

**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 UHY, LLP AS EMPLOYEE BENEFIT
PLAN AUDITORS FOR DEBTOR US FIDELIS, INC.**

(Summary of Request)

Name of Applicant	UHY, LLP
Date of Approval of Employment	February 22, 2011
Identity of Party Represented	Debtor
Time Period Requested	November 1, 2010 through September 12, 2012
Amount of Fees Requested	\$43,722.50
Amount of Expenses Requested	\$287.15
Previous Fee Order	First Interim, entered 12/23/2011 (Dkt. #961)
Interim or Final Application	Final Application

COMES NOW Debtor US Fidelis, Inc. (“Debtor”), by and through its undersigned counsel, on behalf of UHY, LLP (“**UHY**”), Employee Benefit Plan Auditors 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 UHY, LLP as Employee Benefit Plan Auditors for Debtor US Fidelis, Inc.* (the “**UHY 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 February 22, 2011, the Debtor filed its *Application of Debtor-in-Possession for the Entry of an Order 11 U.S.C. § 327(A) and Fed. R. Bankr. P. 2014(A) Authorizing the Employment of UHY, LLP as Employee Benefit Plan Advisors* (the “**UHY Employment Application**”). On February 22, 2011, the Bankruptcy Court entered its order granting the UHY 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.

UHY’S FEES AND EXPENSES

5. On November 21, 2011, UHY filed its First Interim Fee Application for Allowance of Fees and Expenses (the “First Interim Application”) (Dkt. #934). On December 23, 2011, the Court entered its Order Granting First Interim Application for Allowance of Fees and Expenses (the “First Interim Order”) (Dkt. #961) approving and allowing UHY its request for fees totaling \$43,722.50 and expenses totaling \$287.15 for the first interim compensation period from February 22, 2011 through October 31, 2011.

6. UHY maintained detailed time 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 description of services and the length of time spent delivering those services.

7. The services provided by UHY to the Debtor were actual and necessary. Reasonable compensation for such services based on the time, the nature, the extent and value of such services, and the costs of such services, other than in a case under the Bankruptcy Code, was \$43,722.50 and expenses of \$287.15. Because supporting documentation was submitted with the First Interim Application and is now part of the Court's record in this case, the Debtor hereby incorporates that supporting documentation into this Final Application.

8. Debtor paid 100% of UHY's fees and expenses per the First Interim Order. Therefore, no balance remains and UHY has been paid in full.

STATUS OF CASE

9. UHY performed the required audits (and related procedures) of the Debtor's ERISA benefits plans.

INFORMATION REQUIRED BY LOCAL RULES

10. 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).

11. The Johnson Factors are as follows:

- A. The time and labor required. UHY described in detail the time spent and included a complete description of the tasks performed.
- B. 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.
- C. The skill required to perform legal services properly. The Court is certainly the best judge of the skill demonstrated by UHY in this engagement. Debtor, however, believes that UHY has demonstrated consistently the skill levels necessary for engagements of this type and complexity.
- D. The preclusion of employment due to acceptance of the case. Acceptance of this case did not preclude other employment.
- E. The customary fee. The rates charged by UHY in this case are commensurate with rates it charges similar clients in similar matters.
- F. Whether the fee is fixed or contingent. The fees requested herein are based on neither a fixed nor contingent fee basis.
- G. Time limitations imposed by the client or the circumstances. This case poses the normal time pressures inherent in any Chapter 11 case.
- H. The amount involved and the results obtained. UHY submits that the fees requested are appropriate.

- I. The experience, reputation and ability of the attorneys. UHY is a well known and respected certified public accounting firm.
- J. The undesirability of the case. This is not an undesirable case.
- K. The nature and length of the professional relationship with the client. The Debtor selected UHY as its Employee Benefit Plan Auditors postpetition.
- L. 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

12. 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:

Review of Application	This application will be sent to the Committee, the Debtor and other parties.
Status of Plan	The Court confirmed the Committee’s Plan on August 28, 2012. September 12, 2012 is the Effective Date of the Plan.
Monthly Operating Reports	Debtor is current in filing its Monthly Operating Reports.
Quarterly Fees	Debtor has made all quarterly fee payments due to the Office of the U.S. Trustee.
Unpaid Administrative Expenses	None, other than professional fees and ordinary course of business liabilities
Cash on Hand	UHY holds no retainer. The Liquidating Trustee has over \$2.5 million in cash.
Unencumbered Funds	All cash on hand is unencumbered.

WHEREFORE, Debtor US Fidelis, Inc., on behalf of UHY, LLP, respectfully requests this Court to allow UHY's professional fees on a final basis in the amount of \$43,722.50, expenses on a final basis in the amount of \$287.15, and for such other and further relief as is just and equitable.

Dated: October 8, 2012

Respectfully submitted,

LATHROP & GAGE LLP

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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 of Fees and Expenses Filed by UHY, LLP as Employee Benefit Plan Auditors 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
Attorneys for Debtor US Fidelis, Inc.