain Craig and Macauley, effective as of the Petition Date as set forth in the Application.

3. That Craig and Macauley shall be compensated in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules and any applicable regulations and administrative orders entered by this Court governing compensation in this case.

4. That any objection to the relief requested in this Application on a permanent basis must be filed with the Court on or before _____ at _____ .m.

5. That if timely objections are received there shall be a hearing held on _____ at _____ .m. to consider such timely objections to the proposed retention of Craig and Macauley.

6. That if no objections to Craig and Macauley's retention are timely filed, served and received in accordance with this Order, this Order shall be deemed a final order without further notice or hearing, and the Application shall be granted in its entirety, and Craig and Macauley's retention shall be made effective nunc pro tunc to the Petition Date.

Dated: _____

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

In re:

BIOPURE CORPORATION,

Debtor.

Chapter 11
Case No. 09-____ - ____

**AFFIDAVIT OF CHRISTOPHER J. PANOS IN SUPPORT OF
APPLICATION BY DEBTOR FOR AUTHORITY TO EMPLOY
CRAIG AND MACAULEY PROFESSIONAL CORPORATION AS COUNSEL
AND STATEMENT UNDER FED. R. BANKR. P. 2016**

I, Christopher J. Panos, hereby depose and state as follows:

1. I am the Managing Shareholder of the law firm of Craig and Macauley Professional Corporation (“Craig and Macauley”).
2. I am generally familiar with the business of Craig and Macauley and have made due inquiry with regard to the facts set forth herein prior to making this affidavit.
3. I am a member of the bar of the Supreme Judicial Court of Massachusetts and of the United States District Court for the District of Massachusetts. I hereby certify that I am a member in good standing in every jurisdiction in which I have been admitted to practice and there are no disciplinary proceedings pending against me as a member of the bar in any jurisdiction.
4. I am familiar with the matters herein and I submit this affidavit in support of the application of even date (the “Application”) submitted by Biopure Corporation, the above-captioned debtor (the “Debtor”) seeking approval from this Court, *nunc pro tunc* as of the Petition Date, of the Debtor’s selection and employment of Craig and Macauley as counsel to the Debtor under a general retainer.

5. Craig and Macauley maintains records of all of its clients, the matters on which it represents its clients and the other parties that have a substantial role in such matters. Craig and Macauley has reviewed such records to determine Craig and Macauley's connections with the parties identified on Exhibit A hereto, which includes the top twenty (20) unaffiliated, unsecured creditors of the Debtor, known affiliates of the Debtor and the Debtor's professionals.

6. I hereby represent that, to the best of my knowledge, information and belief, neither I nor any member of Craig and Macauley holds or represents any interest adverse to the Debtor or its bankruptcy estate.

7. Based on the above review, I am not presently aware of any representation by Craig and Macauley of any creditors of the Debtor or other parties in interest, except as may be set forth in paragraph 8 hereof. It is possible, however, that Craig and Macauley may have represented or is presently representing other creditors or parties in interest whose relationship to these proceedings is not presently known to Craig and Macauley. I will amend this affidavit to the extent any such relationship becomes known to me.

8. Craig and Macauley has provided advice and counsel to the Debtor with respect to the possible restructuring of the Debtor's financial affairs for the period leading up to the Debtor's voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code"). Otherwise, my and Craig and Macauley's known connections with the Debtor, any creditor thereof, any other party in interest or their respective attorneys or accountants are:

(a) Bingham McCutchen has served as litigation counsel to the Debtor and is a creditor of the Debtor. Craig and Macauley serves as co-counsel with Bingham McCutchen representing a chapter 11 plan trustee in certain director and officer litigation pending before the United States Bankruptcy Court for the District of Connecticut.

(b) The University of Alabama at Birmingham (“UA”) is a creditor of the Debtor. On information and belief, The University of Alabama Press (“Press”) is an affiliate of UA. The Press was a creditor of Sabine, Inc. (f/k/a RoweCom, Inc.). I served as counsel to the Official Committee of Unsecured Creditors of Sabine, Inc. and serves as trustee of the Sabine, Inc. Liquidating Trust (the “Trust”) of which the Press was a beneficiary.

(c) The City of Cambridge is a creditor of the Debtor. I and Craig and Macauley have represented the City of Cambridge from time to time in discrete matters unrelated to the Debtor’s bankruptcy.

9. Due to the size and diversity of Craig and Macauley’s practice, Craig and Macauley may have represented or otherwise dealt with, and may now be representing or otherwise dealing with, various persons (and their attorneys and accountants) who are or who may consider themselves creditors or parties in interest in this case. After conducting conflict checks with respect to the Debtor’s 20 largest unsecured creditors, Craig and Macauley has not identified any conflicts. To the best of my knowledge and information, such representation or involvement does not relate in any way to the Debtor, its estate or pending case. To the best of my knowledge, after due inquiry, Craig and Macauley:

(a) is not a creditor of the Debtor, an equity security holder of the Debtor or an “insider” of the Debtor, as that term is defined at 11 U.S.C. § 101(31);

(b) is not and has not been, within two years before the date of the filing of the petition, a director, officer, or employee of the Debtor; and

(c) does not have an interest materially adverse to the interests of the Debtor’s estate, or of any class of creditors or equity security holders thereof, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor or for any other reason.

10. Accordingly, I understand that I am and each shareholder and each associate of my firm is a “disinterested person” as that term is defined at 11 U.S.C. §101(14).

11. Craig and Macauley is willing to be retained as counsel to the Debtor and intends to apply to this Court for compensation for professional services rendered and for reimbursement of actual, necessary expenses arising in the performance of such services in accordance with 11 U.S.C. §§ 330(a) and 331, Fed. R. Bankr. P. 2016(a) and MLBR 2016-1.

12. Subject to court approval in accordance with 11 U.S.C. §§ 330(a) and 331, Fed. R. Bankr. P. 2016 and MLBR 2016-1, compensation will be payable to Craig and Macauley on an hourly basis, plus reimbursement of actual, necessary expenses incurred by Craig and Macauley. I will be the shareholder primarily responsible for the representation of the Debtor in this case. All expenses incurred by Craig and Macauley will be charged in accordance with the applicable rules and guidelines of this Court. The principal attorneys presently designated to assist the Debtor and their present respective hourly rates are:

Name	Position	Rate/Hour
Christopher J. Panos	Shareholder	\$495
Kathleen A. Rahbany	Associate	\$285
All other Shareholders		\$350-\$525
All other Associates		\$195-\$350
Of Counsel		\$400-\$495
Paralegals		\$125-\$150

The hourly rates set forth above are subject to periodic adjustment to reflect economic and other conditions.

13. Craig and Macauley has not agreed to share with any person (except members of Craig and Macauley) the compensation to be paid for the services rendered in this case. No promises have been received by Craig and Macauley or by any member or associate thereof with respect to compensation in connection with this case other than in accordance

with the provisions of Title 11 of the United States Code. The Debtor has paid Craig and Macauley \$78,534.50 on account of prepetition services and has reimbursed Craig and Macauley \$2,227.09 on account of prepetition expenses. Craig and Macauley has agreed to represent the Debtor in connection with its chapter 11 case, and the Debtor has provided Craig and Macauley with a retainer of \$45,188.41 to be held and applied for payment for such services subject to Court approval. Upon information and belief, the retainer was generated by the Debtor from business operations. The Debtor has also agreed to seek authority to pay Craig and Macauley on a current basis and to use debtor-in-possession financing to pay fees as incurred. Craig and Macauley has also agreed to provide certain basic services as may be required upon conversion or dismissal of the Debtor's chapter 11 case (the "Post-Conversion/Post-Dismissal Services"). Craig and Macauley has agreed to perform any Post-Conversion/Post-Dismissal Services for a flat fee of \$25,000 (the "Flat Fee") in order to comply with the dictates of *Lamie v. United States Trustee*, 540 U.S. 526 (2004). Craig and Macauley has earned and been paid the Flat Fee. Craig and Macauley and the Debtor have agreed that, if for any reason the Flat Fee or any portion of it is refunded, it shall be held by Craig and Macauley as a pre-petition retainer.

14. I shall amend this statement immediately upon my learning that (a) any of the within representations are incorrect or (b) there is any change of circumstances relating thereto.

15. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 16th day of July, 2009.

/s/ Christopher J. Panos
Christopher J. Panos

Exhibit A

Debtor

Biopure Corporation

Directors and Officers of the Debtor

David N. Judelson

Guido J. Neels

Allan R. Ferguson

C. Everett Koop, M.D.

Zafiris G. Zafirelis

Danile P. Harrington

Jay B. Pieper

Jane Kober

Debtors' Affiliates

Biopure Netherlands, BV

Biopure Africa, Pty, Ltd

Reperfusion Systems Incorporated

DeNovo Technologies Corporation

NeuroBlok Incorporated

Eleven Hurley Street Associates

20 Largest Unsecured Creditors

America's Growth Capital, LLC

BKG Co Inc.

Bingham McCutchen

Broadridge

Computershare

ConEdison Solutions

Dr. Martin P. Sussman

Foley Hoag LLP

Hamilton, Brook, Smith & Reynolds Corp.

Intelligen, Inc.

Iron Mountain Incorporated

Klifovet AG

Lewis J. Levien, Ph.D.

Oxford Radcliffe Hospital

Quartesian LLC

St. Lukes Hospital

SunGard Availability Services LP

Triskel Integrated Services

U.S. Naval Medical Research Center

University of Alabama at Birmingham

Debtors' Professionals

Craig and Macauley Professional Corporation

Ropes & Gray LLP

Newbury, Piret Companies, Inc.

King, McNamara & Moriarty

Moody, Famiglietti & Andronico, LLP