

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF MISSOURI  
 EASTERN DIVISION

In re:	)	Chapter 11
	)	
US FIDELIS, INC.,	)	Case No. 10-41902-705
	)	
Debtor.	)	Hon. Charles E. Rendlen III
	)	
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OFFICIAL UNSECURED CREDITORS	)	
COMMITTEE ON BEHALF OF US	)	Adv. Proc. _____
FIDELIS, INC.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>COMPLAINT</b>
RANDOLF R. ARDERY	)	
Serve: Randolf R. Ardery	)	
Rt. 1, Box 137	)	
Greensburg, KS 67054	)	
	)	
Defendant.	)	
	)	
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COMES NOW the Official Committee of Unsecured Creditors for US Fidelis, Inc. (“Plaintiff”), by and through its undersigned counsel, and for its Complaint against Randolf Ardery (“Ardery”) states as follows:

1. US Fidelis, Inc. (“Debtor”), the debtor herein, filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on March 1, 2010 (the “Petition Date”). Darain and Cory Atkinson are also the only two shareholders of USF.

2. The Official Unsecured Creditors' Committee for US Fidelis, Inc., the Plaintiff in this action, was formed on or about March 11, 2010.

3. On May 27, 2010, the U.S. Bankruptcy Court entered an *Order Granting Joint Motion of US Fidelis, Inc. and the Official Committee of Unsecured Creditors For Derivative Standing to Investigate, Assert and Prosecute Certain Claims* wherein the Bankruptcy Court granted to the Committee derivative standing to pursuant claims that belong to the Debtor and its bankruptcy estate. By virtue of this Order, the Committee has standing to pursue this action.

4. Ardery is an individual residing at Rt. 1, Box 137, Greensburg, Kansas 67054.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

6. This action is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(E).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

### **COUNT I - BREACH OF PROMISSORY NOTES**

8. Plaintiff incorporates by reference and realleges, as if the same were fully set forth herein, each of its allegations contained in paragraphs 1 through 7 of this Complaint.

#### **NOTE 1**

9. On or about August 9, 2006, Ardery executed a Promissory Note #1 ("Note 1") in favor of Debtor. A true and accurate copy of the Note 1 is attached hereto as **Exhibit 1** and incorporated by reference herein.

10. Note 1 requires Ardery to repay the principal amount loaned with all unpaid interest on or before December 31, 2007.

11. Pursuant to the terms of Note 1, the unpaid principal balance thereunder bears interest at a rate of 7.5% per annum from August 9, 2006.

12. Ardery failed to make its payment when due and owing to Debtor under Note 1.
13. The principal balance of Note 1 is \$525,000.00.

## **NOTE 2**

14. On or about August 9, 2006, Ardery executed a Promissory Note #2 (“Note 2”) in favor of Debtor. A true and accurate copy of the Note 2 is attached hereto as **Exhibit 2** and incorporated by reference herein.

15. Note 2 requires Ardery to repay the principal amount loaned over four monthly payments with the full principal balance to be paid with all unpaid interest on or before December 31, 2006.

16. Pursuant to the terms of Note 2, the unpaid principal balance thereunder bears interest at a rate of 7.5% per annum from August 9, 2006.

17. Ardery failed to make its payments when due and owing to Debtor under Note 2.

18. The principal balance of Note 2 is \$500,000.00.

## **NOTE 3**

19. On or about May 28, 2008, Ardery executed a Universal Note and Security Agreement (“Note 3”) in favor of Debtor. A true and accurate copy of the Note 3 is attached hereto as **Exhibit 3** and incorporated by reference herein.

20. Note 3 requires Ardery to repay the principal amount loaned with interest on or before January 26, 2009.

21. Pursuant to the terms of Note 3, the unpaid principal balance thereunder bears interest at a rate of 8.5% per annum from May 28, 2008.

22. Ardery failed to make its payment when due and owing to Debtor under Note 3.

23. The principal balance of Note 3 is \$73,100.00.

#### **NOTE 4**

24. On or about May 27, 2009, Ardery executed a Universal Note and Security Agreement (“Note 4”) in favor of Debtor. A true and accurate copy of the Note 4 is attached hereto as **Exhibit 4** and incorporated by reference herein.

25. Note 4 requires Ardery to repay the principal amount loaned with interest on or before February 5, 2010.

26. Pursuant to the terms of Note 4, the unpaid principal balance thereunder bears interest at a rate of 7% per annum from May 27, 2009.

27. Ardery failed to make its payment then due and owing to Debtor under Note 4.

28. The principal balance of Note 4 is \$200,000.00.

#### **NOTE 5**

29. On or about June 24, 2009, Ardery executed a Universal Note and Security Agreement (“Note 5”) in favor of Debtor. A true and accurate copy of the Note 5 is attached hereto as **Exhibit 5** and incorporated by reference herein.

30. Note 5 requires Ardery to repay the principal amount loaned with interest on or before February 5, 2010.

31. Pursuant to the terms of Note 5, the unpaid principal balance thereunder bears interest at a rate of 7% per annum from June 24, 2009.

32. Ardery failed to make its payment then due and owing to Debtor under Note 5.

33. The principal balance of Note 5 is \$98,000.00.

## **NOTE 6**

34. On or about July 8, 2009, Ardery executed a Universal Note and Security Agreement (“Note 6”) in favor of Debtor. A true and accurate copy of the Note 6 is attached hereto as **Exhibit 6** and incorporated by reference herein.

35. Note 6 requires Ardery to repay the principal amount loaned with interest on or before February 10 2010.

36. Pursuant to the terms of Note 6, the unpaid principal balance thereunder bears interest at a rate of 7% per annum from July 8, 2009.

37. Ardery failed to make its payment then due and owing to Debtor under Note 6.

38. The principal balance of Note 6 is \$100,000.00.

## **NOTE 7**

39. On or about September 3, 2009, Ardery executed a Universal Note and Security Agreement (“Note 7”) in favor of Debtor. A true and accurate copy of the Note 7 is attached hereto as **Exhibit 7** and incorporated by reference herein.

40. Note 7 requires Ardery to repay the principal amount loaned with interest on or before February 5, 2010.

41. Pursuant to the terms of Note 7, the unpaid principal balance thereunder bears interest at a rate of 7% per annum from September 3, 2009.

42. Ardery failed to make its payment then due and owing to Debtor under Note 7.

43. The principal balance of Note 7 is \$19,000.00.

44. The unpaid principal balances of Note 1, Note 2, Note 3, Note 4, Note 5, Note 6 and Note 7 (collectively, the “Notes”) total \$1,512,100.00.

45. The Notes constitute valid and binding contracts, enforceable against Ardery, in accordance with their terms.

46. All conditions precedent to Ardery's performance under the Notes in making payment have been satisfied by Debtor.

47. Ardery is in breach of its obligations under the terms of the Notes for, among other things, its failure to timely pay the amounts past-due and owing under the Notes, as of their respective maturity dates.

48. Ardery continues in breach of the Notes by failing to pay the amounts past-due and owing under the Notes.

49. Ardery is liable and bound to pay to Debtor the sums set forth in the Notes, including the entire unpaid principal balance, and interest accruing on the Notes from and after the origination date of the Notes.

50. Each of the Notes provide that the Debtor may recover its costs of collection of the Notes, including reasonable attorneys' fees.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment in favor of Plaintiff and against Ardery granting the following relief:

(a) Damages in an amount not less than \$1,512,100.00, plus accrued and unpaid interest;

(b) Damages in the amount of the Plaintiff's expenses, reasonable attorneys' fees, and other costs of collection incurred; and

(c) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ Brian W. Hockett

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Attorneys for the Official Committee of Unsecured  
Creditors for US Fidelis, Inc.

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF MISSOURI  
 EASTERN DIVISION

In re:	)	Chapter 11
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US FIDELIS, INC.,	)	Case No. 10-41902-705
	)	
Debtor.	)	Hon. Charles E. Rendlen III
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OFFICIAL UNSECURED CREDITORS COMMITTEE ON BEHALF OF US FIDELIS, INC.	)	Adv. Proc. _____
	)	
Plaintiff,	)	
	)	
vs.	)	<b>EXHIBIT SUMMARY</b>
	)	
RANDOLF R. ARDERY	)	
Serve: Randolph R. Ardery	)	
Rt. 1, Box 137	)	
Greensburg, KS 67054	)	
	)	
Defendant.	)	
	)	
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Pursuant to L.B.R. 9040, the following exhibits are referenced in support of the Complaint. Copies of these exhibits will be provided as required by Local Rules:

1. Note 1 – Promissory Note #1 dated August 9, 2006
2. Note 2 – Promissory Note #2 dated August 9, 2006
3. Note 3 – Universal Note and Security Agreement dated May 28, 2008 and statement of loan balance
4. Note 4 – Universal Note and Security Agreement dated May 27, 2007 and statement of loan balance
5. Note 5 – Universal Note and Security Agreement dated June 24, 2009 and statement of loan balance
6. Note 6 – Universal Note and Security Agreement dated July 8, 2009 and statement of loan balance
7. Note 7 – Universal Note and Security Agreement dated September 3, 2009 and statement of loan balance



Dated: July 14, 2010

Respectfully submitted,


THOMPSON COBURN LLP

By: /s/ Brian W. Hockett

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Fax (314) 552-7000

Attorneys for the Official Committee of Unsecured  
Creditors for US Fidelis, Inc.

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (For Court Use Only)	
<b>PLAINTIFFS</b> Official Committee of Unsecured Creditors for US Fidelis, Inc.		<b>DEFENDANTS</b> Randolf R. Ardery	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.)  Thompson Coburn LLP One U.S. Bank Plaza St. Louis, MO 63101 314-552-6000 Fax: 314-552-7000		<b>ATTORNEYS</b> (If Known) --	
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Recovery on promissory notes to debtor			
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)			
<b>FRBP 7001(1) - Recovery of Money/Property</b> [ ] 11-Recovery of money/property - §542 turnover of property [ ] 12-Recovery of money/property - §547 preference [ ] 13-Recovery of money/property - §548 fraudulent transfer [ X ] 14-Recovery of money/property - other		<b>FRBP 7001(6) - Dischargeability (continued)</b> [ ] 61-Dischargeability - §523(a)(5), domestic support [ ] 68-Dischargeability - §523(a)(6), willful and malicious injury [ ] 63-Dischargeability - §523(a)(8), student loan [ ] 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) [ ] 65-Dischargeability - other	
<b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b> [ ] 21-Validity, priority or extent of lien or other interest in property		<b>FRBP 7001(7) - Injunctive Relief</b> [ ] 71-Injunctive relief - imposition of stay [ ] 72-Injunctive relief - other	
<b>FRBP 7001(3) - Approval of Sale of Property</b> [ ] 31-Approval of sale of property of estate and of a co-owner - §363(h)		<b>FRBP 7001(8) Subordination of Claim or Interest</b> [ ] 81-Subordination of claim or interest	
<b>FRBP 7001(4) - Objection/Revocation of Discharge</b> [ ] 41-Objection / revocation of discharge - §727(c),(d),(e)		<b>FRBP 7001(9) Declaratory Judgment</b> [ ] 91-Declaratory judgment	
<b>FRBP 7001(5) - Revocation of Confirmation</b> [ ] 51-Revocation of confirmation		<b>FRBP 7001(10) Determination of Removed Action</b> [ ] 01-Determination of removed claim or cause	
<b>FRBP 7001(6) - Dischargeability</b> [ ] 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims [ ] 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud [ ] 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		<b>Other</b> [ ] SS-SIPA Case - 15 U.S.C. §§78aaa <i>et seq.</i> [ ] 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ <b>1,512,100.00</b>	
Other Relief Sought			

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR US Fidelis, Inc.		BANKRUPTCY CASE NO. 10-41902
DISTRICT IN WHICH CASE IS PENDING Eastern District of Missouri	DIVISION OFFICE St. Louis	NAME OF JUDGE Judge Rendlen
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)  		
DATE 7/14/2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Brian W. Hockett	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.