

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

IN RE: ) In Proceedings Under Chapter 11  
 )  
 US FIDELIS, INC., ) Case No. 10-41902-705  
 )  
 )  
 Debtor. )

**FINAL APPLICATION FOR ALLOWANCE OF FEES AND  
EXPENSES FILED BY LATHROP & GAGE DC, PLLC,  
AS SPECIAL COUNSEL FOR DEBTOR US FIDELIS, INC.  
(Summary of Request)**

<b>Name of Applicant</b>	Lathrop & Gage DC, PLLC
<b>Date of Approval of Employment</b>	December 10, 2010
<b>Identity of Party Represented</b>	Debtor
<b>Time Period Requested</b>	August 1, 2010 through September 12, 2012
<b>Amount of Fees Requested</b>	\$35,667.00
<b>Amount of Expenses</b>	\$39.16
<b>Previous Fee Orders</b>	First Interim, entered 2/18/2011 (Dkt. #613) Second Interim, entered 7/26/2011 (Dkt. #827) Third Interim, entered 12/23/2011 (Dkt. #964)
<b>Interim or Final Application</b>	Final Application

COMES NOW Debtor US Fidelis, Inc. (“Debtor”), by and through its undersigned counsel, on behalf of Lathrop & Gage DC, PLLC (“L&G DC”), special counsel for Debtor and, pursuant to 11 U.S.C. §§ 328, 330 and 331, files this *Final Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel Debtor US Fidelis, Inc.* (the “L&G DC Final Application”). In support thereof, Debtor states as follows:

## **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and E.D. Mo. L.R. 81-9.01(B)(1).

## **BACKGROUND**

2. On March 1, 2010 (the “Petition Date”), Debtor filed its Voluntary Petition for Relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). The Debtor continued managing its affairs as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code until the Effective Date (defined below).

3. On November 12, 2010, the Debtor filed its *Application for Employment of Kenneth E. Chase and the Law Firm of Lathrop & Gage DC, PLLC, as Special Counsel for Debtor* (the “L&G DC Employment Application”). On December 10, 2010, the Bankruptcy Court granted the L&G DC Employment Application.

4. On August 28, 2012, the Court confirmed the First Amended Plan of Liquidation as Modified on July 13, 2012 (the “Plan”). September 12, 2012 is the “Effective Date” under the Plan.

## **L&G DC ATTORNEYS’ FEES AND EXPENSES**

5. January 14, 2011, L&G DC filed its First Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “First Interim Application”) (Dkt. #551). On February 18, 2011, the Court entered its Order Granting First Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “First Interim Order”) (Dkt. #613) approving and allowing L&G DC its request for fees totaling \$18,691.50 and expenses totaling \$18.12 for the first interim period from August 1, 2010 through November 30, 2010.

6. On June 14, 2011, L&G DC filed its Second Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “Second Interim Application”) (Dkt. #782). On July 26, 2011, the Court entered its Order Granting Second Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “Second Interim Order”) (Dkt. #827) approving and allowing L&G DC its request for fees totaling \$9,237.50 and no expenses for the second interim period from December 1, 2010 through April 30, 2011.

7. On November 21, 2011, L&G DC filed its Third Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “Third Interim Application”) (Dkt. #939). On December 23, 2011, the Court entered its Order Granting Third Interim Application for Allowance of Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc. (the “Third Interim Order”) (Dkt. #964) approving and allowing L&G DC its request for fees totaling \$7,738.00 and expenses totaling \$21.04 for the third interim period from May 1, 2011 through September 30, 2011.

8. This is L&G DC’s Final Application.

9. L&G DC maintained detailed daily records in the ordinary course of its business. These time records were prepared contemporaneously with the rendition of services to the client. These time records described the person performing the services, the date services were rendered, a detailed description of services and the length of time spent delivering those services. These time records were kept in increments of tenths of an hour. Because supporting documentation for all previous interim fee periods were attached to the First Interim Application, the Second Interim Application, and the Third Interim Application and are now part of the

Court's record in this case, the Debtor hereby incorporates that supporting documentation into this Final Application.

10. To date, Debtor has paid 100% of L&G DC's fees and 100% of L&G DC's expenses pursuant to the First Interim Order, Second Interim Order, and Third Interim Order (collectively, the "Interim Orders"). Therefore, the Debtor does not owe any amounts to L&G DC.

#### **STATUS OF CASE**

11. During the interim periods, L&G DC's representation had focused on the following projects:

- A. **State of Maryland:** Despite the fact that 42 States Attorneys General agreed to a "standstill" of litigation against the Debtor and the Atkinsons and were working with the Debtor and the Committee in an effort to settle their claims through a consensual plan of liquidation that would benefit all creditors, the State of Maryland filed a lawsuit against the Debtor and the Atkinsons seeking injunctive and monetary relief in excess of \$30 million. During the previous interim compensation periods, L&G DC assisted in the removal of the Maryland action to Federal Court in Maryland, advised the Debtor with respect to the Maryland action, attended court appearances on behalf of the Debtor in Maryland courts, and prepared and filed pleadings on the Debtor's behalf.

#### **INFORMATION REQUIRED BY LOCAL RULES**

12. L.B.R. 2016-1.B requires that all professional fee applications analyze the twelve factors (the "Johnson Factors") for allowance of compensation set forth in *Johnson v. Georgia Highway Express*, 388 F.2d 714 (5th Cir. 1974). See also *P.A. Novelly v. Palans (In re Apex Oil*

Co.), 960 F.2d 728 (8th Cir. 1992); *Chamberlain v. Kula (In re Kula)*, 213 B.R. 729, 736-39 (B.A.P. 8th Cir. 1997); *In re Grimes*, 115 B.R. 639, 642-43 (Bankr. D.S.D. 1990).

13. The Johnson Factors are as follows:

- B. *The time and labor required.* L&G DC described in detail the time spent and included a complete description of the tasks performed.
- C. *The novelty and difficulty of the questions.* This case involves novel and difficult issues of law and fact arising from the activities of Debtor's principals in the operations of Debtor, the use by Debtor's principals of Debtor's assets, and the ongoing investigations into and lawsuits against Debtor and Debtor's principals by the attorneys general of various states.
- D. *The skill required to perform legal services properly.* The Court is certainly the best judge of the skill demonstrated by L&G DC lawyers in this engagement. The Debtor, however, believes that L&G DC's lawyers demonstrated consistently the skill levels necessary for the vigorous representation of the Debtor's and estate's interests in the Maryland courts.
- E. *The preclusion of employment due to acceptance of the case.* Acceptance of this case did not preclude other employment.
- F. *The customary fee.* The rates charged by L&G DC in this case are commensurate with rates it charges similar clients in similar matters.
- G. *Whether the fee is fixed or contingent.* The fees requested herein are based on neither a fixed nor contingent fee basis.
- H. *Time limitations imposed by the client or the circumstances.* This case poses the normal time pressures inherent in any Chapter 11 case, as well

as extreme time pressures with respect to recovering the obligations owed by Debtor’s principals to Debtor prior to the attorneys general or other entities obtaining judgments against the same.

- I. The amount involved and the results obtained. L&G DC submits that the fees requested are appropriate.
- J. The experience, reputation and ability of the attorneys. L&G DC is a well known business and commercial law firm in the Washington, DC area.
- K. The undesirability of the case. This is not an undesirable case.
- L. The nature and length of the professional relationship with the client. The Debtor selected L&G DC as its special counsel on September 1, 2010.
- M. Awards in similar cases. The fees requested in this case are in line with awards made in other chapter 11 cases.

**LOCAL COMPENSATION RULES AND U.S. TRUSTEE GUIDELINES**

14. On January 30, 1996, the Office of the United States Trustee promulgated guidelines for compensation and reimbursement of expenses from a Bankruptcy estate (the “U.S. Trustee Guidelines”). Reprinted at 28 C.F.R. Part 58, Appendix. The information requested under the U.S. Trustee Guidelines not otherwise disclosed herein is as follows:

<b>Review of Application</b>	This application will be sent to the Committee, the Debtor and other parties.
<b>Status of Plan</b>	The Court confirmed the Committee’s Plan on August 28, 2012. September 12, 2012 is the Effective Date of the Plan.
<b>Monthly Operating Reports</b>	Debtor is current in filing its Monthly Operating Reports.
<b>Quarterly Fees</b>	Debtor has made all quarterly fee payments due to the Office of the U.S. Trustee.
<b>Unpaid Administrative Expenses</b>	None, other than professional fees and ordinary

	course of business liabilities
<b>Cash on Hand</b>	L&G DC holds no retainer. The Liquidating Trust has over \$2.5 million in cash.
<b>Unencumbered Funds</b>	All of the cash on hand is unencumbered.

WHEREFORE, Debtor US Fidelis, Inc., on behalf of Lathrop & Gage DC, PLLC, respectfully requests this Court to allow L&G DC professional fees on a final basis in the amount of \$35,667.00, expenses on a final basis in the amount of \$39.16, and for such other and further relief as is just and equitable.

Dated: October 8, 2012

Respectfully submitted,

Lathrop & Gage LLP

By: /s/ Laura Toledo

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Attorneys for Debtor US Fidelis, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 8, 2012, a true and accurate copy of the foregoing *Final Application for Allowance Fees and Expenses Filed by Lathrop & Gage DC, PLLC, as Special Counsel for Debtor US Fidelis, Inc.* was served on all parties receiving notice through the Court's CM/ECF system. Service of the Notice of Hearing on the Application will be served later in conjunction with the other professionals.

*/s/ Laura Toledo*

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Attorneys for Debtor US Fidelis, Inc.