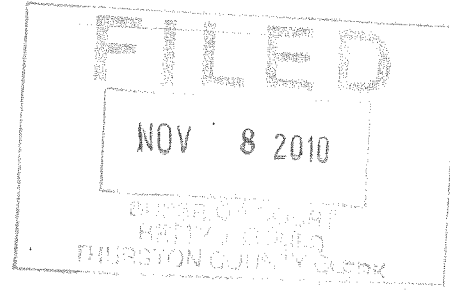


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The Honorable Christine A. Pomeroy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,

Plaintiff,

v.

U.S. FIDELIS, INC., fka National Auto Warranty  
Services, Inc., dba Dealer Services; DARAIN  
ATKINSON, President of U.S. Fidelis, Inc.,  
individually and his marital community; and  
CORY C ATKINSON, Vice President of U.S.  
Fidelis, Inc., individually and his marital  
community,

Defendants.

NO. 10-2-00885-1

**CORY C. ATKINSON CONSENT  
JUDGMENT AND PERMANENT  
INJUNCTION**

**A. JUDGMENT SUMMARY**

A.1	Judgment Creditor:	State of Washington
A.2	Judgment Debtor:	Cory Atkinson
A.3	Principal Judgment:	\$ 4,928,359
	(a) Costs and Attorney Fees:	\$ 301,112
	(b) Civil Penalties:	\$ 4,627,247
A.4	Post Judgment Interest Rate:	12 percent per annum
A.5	Attorney for Judgment Creditor:	Mary C. Lobdell Assistant Attorney General

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**B. PREAMBLE**

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This Consent Judgment and Permanent Injunction (hereinafter referred to as "Judgment") is entered into between the States and Commonwealths of Arkansas, Idaho, Iowa, Kansas, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin acting pursuant to its consumer protection statutes, and Cory Atkinson, Vice President of U.S. Fidelis, Inc., (collectively referred to as "Parties").

**I. GENERAL PROVISIONS**

This Court, recognizing that the Plaintiff, by Robert M. McKenna, Attorney General, and Mary C. Lobdell, Assistant Attorney General, and Defendant, by his counsel, have consented to the entry of this Judgment and Permanent Injunction, finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.

2. Venue is proper because the alleged violations of Chapter 19.86 RCW, Unfair Business Practices -- Consumer Protection Act; chapter 80.36 RCW -- Automatic Announcing and Dialing Devices Act; and chapter 19.158 -- Commercial Telephone Solicitation Act occurred here in Washington, including, but not limited to, Thurston County.

3. Plaintiff, Attorney General, Robert M. McKenna, has authority under RCW 19.86.080 to bring consumer protection actions on behalf of the state of Washington.

4. Defendant Cory Atkinson is the former Vice President, and 50 percent shareholder of Defendant U.S. Fidelis, formerly known as National Auto Warranty Services and Dealer Services.

1           5.       This Judgment and Permanent Injunction (referred to as "Judgment") shall be  
2 governed by the laws of the state of Washington.

3           6.       This Judgment is entered into by Defendant as a free and voluntary act and with  
4 full knowledge and understanding of the nature of the proceedings and the obligations and  
5 duties imposed by this Judgment.

6           7.       This Judgment is entered into by Plaintiff based upon the financial statement  
7 provided by Defendant to the United States Bankruptcy Court Eastern District of Missouri, St.  
8 Louis Division, in the bankruptcy case of *In re: U.S. Fidelis, Inc.*, Case No. 10-41902. This  
9 Judgment is expressly premised upon the truthfulness, accuracy and completeness of  
10 Defendant's financial condition as represented in the financial statement that contained  
11 material information relied upon by the State of Washington in negotiating and agreeing to the  
12 terms of this Judgment. The failure to provide truthful and accurate financial statements  
13 constitutes a violation of this agreement affording Plaintiff all remedies provided by law.  
14

15           8.       Nothing in this Judgment constitutes any admission of guilt or liability by the  
16 Defendant. The Parties acknowledge that this agreed Judgment is in their mutual best interests  
17 and is preferable to expensive litigation concerning Plaintiff's allegations in this state, as well  
18 as other states, and Defendant's defenses to those allegations.  
19

20           9.       Defendant is not admitting that each of the acts alleged, if proved in a court of  
21 law, would necessarily constitute a violation of any federal, state or local law; but Defendant  
22 acknowledges that this Judgment constitutes legal notice and knowledge that it is the State's  
23 position that the alleged acts constitute a state or federal law violation.  
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1           10.     Nothing in this Judgment constitutes any agreement by the Parties concerning  
2 the characterization of the amounts paid pursuant to this Judgment for purposes of the Internal  
3 Revenue Code or any state tax laws.

4           11.     Except as set forth in Section X, this Judgment shall not bar the Attorney  
5 General or any local, state, federal, or other governmental entity from enforcing other laws or  
6 rules within their jurisdiction against the Defendant as to any of Defendant's business  
7 practices, including those alleged in the Complaint. Nothing in this Judgment shall affect the  
8 admissibility of this Judgment in any proceeding. Moreover, nothing in this Judgment shall be  
9 deemed to waive any rights of Defendant to argue the inadmissibility of this Judgment in any  
10 proceeding other than an action by the Attorney General to enforce this Judgment  
11

12           12.     Nothing contained herein shall be construed to waive any individual right of  
13 action by a consumer.  
14

15           13.     Defendant shall not represent or imply that the Attorney General approves of  
16 Defendant's past business practices, current efforts to reform its practices, or any further  
17 practices that Defendant may adopt or consider adopting. Likewise, as to the advertisements  
18 that Defendant provided to the Attorney General during the investigation, Defendant shall not  
19 represent or imply that the Attorney General approves of or endorses Defendant's  
20 advertisements or business practices.  
21

## 22                                   II. DEFINITIONS

23           1.     For purposes of this Judgment, and except where specifically noted otherwise,  
24 "Defendant" shall mean Cory Atkinson, Vice President of U.S. Fidelis, Inc., whether operating  
25 under his own name or any other business names, including all other persons acting in concert  
26



1 or participation with him, directly or indirectly, or acting on behalf of Defendant or at his  
2 direction, through any corporate device, partnership or association, jointly and severally,  
3 including all persons and entities that receive notice of this Judgment.

4         2. For purposes of this Judgment, an "affiliate" shall mean a business entity that is  
5 owned by, operated by, controlled by, or under common control with another business entity.

6         3. For purposes of this Judgment, "service contract" or "motor vehicle service  
7 contract" shall mean a contract or agreement (a) that contains a separately stated consideration  
8 for a specific duration to perform the repair, replacement or maintenance of a motor vehicle  
9 and includes vehicle protection products; or (b) that provides indemnification for repair,  
10 replacement or maintenance of a motor vehicle due to an operational or structural defect in  
11 materials, workmanship or normal wear and tear; and (c) may or may not include additional  
12 provision for incidental payment of indemnity under limited circumstances, including but not  
13 limited to, towing, rental and emergency road service.

14         4. For purposes of this Judgment, a statement or communication is "clear and  
15 conspicuous" if it is readily understandable and presented in such size, color, contrast, location  
16 and audibility, compared to the other matter with which it is presented, as to be readily  
17 understood. If such statement modifies, explains or clarifies other information with which it is  
18 presented, it must be presented in close proximity to the information it modifies and in a  
19 manner so as to be readily noticed and understood.

20         5. For purposes of this Judgment, an "Authorized Telemarketer" shall mean a  
21 business or other entity that conducts telemarketing or generates leads on Defendant's behalf in  
22 connection with the offer or sale of products or services.

1           6.       For purposes of this Judgment, “telemarketing” or “telephone solicitation” shall  
2 mean any telephone call or message for the purpose of encouraging or inducing the purchase of  
3 goods or services or means any definition provided in any federal, state, or local law defining  
4 that term. However, nothing herein shall be construed to affect, restrict, limit, waive, or alter  
5 the definition of “telemarketing” or “telephone solicitation” under the laws and statutes of the  
6 states, and nothing herein shall be construed to limit the authority of the Attorneys General to  
7 enforce federal or state laws and statutes, including those regarding “telemarketing” and  
8 “telephone solicitations.”  
9

10           7.       For purposes of this Judgment, “spoofing” shall mean using any means to block,  
11 disguise or falsify the identity of the originator that (a) fails to comply with state and federal  
12 laws, or (b) fails to transmit or display the originator’s telephone or the telephone number of  
13 the company selling a product or service that a consumer can call during regular business hours  
14 to be placed on a do-not-call list.  
15

16           8.       For purposes of this Judgment, and in the context of accepting payment from  
17 consumers for Defendant’s goods and services, “process” shall refer to the submission of a  
18 consumer’s credit card information to Defendant’s credit card processor for approval of the  
19 charges incurred by the consumer; the “process” is completed upon the receipt by Defendant of  
20 an authorization number for the transaction.  
21

22           9.       For purposes of this Judgment, a “Risk Retention Group” (RRG) shall mean an  
23 entity, formed under the Federal Liability Risk Retention Act of 1986, which insures payment  
24 of monies owed for claims due on a service contract.  
25  
26

1           10.    “Written solicitation” or “written communication” shall include, but is not  
2 limited to, solicitations and communications on paper, on the internet, or electronically (i.e. e-  
3 mail, instant messaging, etc.).

4           11.    For purposes of this Judgment, the “Effective Date” shall mean the date by  
5 which all Parties have executed the Judgment.  
6

### 7                               **III. REPRESENTATIONS AND WARRANTIES**

8           1.    Defendant warrants and represents that he and his predecessors, successors and  
9 assigns were engaged in the business of marketing, selling and promoting the sales of motor  
10 vehicle service contracts to consumers. Defendant further acknowledges that he is the proper  
11 party to this Judgment. Defendant warrants and represents that the individual(s) signing this  
12 Judgment is fully authorized to enter into this Judgment and to legally bind Defendant to all of  
13 the terms, conditions and injunctions of this Judgment.  
14

15           2.    Defendant and the State of Washington warrant and represent that they  
16 negotiated the terms of this Judgment in good faith.

### 17                               **IV.    ALLEGED VIOLATIONS**

18           The State alleges that Defendant violated Chapter 19.86 RCW, Unfair Business Practices  
19 -- Consumer Protection Act; chapter 80.36 RCW -- Automatic Announcing and Dialing Devices  
20 Act; and chapter 19.158 -- Commercial Telephone Solicitation Act by selling and marketing  
21 motor vehicle service contracts in a false, deceptive and misleading manner, including but not  
22 limited to the following:  
23

24           1.    Representing that a consumer’s motor vehicle warranty expired, is expiring, or  
25 is about to expire when such statement is not true or cannot be substantiated;  
26

1           2.     Representing or implying that a consumer's vehicle may be unsafe or subject to  
2 recall, when such is not the case or is not known;

3           3.     Misrepresenting the nature of the motor vehicle service contract as a  
4 "warranty," "factory warranty," or "extended warranty," when in fact the product being sold is  
5 not a "warranty," "factory warranty," or "extended warranty";  
6

7           4.     Representing that Defendant has a preexisting relationship with a consumer  
8 when such a relationship does not exist;

9           5.     Representing or implying to a consumer that a solicitation is a final or limited  
10 time offer when such is not or was not the case.

11           6.     Representing or implying to a consumer that a solicitation is a final offer when  
12 the offer was never previously made to the same consumer;

13           7.     Creating a false sense of urgency that an offer will expire when no  
14 actual expiration date for the offer exists;  
15

16           8.     Representing to a consumer that the offer is "exclusive" when such is  
17 not the case;

18           9.     Creating confusion in consumers as to the source, sponsorship, approval, or  
19 certification of the service contracts offered by Defendant, including misrepresenting or  
20 causing confusion that U.S. Fidelis is the company with which consumers had their original  
21 motor vehicle warranty;  
22

23           10.    Representing or implying an affiliation, connection or association with, or  
24 certification by a third party, such as a manufacturer, government agency or other entity, when  
25 in fact there was no such relationship with the third party;  
26

1           11.     Misrepresenting or implying that the service contracts Defendant sells or offers  
2 has uses, benefits, standards, grades, or qualities that they do not have;

3           12.     Failing to disclose all material terms of a service contract offer in solicitations  
4 and marketing contacts with consumers;

5           13.     Refusing to allow a consumer an opportunity to review the complete written  
6 service contract agreement upon request;

7           14.     Misleading consumers as to the nature of U.S. Fidelis' relationship with the  
8 service contract provider;

9           15.     Engaging in violations of state and federal do-not-call laws by failing to scrub  
10 telephone numbers, making calls to consumers on state and federal do-not-call lists, making  
11 calls to cell phones, failing to transmit caller identification information, spoofing, failing to  
12 register as a telemarketer and/or failing or refusing to place consumers on internal do-not call  
13 lists upon the consumer's request;

14           16.     Engaging in violations of state and federal laws in the use of automatic dialing  
15 and announcing devices (ADAD) and state and federal do-not-call laws and the Telephone  
16 Consumer Protection Act of 1991 (TCPA), 47 U.S.C. §227 et seq. and 47 C.F.R. 64.1200, and  
17 as it is amended hereafter; the Telemarketing and Consumer Fraud and Abuse Prevention Act  
18 (TCFAPA), 15 U.S.C. §1601 et seq.; and the Telephone Sales Rule (TSR), 16 C.F.R. Part 310,  
19 and as it is amended hereafter, including, but not limited to, placing calls into Washington  
20 State in which such calls are prohibited for commercial purposes, calling cell phones,  
21 emergency lines and hospitals, spoofing, using such devices in violation of state and federal  
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1 do-not-call laws, and/or using such devices in a manner that the consumer is unable to place  
2 his or her phone number on an internal do-not-call list;

3 17. Providing false or misleading caller identification information, including  
4 preventing the display of caller identification, using methods that bypass, circumvent, or  
5 disable caller identification, or using methods that mislead the caller as to the identification of  
6 the caller or the caller's phone number;

7 18. Selling or offering for sale service contracts in violation of state licensing or  
8 registration laws, including the licensing or registration of U.S. Fidelis as a marketer, as  
9 licensed or registered sales staff, and the licensing or registration of the motor vehicle service  
10 contracts sold by Defendant;

11 19. Engaging in a pattern or practice of failing to provide prompt refunds to  
12 consumers, issuing refunds that were less than the amount required by contract or state law or  
13 denying valid refund requests;

14 20. Obtaining, directly or indirectly, consumers' personal information as that term  
15 is defined in the Drivers' Privacy Protection Act (DPPA), 18 U.S.C. § 2721 et seq., from a  
16 state department of motor vehicle without the express consent of the person to whom such  
17 personal information pertains, in violation of the DPPA; and

18 21. Obtaining, directly or indirectly, consumers' credit information without using  
19 that information for a permissible purpose within the meaning of the Fair Credit Reporting Act  
20 (FCRA), 15 U.S.C. §1681, et seq.

21 Defendant denies each and every one of the foregoing allegations of wrongdoing in  
22 paragraphs One through Twenty-One, above.  
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Pursuant to RCW 19.86.080 and RCW 19.86.140, Defendant, under his own name or any other business names, including any officers, directors, agents, representatives, salespersons, employees, independent contractors, affiliates, successors and assigns, and all other persons acting in concert or participation with them, directly or indirectly, or acting on behalf of Defendant or at his direction, and who have actual or constructive notice of this Judgment, are hereby permanently **RESTRAINED** and **ENJOINED** from engaging in any conduct that does not comply with Section VI of this Judgment.

Pursuant to RCW 19.86, Defendant, under his own name or any other business names, any officers, directors, agents, representatives, salespersons, employees, independent contractors, affiliates, successors and assigns, and all other persons acting in concert or participation with Defendant, directly or indirectly, or acting on behalf of Defendant or at his direction, and who have actual or constructive notice of this Judgment, agree to comply with the following provisions:

## CONSENT JUDGMENT AND PERMANENT INJUNCTION

1           2.     Telemarketing Prohibition. Defendant shall not engage in any telemarketing  
2 sales or telephone solicitations as that term is defined by the federal Telemarketing and  
3 Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101 *et. seq.*, the Telemarketing  
4 Sales Rule, 16 CFR Part 310, other state or local laws. This Paragraph, which never expires,  
5 prohibits Defendant from engaging in telephone solicitations to Washington State consumers  
6 and prohibits Defendant from registering with the Attorney General to conduct telephone  
7 solicitations in Washington State. This Paragraph also applies to any business that Defendant  
8 owns, operates, or manages now and in the future.

9  
10           3.     Motor Vehicle Service Contract Prohibition. Defendant shall not engage in the  
11 marketing or administration of motor vehicle service contracts, or any other aspect related to or  
12 associated with the sales of motor vehicle service contracts, other than those sold in connection  
13 with the sale of a motor vehicle by a motor vehicle dealership at which he is employed.

14  
15           4.     Compliance with Applicable Laws. Defendant shall comply with Chapter 19.86  
16 RCW, Unfair Business Practices -- Consumer Protection Act; chapter 80.36 RCW -- Automatic  
17 Announcing and Dialing Devices Act; and chapter 19.158 -- Commercial Telephone Solicitation  
18 Act., particularly in connection with the promotion, offer for sale, or sale of goods or services.

19  
20           5.     Representations of Fact. Defendant shall not make false or misleading  
21 representations of fact, particularly concerning any terms of an offer or the terms of any good  
22 or service offered for sale.

23           6.     Other Business Names. Defendant shall not use a misleading assumed business  
24 name, logo, or other mark that is misleading as to the nature of the services Defendant  
25 provides, the products Defendant sells, or Defendant's affiliations with others.  
26



1           7.     General Marketing and Sales Practices. In the marketing and sale of goods and  
2 services, Defendant shall:

- 3           a.     Not mislead consumers regarding Defendant's affiliation, connection or  
4                 association with, or certification by a third party.  
5  
6           b.     Not mislead consumers regarding the source, sponsorship, approval, or  
7                 certification of goods or services that Defendant sells or offers for sale.  
8  
9           c.     Not mislead consumers that Defendant offers for sale or sells goods or  
10                services on behalf of third party providers and, in addition, not mislead  
11                consumers that the third party, and not the Defendant, is responsible for  
12                administering the contract.  
13  
14           d.     Not mislead consumers as to the nature of Defendant's relationship with  
15                the provider of a good or service.  
16  
17           e.     Not represent or imply that the Defendant has a preexisting relationship  
18                with a consumer that does not in fact exist.  
19  
20           f.     Not make a representation directly or by implication in any  
21                advertisement that is false or misleading.  
22  
23           g.     Substantiate, in writing within twenty-one days of receiving a written  
24                request for substantiation from a consumer or the Attorney General, any  
25                representation made directly or by implication in any advertisement.  
26           h.     Not make a representation directly or implicitly in any advertisement  
              targeted to a specific consumer that is false or misleading

- 1 i. Not mislead consumers regarding what information Defendant has in his  
2 possession.
- 3 j. Not represent or imply that a solicitation constitutes a limited time offer  
4 unless such is the case. Defendant shall not create a false sense of  
5 urgency or represent or imply that any offer is limited and/or will expire  
6 within a set period of time unless Defendant (by using the word "final"  
7 or any words of similar import) will in fact refuse to honor the terms of  
8 the offer after the specific period of time has expired and Defendant can  
9 substantiate this statement in writing within twenty-one days of  
10 receiving a written request for substantiation from a consumer or the  
11 Attorney General.
- 12 k. Not represent or imply that a solicitation constitutes a "final" offer  
13 unless such is the case and can be substantiated in writing within twenty-  
14 one days of receiving a written request for substantiation from a  
15 consumer or the Attorney General.
- 16 l. Not represent or imply that an offer is "exclusive" unless such is the case  
17 and can be substantiated in writing within twenty-one days of receiving  
18 a written request for substantiation from a consumer or the Attorney  
19 General.
- 20 m. Not represent or imply that the goods or services Defendant sells or  
21 offers for sale have sponsorship, approval, characteristics, uses, benefits,  
22 or qualities that they do not in fact have.
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- 1 n. Not represent or imply that the goods or services Defendant sells or  
2 offers for sale are of a different standard, quality, or grade than they  
3 actually are.
- 4 o. Not represent or imply that the purchase or ownership of goods or  
5 services can increase or enhance its value unless Defendant has  
6 documented substantiation of such claim and provides that  
7 substantiation to the Attorney General within twenty-one days of receipt  
8 of a request for such.
- 9 p. Not disproportionately target older consumers in any marketing efforts.  
10 For the purposes of this Judgment, "older" consumers shall mean  
11 consumers age sixty-five years or older. Defendant, Defendant's  
12 employees or third-party marketing agents and contractors shall not  
13 utilize calling or mailing lists that have been compiled to  
14 disproportionately target older consumers using any criteria that  
15 indirectly suggest a reasonable likelihood that such consumers are age  
16 sixty-five or older, including, but not limited to: addresses or phone  
17 numbers being associated with a retirement community; consumers'  
18 status as retirees; or whether such consumers are drawing a pension or  
19 drawing Social Security.
- 20 q. Not sell or provide personal information obtained from a consumer  
21 during a sale to unaffiliated companies for marketing purposes without  
22 the consumer's knowledge and express authorization; and  
23  
24  
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26

1           r.       Post the privacy policy in a clear and conspicuous manner on any  
2                       website sponsored by Defendant.

3           8.       Disclosure of Coverage, Exclusions, Conditions and Costs. In order to ensure  
4           that the consumer has all material information necessary to make an informed purchasing  
5           decision, before the Defendant processes any payment by a consumer for any goods or services  
6           offered, Defendant shall disclose certain information to the consumers.<sup>1</sup> Defendant shall  
7           clearly and conspicuously:  
8

9                   a.       Summarize all material provisions of any goods or services offered,

10                   b.       Disclose primary exclusions and/or conditions related to any goods or  
11                       services that Defendant sells or markets.

12       Nothing in this provision restricts Defendant from providing additional details regarding the  
13       terms and conditions of the goods or services, nor does it relieve Defendant from his obligation  
14       to accurately answer all questions raised by a consumer.  
15

16           9.       Clear and Understandable Contract Terms. In order to ensure that the consumer  
17       has the opportunity to read and understand all material terms and conditions of a good or  
18       service contract, Defendant shall only market contracts that are written in clear, understandable  
19       language, and are printed or typed in easy-to-read font and format.  
20

21           10. Mailing Lists. With regard to the marketing and sale of goods and services by  
22       written solicitation, Defendant shall .in written solicitations, clearly and conspicuously offer  
23       consumers the option of being removed from a mailing list obtained or created by Defendant  
24       via a toll-free telephone number and/or by a mail delivery service. If a consumer asks to be  
25

26       <sup>1</sup> When Defendant is required to mail the consumer a copy of the written service contract, the date the  
      contract was mailed (as evidenced by the date on the letter or the postmark noted on the envelope, whichever is  
      later) will trigger the consumer's response time to cancel the contract or as provided by state law.

1 removed from a mailing list, Defendant, Defendant's agents, assigns, or any other entity  
2 soliciting business for Defendant or providing transfer leads to Defendant, shall not make a  
3 written solicitation to said consumer or any persons residing with said consumer at that mailing  
4 address for a period of five years.

5  
6 11. Written and Television Solicitations. In the marketing and sale of goods and  
7 services by written or television solicitations, Defendant shall:

- 8 a. Clearly and conspicuously disclose in all written and television  
9 solicitations with or directed to consumers the company's identity,  
10 including its business name (or assumed business name) and contact  
11 information, including the company's telephone number and address;  
12 and  
13  
14 b. When making a specific offer, clearly and conspicuously disclose, in  
15 close proximity to any terms or conditions to which they relate, all  
16 material limitations, conditions and restrictions relating to any offer.

17 12. Cancellation or Refund Policies.

- 18 a. Prior to giving consumers the full written terms of the goods and  
19 services to be purchased, Defendant shall provide clear and conspicuous  
20 instructions that explain the procedures consumers must follow to  
21 properly cancel a purchase.  
22  
23 b. Defendant shall issue refunds to consumers in compliance with a  
24 reasonable refund policy that is in writing and provided to the customer.  
25  
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1 c. If Defendant is an employer, Defendant shall employ adequate staff to  
2 promptly respond to customer service inquiries, telephone calls and  
3 refund requests.

4 d. Defendant shall adhere to any written cancellation procedures.

5 e. Defendant shall not make cancellation procedures burdensome or  
6 confusing.  
7

8 13. Licensing and Registration Requirements.

9 a. Defendant shall comply with all applicable licensing and registration  
10 requirements in the state of Washington,

11 b. Defendant shall not operate in a state in which Defendant is not properly  
12 licensed or registered.

13 c. Defendant shall not sell or offer to sell goods or services on behalf of  
14 another entity that is not properly licensed, registered or insured.

15 d. Defendant is not prohibited from asserting any defense Defendant  
16 believes is applicable under state licensing and registration laws.  
17

18 14. Consumer Credit Reports & Offers of Credit. In the marketing and sale of  
19 goods and services, Defendant shall:  
20

21 a. Comply with the FCRA;

22 b. Upon the request of a consumer, inform the consumer of the manner in  
23 which the consumer's information was obtained, for what purposes it  
24 was obtained and what information was obtained;

25 c. When making an offer of credit or insurance, inform a consumer:  
26

- 1                   i.       Of the consumer's right to opt-out of pre-screened solicitations  
2                               of credit or insurance in the exact format, type size, and manner  
3                               prescribed by the FCRA, 16 C.F.R. § 642 et seq. and § 698 et  
4                               seq.;
- 5                   ii.       That Defendant used information contained in the consumer's  
6                               consumer report, if such is the case; and
- 7                   iii.       That the consumer received the offer because the consumer  
8                               satisfied the criteria for credit worthiness or insurability, but that  
9                               credit or insurance may not be extended if the consumer does not  
10                              continue to meet the criteria or does not pay any collateral that  
11                              was clearly and conspicuously disclosed in the solicitation as  
12                              being required.
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- 14
- 15               d.       For a period of five years from the date an offer of credit or insurance  
16                              was made, secure and maintain records of the criteria used to select  
17                              which consumers to target, including all criteria Defendant used to  
18                              determine credit worthiness or insurability and any requirement for  
19                              paying collateral (unless such records were already unavailable as of  
20                              January 1, 2009).
- 21
- 22               e.       Not use a consumer report, or any information contained therein, except  
23                              for the permissible purpose for which it was originally obtained by  
24                              Defendant.
- 25
- 26

1           15.   Consumer's Right to Privacy. In the marketing and sale of goods and services,  
2 Defendant shall:

- 3                   a.       Comply with the federal DPPA or similar state disclosure laws.  
4                   b.       Not obtain consumers' contact information, including phone number and  
5                               address, and other personal information in violation of federal or state  
6                               laws, including, but not limited to, the FCRA.  
7

8           16. Compliance Not Admission. While Defendant agrees to comply with all state and  
9 federal laws, the Defendant's agreement to perform as detailed in Section VI is not itself an  
10 admission that said performance of each injunctive provision is necessary or required to  
11 comply with any state or federal law, other than those which require Defendant to comply with  
12 this Judgment.  
13

## 14                               **VII. NOTICE**

15           The mailing of a copy of this signed and filed Judgment to Defendant or to Defendant's  
16 attorney shall constitute notice and acceptance by Defendant of all the terms of this Judgment.  
17 Defendant waives his right to have a copy of this Judgment served upon him. Furthermore,  
18 Defendant waives any requirement that this Judgment include findings of fact and conclusions  
19 of law.  
20

## 21                               **VIII. RECORDKEEPING**

22           1.   Copies of Advertising. In any future business that Defendant owns or operates,  
23 Defendant shall, for a period of five years following the registration of his business pursuant to  
24 the state law in which it operates provide a copy of any promotional materials (including  
25 advertising transcripts) and telephone scripts to the Attorney General within fourteen days of  
26



1 receiving a request from the Attorney General. Defendant shall not represent or imply that  
2 failure of an Attorney General to take any action thereon constitutes acquiescence, approval or  
3 endorsement of any promotional material, telephone script or business practice by the Attorney  
4 General.

5  
6 2. Maintenance of Advertising. In any future business Defendant owns or operates  
7 and effective immediately upon execution of this Judgment, Defendant agrees to maintain  
8 records of all promotional materials for a period of at least five years after Defendant  
9 publishes, broadcasts or otherwise disseminates the advertisement, including advertisements  
10 that Defendant causes to be published, broadcast or otherwise disseminated or which are  
11 published, broadcast or otherwise disseminated by anyone pursuant to a contract.  
12 Advertisements shall include, but are not limited to, postcards, mailers, emails, text messages,  
13 Internet sites or other information disseminated for the purposes of promoting or marketing a  
14 service or product. Defendant shall maintain records in such a manner that the advertisement,  
15 the dates of dissemination, the method of dissemination and any records sufficient to  
16 substantiate the representations or claims made in the advertisement are easily obtainable.  
17

18 3. Maintenance of Scripts. In any future businesses the Defendant owns or  
19 operates and effective immediately upon execution of this Judgment, Defendant agrees to  
20 maintain for a period of at least five years a copy of all scripts used by Defendant, or by  
21 anyone on behalf of or at the direction or request of Defendant, including, but not limited to,  
22 customer service scripts, sales scripts, or language contained in any instructions to employees,  
23 agents, volunteers, interns or independent contractors, or rebuttal language used based on  
24 consumer responses.  
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1                                   **IX.     PENALTIES / PAYMENT TO THE STATE**

2           1.     Civil Fine or Penalty. The State of Washington is hereby awarded a civil fine or  
3 penalty against the Defendant in the amount of \$4,627,247. Said Civil Fine or Penalty is to or  
4 for a governmental unit and is not for pecuniary loss. Subject to Defendant's full compliance  
5 with this Judgment and the Settlement Agreement that Defendant has entered into with the  
6 Bankruptcy Estate of U.S. Fidelis, Inc., the State of Washington agrees to look only to the  
7 assets paid over to the Bankruptcy Estate of U.S. Fidelis, Inc. to recover its civil fines and  
8 penalties.  
9

10          2.     Fees and Costs. The State of Washington Office of the Attorney General is  
11 further awarded the sum of \$301,112 as attorneys' fees, court costs, and investigative costs.  
12 Subject to Defendant's full compliance with this Judgment and the Settlement Agreement that  
13 Defendant has entered into with the Bankruptcy Estate of U.S. Fidelis, Inc., the State of  
14 Washington Office of the Attorney General agrees to look only to the assets paid over to the  
15 Bankruptcy Estate of U.S. Fidelis, Inc. to recover its attorneys' fees, court costs and  
16 investigative costs.  
17

18          3.     Civil Penalties for Failure to Comply. Pursuant to RCW 19.86, the Court may  
19 impose a civil penalty of not more than \$2,000 for each violation of this Judgment in addition  
20 to any other remedy allowed by law. In addition, should the Defendant materially default in  
21 performance of his duties or seek to recover any or all of his assets from the Bankruptcy Estate,  
22 Plaintiff expressly reserves the right, upon notice to the Defendant, to collect on the judgment  
23 herein as provided by law.  
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25          4.     Costs. Defendant shall pay all court costs associated with this matter.  
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**X. RELEASE OF CLAIMS**

1. In lieu of further litigation by Plaintiff, and in consideration of Plaintiff's forbearance, Defendant shall fully perform his duties as required under this Judgment and in the bankruptcy case of *In re: U.S. Fidelis, Inc.*, Case No. 10-41902, now pending in the Eastern District of Missouri, St. Louis Division, including but not limited to the surrender of assets set forth in the Settlement Agreement between Defendant and the U.S. Fidelis, Inc. Bankruptcy Estate, a copy of which is attached hereto and made part hereof as Exhibit 1 together with a motion and final order approving same filed pursuant to Bankruptcy Rule 9019. This Judgment is expressly premised upon Defendant's surrender of all of his assets to the U.S. Fidelis, Inc. Bankruptcy Estate as provided in Exhibit 1. The Plaintiff's release of its restitution claims is subject to and conditioned on the Defendant not recovering or seeking to recover any or all of his assets from the Bankruptcy Estate, as indicated in Exhibit 1.

2. By execution of this Judgment, the Attorney General releases the Defendant from all civil claims, causes of action, damages, fines, costs or penalties that were asserted by the Attorney General at any time up to and including the effective date of this Judgment for alleged violations of its consumer protection laws or regulations arising from the allegations that are the subject matter of this Judgment. Notwithstanding the foregoing, the Attorney General may institute an action or proceeding to enforce the terms and provisions of this Judgment.

**XI. JURISDICTION RESERVED**

The Court reserves jurisdiction over this action for the following purposes:

1        1.        In order to take any further action deemed necessary to enforce this Judgment  
2 and to award the Attorney General judgment for any costs, including attorney's fees, it incurs  
3 in the event of noncompliance by Defendant.

4        2.        In order to take further action for Defendant's (a) failure to disclose any  
5 material asset; (b) Defendant's material misrepresentation of the value of an asset; (c) or any  
6 other material misrepresentation or omission on Defendant's financial statement that conceals  
7 the existence of assets, including but not limited to claims involving fraudulent transfers or  
8 piercing the corporate veil. Plaintiff may request that the Consent Judgment be re-opened for  
9 the purpose of allowing Plaintiff to modify Defendant's monetary liability. Proceedings  
10 instituted under this provision would be in addition to and not in lieu of any other remedies as  
11 may be provided by law. A finding of material misrepresentation or omission as to the  
12 financial statement shall in no respect modify any other term or condition of this Judgment. In  
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1 all other respects, this Judgment shall remain in full force and effect unless otherwise ordered  
2 by the Court.

3 IT IS SO ORDERED THIS 8th day of November, 2010.

6 THOMAS MCPHEE

7 JUDGE/COMMISSIONER

9 Jointly Approved For Entry And Submitted By:

11 ROBERT M. MCKENNA  
12 Attorney General

13 Mary C. Lobdell  
14 MARY C. LOBDELL, WSBA # 17930  
15 Assistant Attorney General  
16 Attorneys for Plaintiff  
17 Office of the Washington Attorney General  
18 P.O. Box 2317  
19 Tacoma, WA 98401-2317  
20 (253) 593-2256

DATED: 11-2-2010

21 DEFENDANT CORY ATKINSON, Individually

22 CA  
23 CORY ATKINSON, Individually

DATED: 10/25/10

**EXHIBIT 1**  
**TO CORY ATKINSON CONSENT JUDGMENT**  
**AND PERMANENT INJUNCTION**

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

<b>In re:</b>	§	<b>Case No. 10-41902-705</b>
	§	
<b>US Fidelis, Inc.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>[Related to Docket #410]</b>

**ORDER GRANTING THE SETTLEMENT MOTION**

On September 30, 2010, US Fidelis, Inc. (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”) filed a Joint Motion for Order Approving Settlements with Defendants Cory and Heather Atkinson and Defendants Darain and Mia Atkinson (the “Settlement Motion”) [Docket #410]. Five objections [Docket ##422, 424, 426, 427, & 428] to the Settlement Motion were filed. On October 20, 2010, the Settlement Motion came for hearing upon notice (the “Settlement Hearing”), with the Debtor, the Committee, four of the five objecting parties, and certain other parties appearing through counsel. Upon consideration of the pleadings, evidence, and applicable law, the Court makes the findings of fact and conclusions of law, and grants the Settlement Motion, as set forth below.

**FINDINGS OF FACT**

1. On March 1, 2010, Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”<sup>1</sup>). On April 28, 2010, the Debtor filed a complaint (the “Complaint”) commencing Adversary Proceeding Number 10-4225, *US Fidelis, Inc. v. Cory Atkinson, et al.*, (the “Litigation”), against the two brothers who equally own US Fidelis, Darain Atkinson (“Darain”) and Cory Atkinson (“Cory”), and also against certain

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<sup>1</sup> Hereinafter, any reference to “section[s]” or “§[§]” shall refer to the indicated section(s) of the Bankruptcy Code unless otherwise provided.

companies owned by Darain and Cory. The Debtor eventually amended the Complaint to add counts against Mia Atkinson, the wife of Darain (“Mia”) and against Heather Atkinson, the wife of Cory (“Heather,” collectively with Darain, Cory, and Mia, the “Atkinsons”). The Debtor asserted a variety of claims against the Atkinsons, all of which were based on the actions taken by Darain and Cory as the owners, officers and directors of the Debtor, including claims seeking judgments in the amount of at least \$101 million.

2. The Debtor prosecuted the Litigation throughout the summer of 2010. A trial on the Complaint (as amended) was set for September 15, 2010. Shortly before the trial date, the parties announced that they had reached a tentative settlement and requested that the trial date be reset. The request for a resetting was granted.

3. Thereafter, the Debtor and the Committee (together, the “Estate”), on one hand, and Darain and Mia, on the other hand, executed a settlement agreement, dated September 29, 2010 (the “Darain Settlement Agreement”).<sup>2</sup> The Darain Settlement Agreement resolved all disputes between and among the parties thereto (the “Darain Settlement”), subject to approval of the Darain Settlement by the Court.

4. Likewise, the Estate, on one hand, and Heather and Cory, on the other hand executed a settlement agreement, dated September 29, 2010 (the “Cory Settlement Agreement,” together with the Darain Settlement Agreement, the “Settlement Agreements”). The Cory Settlement resolved all disputes between and among the parties thereto (the “Cory Settlement”), subject to approval of the Cory Settlement by the Court.

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<sup>2</sup> The Darain Settlement Agreement was amended and restated on October 19, 2010. All references to the “Darain Settlement Agreement” herein shall refer to the First Amended and Restated Settlement Agreement dated October 19, 2010 [Docket #431].



5. On September 30, 2010, the Settlement Motion was filed. On October 1, 2010, a Certificate of Service regarding the Settlement Motion and Notice of the Settlement Hearing was filed [Docket #417]. Also on October 1, 2010, the Committee established an Internet website at [www.usfbankruptcy.com](http://www.usfbankruptcy.com), where creditors could download, without charge, the Settlement Motion and the Settlement Agreements. Counsel for the Committee addressed more than 120 telephone call inquiries regarding the Settlement Agreements.

6. The following five parties each filed an objection to the Settlement Motion:

- a. Helen Howell (the “Howell Objection” at Docket #422);
- b. the State of Missouri, by and through Missouri Attorney General Chris Koster (the “State of Missouri Objection” at Docket #424);
- c. Benita Bruno (the “Bruno Objection” at Docket #426);
- d. the R.G. Brinkmann Company d/b/a Brinkmann Constructors (“Brinkmann”) (the limited “Brinkmann Objection,” at Docket #427); and
- e. David Rucker, *et al.* (“Rucker”) (the “Rucker Objection” at Docket #428).

7. At the Settlement Hearing, David A. Warfield, counsel for the Committee, was called as a fact witness. No objections to Mr. Warfield’s being called as a witness were made. Mr. Warfield was the only witness called by any party. No objections to any of his testimony were made. Mr. Warfield’s testimony was un rebutted by any credible evidence. The Court finds Mr. Warfield’s testimony to be credible and persuasive in all respects.

#### **CONCLUSIONS OF LAW**

- A. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a “core” proceeding under 28 U.S.C. § 157(b)(2).
- B. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.
- C. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Court may approve a compromise or settlement entered into by a debtor. The Court has authority to approve a settlement proposed by the Committee pursuant to Rule 9019 through the use of its powers under

§ 105(a) to issue any order that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. *See, e.g., In re TSIC, Inc.*, 393 B.R. 71, 78 (Bankr. D. Del. 2008).

D. The authority to approve a settlement is within the sound discretion of the court. In doing so, the Court must conclude that the compromise is fair and equitable and in the best interests of the estate. *Tri-State Fin., LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008). When considering whether a compromise is fair and equitable, a bankruptcy court should consider four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Drexel Burnham Lambert Inc. v. Flight Transportation Corp., et al.*, 730 F.2d 1128, 1135 (8th Cir. 1984), *cert. denied*, 469 U.S. 1207 (1985)(citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929) and referring to *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).

E. The Court need not conclusively determine claims subject to compromise, nor find that the settlement constitutes the best result obtainable. *Cosoff v. Rodman*, 699 F.2d 599, 608, 613 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983). The Court need determine only that the settlement does not fall "below the lowest point in the range of reasonableness." *Id.* at 608; *see also New Concept Housing, Inc. v. Poindexter*, 951 F.2d 932, 938 (8th Cir. 1991).

F. Applying the applicable four-factored test, the Court **FINDS** that each of the Settlement Agreements is fair, equitable and in the best interests of the Debtor's estate, and that each falls within the range of reasonableness, and thus **HOLDS** that approval of each is proper:

1. Factor #1: Probability of success. The Estate's success in prosecution of the Litigation is by no means a certainty—a reality with which the Estate had to contend when evaluating the Settlement Agreements. Failure at trial, or only limited success at trial, presents the risk that distribution from the Debtor's estate will be dramatically curtailed. An evaluation of the Estate's probability of success at trial demonstrates that there are several threats to a recovery. First, there is a serious concern about the realistic ability to obtain a judgment against the wives. Mr. Warfield testified that there is not a "speck" of evidence that either Mia or Heather had any role in the Debtor's business. Second, Missouri law regarding tenancy by the entirety poses a significant impediment to recovery. *See U.S. Fidelity and Guar. Co. v. Hiles*, 670 S.W.2d 134, 137 (Mo. Ct. App.1984) ("No unilateral act of one spouse can divest the other's interest, so that entirety property cannot be levied on to satisfy the individual debt of one spouse."). No assets of the Akinsons are known to be owned only by Darain or only by Cory, free of any interest of their respective wives. As such, because (a) Darain and Cory are and have been Missouri residents at all relevant times, and are and have been married at all relevant times to their respective wives, and (b) Missouri law recognizes ownership by husband and wife by tenancy by the entirety, it is unclear whether the Estate would be able to obtain a judgment against the wives or to realize upon any property owned by Darain or Cory with their respective wives as tenancy by the entirety. Third, even the best way to address the tenancy by the entirety issues is fraught with its own limitations. To address the entireties issues, the Estate would focus on the fraudulent transfer

counts at trial. However, this theory would limit recovery to transfers made after March 1, 2006 because of the four year reach-back period in Mo. Rev. Stat. § 428.029. Moreover, the Estate would have to prove one or more of the “insolvency” conditions described in Missouri Uniform Fraudulent Transfer Act. These limitations and complications could severely limit the Estate’s ability to recover. Settling the Litigation relieves the Estate from having to meet its burden on the issues and avoids the possibility of a negative trial outcome for the Estate.

2. Factor #2: The difficulties, if any, to be encountered in the matter of collection.

The Estate would incur very substantial costs in collecting any hypothetical judgment against the Atkinsons. For example, the Estate would have to conduct judicial sales of nine pieces of real estate in three separate domestic counties and in one foreign country. The Estate would have to arrange for judicial sales of over two dozen cars, boats, motorcycles, and similar assets (some of which are in the Cayman Islands). The Estate would have to seize through judicial process approximately separate nineteen bank or brokerage accounts in multiple states, some of which were tilted in the names of trusts. The properties located in the Cayman Islands pose unique and significant problems in particular. The Estate would have to commence separate proceedings in the Cayman Islands to realize on those assets. The Committee estimated that the Debtor’s estate saved between \$500,000.00 and \$1,000,000.00 in collection fees and costs—fees and costs which may be even more, if the collection matters are contested or complicated. Moreover, the Estate was justifiably concerned that it might have to effectively

bear the 7.2% stamp duty associated with the transfer of the Cayman Islands real property on multiple occasions, were there not to be a settlement.

3. Factor #3: The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it. During the period leading up to the trial, the Committee suspected that Cory would file a personal bankruptcy case before the scheduled trial. This suspicion was confirmed by Cory's counsel,<sup>3</sup> who advised at the Settlement Hearing that he had prepared the pleadings necessary for Cory to file for bankruptcy relief, and that he believed that without approval of the Settlement Agreements, there was a high likelihood that Cory would file for bankruptcy relief. Such a filing would have potentially multiplied the trial expenses, as the Estate may have had to try its case against Darain and Mia separately from its case against Heather and Cory, and a personal bankruptcy filing by Cory would have greatly complicated a resolution of the Estate's claims against Cory and Heather Atkinson (increasing the expense of pursuing the claims). Such a filing also would have inevitably delayed any resolution of the claims against Cory and Heather by a minimum of several months. Moreover, Cory's filing for bankruptcy likely would have resulted in Cory and Mia's personal assets being tied up in that bankruptcy case and made available to their personal creditors, not to the creditors of US Fidelis. And, last, Cory and Mia's counsel was forthright in his representation regarding his clients' intent to appeal any decision by this Court, or

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<sup>3</sup> Cory and Mia's counsel was not sworn as a fact witness, but offered these representations as an officer of the court during his closing argument in support of the Settlement Motion. No party objected to these representations. The Court notes the good standing and excellent professional reputation of this particular counsel before this Court, the oath that he took when admitted to practice before this Court, and his continuing obligation of truthfulness and candor with the Court. The Court accepts his representations as true.

any court of appeal, that defeated a defense based on the doctrine of tenancy by the entirety. While this Court most certainly would *not* approve any settlement agreement merely because a party threatens to appeal if displeased with the trial judgment, the Court acknowledges that this threat of appeal is a legitimate factor for the *Estate* to consider when evaluating its position on the Settlement Agreements. Missouri law on tenancy by the entirety is complicated and begging for clarification on some points. An appeal on this issue would be expensive and time-consuming, and could result in a negative outcome for the Estate.

4. Factor #4: The paramount interest of the creditors and a proper deference to their reasonable views in the premises. The Rucker Objection was withdrawn at the Settlement Hearing after brief comments by counsel were entertained. The Brinkmann Objection was made moot by the concession and agreement of the Debtor and the Committee at the Settlement Hearing to terms satisfactory to Brinkmann, and thus is overruled as moot. The Howell Objection was not prosecuted at the Settlement Hearing, and is overruled.<sup>4</sup> Mepco Finance Company prosecuted its interests at the Settlement Hearing, conducted cross-examination of Mr. Warfield, and ultimately represented that it fully supported the Settlement Motion. The State Attorney General of Texas and the State Attorney General of Ohio strongly supported the Settlement Motion.<sup>5</sup> There

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<sup>4</sup> The Howell Objection was filed pro se by an individual consumer creditor. To the degree that it is an objection to the Settlement Motion, it is overruled. However, the Court preserves this pleading to the degree that it may be an attempt to assert a claim, and directs that this document to be treated as a proof of claim.

<sup>5</sup> It also was noted at the Settlement Hearing that certain state attorneys general are in negotiations with Darain and Cory, individually, to reach a settlement that is anticipated to

were, however, two objections that were prosecuted fully at the hearing. The State of Missouri Objection and the Bruno Objection, while well-pleaded and well-argued, ultimately did not defeat the evidence presented in support of the Settlement Motion.<sup>6</sup> Despite this, however, the objecting parties played an important role in evaluating the Settlement Motion, by giving voice the frustration of some consumer creditors with one part of this Settlement Agreement: the fact that it allows the Atkinson wives to retain certain assets. The Court understands the seeming distastefulness of this part of the Settlement Agreements. From a layperson perspective, it may seem unjust that the wives are permitted to keep in excess of \$500,000.00 each—money that (as the Rucker counsel noted) far exceeds the annual income ten-fold of many of the consumer claimants. It may seem like the wives—who for years benefited from their husbands’ largess and lifestyle—now are benefiting on the backs of the unsecured creditors. However, this visceral reaction, regardless of how understandable, cannot cloud legal judgment in light of all the facts. In fact, the wives cannot be easily and directly linked to the liabilities of the Debtor, and the expenses, risks, and time involved with fully prosecuting this Litigation makes settlement most likely the best possible avenue for recovery to the Debtor’s estate. And, as with any negotiated settlement, each party must compromise and give up positions. Here, the Estate is

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include an agreement that the brothers be prohibited from conducting certain types of business practices within those states in the future.

<sup>6</sup> The Court notes that no evidence was offered of any alternative that suggested that the Settlement Agreements were unfair or inequitable, and no evidence was offered as to what solution might be better for the creditors of the estate—and, even if there was such a possible solution, who would fund it, or who would fund the continued prosecution of the Litigation.

allowing the wives to retain these assets—which in the big picture is a small price to pay for the very significant recovery it is able to obtain without the costs, delay, and risks involved with seeing the matter through to trial.

G. In evaluating the Settlement Agreements, the Committee engaged in extensive discovery of the Atkinsons' assets, utilizing public records searches, subpoenas of financial institutions, review of electronic mails sent and received by Darain and Cory on the Debtor's computer servers, review of the Atkinsons' federal income tax returns since 2003, depositions of thirteen Atkinson family members, and ultimately depositions of each of the Atkinsons. The discovery conducted regarding inquiry into the Atkinsons' assets was extensive, broad-reaching, and thorough, and—this Court believes—as exhaustive as reasonably possible. And, pursuant to the Settlement Agreements, if any assets of the Atkinsons are subsequently discovered, they will immediately become property of the Debtor's bankruptcy estate, and will be made available for distribution to US Fidelis creditors in accordance with the priority scheme established by federal bankruptcy law. Moreover, under the respective Settlement Agreements, the Atkinsons will suffer serious consequences if additional assets are discovered or if there was a material inaccuracy in any of their disclosures to the Estate in connection with these settlements. This Court will retain jurisdiction to determine such consequences as allowed under federal bankruptcy law, and will take a dim view on any intentional discrepancies or inaccuracies.

#### **RELIEF ORDERED**

Based on the foregoing, the Court **ORDERS** that:

the Settlement Motion be **GRANTED**;

the Settlement Agreements each be **APPROVED**;



the remaining objections be **OVERRULED** as described herein;

the Debtor, the Committee, Darain and Mia be authorized and directed to execute and deliver all documents, instruments, and agreements necessary or desirable to carry out the terms of the Darain Settlement Agreement, including without limitation agreements, contracts, powers of attorney, deeds, mortgages, notes, bills of sale, certificates of title, title affidavits, and consent judgments;


the Debtor, the Committee, Cory and Heather be authorized and directed to execute and deliver all documents, instruments, and agreements necessary or desirable to carry out the terms of the Cory Settlement Agreement, including without limitation agreements, contracts, powers of attorney, deeds, mortgages, notes, bills of sale, certificates of title, title affidavits, and consent judgments;

nothing herein shall affect the validity, priority or extent under applicable non-bankruptcy law any mechanic's liens on the real estate and improvements located at 5 Lakeview Drive, Lake St. Louis, Missouri ("Lakeview Property"), and that the transfer of the Lakeview Property to the Debtor pursuant to the Darain Settlement Agreement and this Order shall be subject in all respects to such mechanic's liens as may determined subsequently by reference to applicable non-bankruptcy law;

the surrender of the assets hereunder by the Atkinsons to the Debtor shall not constitute a transfer for purposes of any listing or similar agreement covering any of the surrendered property and that no commission shall be due on account of such transfer from the Atkinsons to the Debtor under the Settlement Agreements;

all third-parties shall cooperate with the Debtor and the Committee to effectuate the Settlement Agreements and the transfer of all the Atkinsons' assets to the Debtor, and third-parties may rely upon this Order to effectuate the transfer of the Atkinsons' properties.

subject to the right to rescind the releases granted hereunder as set forth in the Settlement Agreements, upon the closing of the transactions in the Darain Settlement Agreement, the Debtor and the Committee are deemed to release and forever discharge Darain, Mia, Cory, and Heather from any and all claims, demands, damages and causes of action of any kind, whether at law, in equity or otherwise, which the Debtor and the Committee now have or hereafter can, shall or may have against them arising out of or pertaining to the business operations of US Fidelis, Inc., provided, however, Darain, Mia, Cory, and Heather shall not be released from their obligations under their respective Settlement Agreements or this Order.

  
CHARLES E. RENDLEN, III  
U.S. Bankruptcy Judge

DATED: October 22, 2010  
St. Louis, Missouri  
ek

**Copies mailed to:**

**Robert E. Eggmann**

**David A. Warfield**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>US FIDELIS, INC.,</b>	)	<b>Case No. 10-41902-705</b>
	)	
<b>Debtor.</b>	)	<b>Hon. Charles E. Rendlen, III</b>
	)	
	)	<b>JOINT MOTION FOR ORDER APPROVING</b>
	)	<b>SETTLEMENTS WITH DEFENDANTS</b>
	)	<b>CORY AND HEATHER ATKINSON AND</b>
	)	<b>DEFENDANTS DARAIN AND MIA</b>
	)	<b>ATKINSON</b>
	)	
	)	Hearing Date: Oct. 20, 2010
	)	Hearing Time: 10:00 a.m.
	)	Hearing Location: U.S. Bankruptcy Court,
	)	St. Louis, MO, Courtroom 7-S
	)	
	)	Objection Deadline: October 18, 2010
	)	

## JURISDICTION AND VENUE

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a “core” proceeding under 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.
3. The basis for the relief requested is 11 U.S.C. §§ 105(a) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure.

## **BACKGROUND**

### **A. The Bankruptcy Case and the Adversary Proceedings**

4. On March 1, 2010, Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Committee was formed on or about March 11, 2010.

5. On March 25, 2010, the Committee filed a Complaint filed an adversary proceeding styled as *Official Committee of Unsecured Creditors v. Darain Atkinson, et al.*, Case No. 10-04172 (the “Committee Litigation”), against, among others, Cory Atkinson (“Cory”), Heather Atkinson, Cory’s wife (“Heather”), Darain Atkinson (“Darain”) and Mia Atkinson, Darain’s wife (“Mia”; collectively, Cory, Heather, Darain and Mia are hereinafter referred to as either, the “Settling Defendants”, or the “Atkinsons”).

6. At the same time, the Committee filed a Motion seeking, *inter alia*, a preliminary injunction prohibiting the Atkinsons from selling, transferring or otherwise disposing of or concealing all or any part of their assets, except as authorized by the Court (the “Preliminary Injunction”). By order, entered April 13, 2010, the Court granted the requested Preliminary Injunction against the Atkinson, which Preliminary Injunction was subsequently by the Court through the conclusion of trial in the Committee Litigation by order, entered September 3, 2010.

7. The overriding purpose of the Preliminary Injunction was to preserve the value of the Settling Defendants’ assets for the benefit of Debtor’s bankruptcy estate and all creditors thereof.

8. On April 28, 2010, Debtor filed a Complaint initiating that certain adversary proceeding styled as *US Fidelis, Inc. v. Cory Atkinson, et al.*, Case No. 10-41902 (the “Debtor Litigation”), against each of the Atkinsons and certain companies owned by Darain and Cory.

9. The Debtor asserts a variety of claims against the Atkinsons in the Debtor Litigation, all of which were based on the actions taken by Darain and Cory as the owners, officers and directors of Debtor, including claims seeking judgments against each in the amount of at least \$101 million.

10. A trial was scheduled on the Debtor Litigation for September 15, 2010. However, the parties were able to avoid trial when they settled their disputes.

11. The Debtor and the Committee, on one hand, and Darain and Mia on the other hand executed and delivered a Settlement Agreement, dated September 29, 2010 (the "Darain Settlement Agreement"), resolving all disputes between the parties thereto (the "Darain Settlement"), subject to approval of the Darain Settlement by the Court. The Darain Settlement is described in more detail below.

12. Likewise, Debtor and the Committee, on one hand, and Heather and Cory on the other hand executed and delivered a Settlement Agreement, dated September 29, 2010 (the "Cory Settlement Agreement"), resolving all disputes between the parties thereto (the "Cory Settlement"), subject to approval of the Darain Settlement by the Court. The Cory Settlement is described in more detail below.

#### **B. Summary of Debtor Litigation**

13. In the Debtor Litigation, the Debtor drafted and prosecuted both the original Complaint and First Amended Complaint against Darain and Cory, Mia and Heather, and third-party companies related to the Atkinsons. In connection with this work, counsel for the Debtor interviewed current and former employees of Debtor, including the company's former Chief Financial Officers and Chief Executive Officer, and analyzed tens of thousands of internal documents relating to the Atkinsons' governance of the company and transfers of company monies for the benefit of the Atkinsons.

14. During the discovery process for the Debtor Litigation, counsel for the Debtor subpoenaed and examined records from the Atkinsons' attorneys, accountants and financial advisors, participated in the 2004 Examinations of various Atkinson family members, and prepared and produced the Chief Restructuring Officer, Scott Eisenberg, and other employees for deposition. Research and motion practice was conducted in support of the Debtor's claims and discovery, including topics relating to alter ego, corporate waste, fraud, attorney-client privilege, the marital privilege, the privilege against self-incrimination and relief pursuant to the Bankruptcy Code. Default judgment was obtained against the

Atkinson-related third-party companies, Atkinson Construction, LLC, Atkinson Realty, LLC and DC Atkinson Realty, LLC.

15. In preparation for trial, the Debtor conducted an in-depth analysis of transfers from the Debtor for the benefit of Cory, Darain, Heather and Mia, including an analysis of the Debtor monies flowing to third parties and to other Atkinson family members. An investigation of Debtor's financial history and accounting methodology was conducted and the date of insolvency of the Debtor was determined in consultation with the Chief Restructuring Officer in support of the Debtor Litigation. Up until the time of settlement, counsel for the Debtor was setting up witness files, selecting key documents and creating demonstrative exhibits for use at trial. These files and exhibits, along with Lathrop & Gage's asset identification and developed legal theories, form the basis of what would have been a successful conclusion to the litigation.

**C. Committee Investigation Into the Settling Defendants' Assets**

16. The Committee began an extensive investigation into the assets and holdings of each of the Settling Defendants from virtually the moment it was appointed to assist with recovery and evaluation of potential recovery from the Atkinsons. Based on the results of this investigation, the Committee strongly believes that each of the Settlements sought to be approved herein and described in detail below are fair and equitable and in the best interests of Debtor's estate.

17. In order to ensure completeness and accuracy of the information, the Committee did not rely on any one source in order to identify and confirm the existence and ownership of assets by the Atkinsons. The sources relied upon by the Committee in its investigation included personal financial statements, media searches, public records searches, interviews with employees and former employees of the Debtor, Rule 2004 examinations of numerous Atkinson family members, Rule 2004 document requests from various financial institutions, personal interviews with Darain and Cory, individually, regarding their respective assets and independent third-party appraisals, each as detailed below.

18. Early on in the bankruptcy case, the Debtor provided the Committee with electronic copies of emails sent or received by Darain or Cory using the Debtor's email servers. The Committee obtained 66,540 emails sent or received by Darain and 49,706 emails sent or received by Cory. The time period covered was approximately January 1, 2005 through the Petition Date. By importing the emails and utilizing a software program that was word searchable, the Committee was able to develop search criteria to locate potential assets. For example, the Committee located multiple versions of personal financial statements prepared by Darain and/or Cory that were provided to other parties using the Debtor's email system. The Committee also located copies of all personal income tax returns filed by the Settling Defendants since 2003. The emails contained many other helpful documents, such as copies of bank statements, deeds, certificates of title and other similar documents.

19. The Committee also conducted research through a public records database (Westlaw) for information on real property and titled personal property currently or previously owned by the Atkinsons. This public records research confirmed certain information disclosed in other sources and provided the Committee with information about other property that would require additional research to confirm. For example, the Committee searched county real property tax records and obtained letter reports to verify ownership, transfers and the status of title of the various parcels of real property in which the Atkinsons held an interest. A law firm in the Cayman Islands assisted the Committee with investigating the status of ownership of real estate located in the Cayman Islands. The Committee also searched records from Missouri Department of Revenue to confirm information on vehicle and boat ownership and transfers.

20. The Committee took Rule 2004 oral examinations of 13 Atkinson family members and other parties that either appeared to have received transfers from Debtor or that worked for the company in some capacity. The vast majority of these examinations focused on the Atkinsons' personal financial situation, including any assets available to satisfy the claims asserted against the Atkinsons by the Debtor and the Committee. The Committee also issued Rule 2004 document requests and subpoenas on the financial institutions that the Committee believed to have any connection with the Atkinsons or their assets. The Committee obtained and reviewed records from at least 12 financial institutions in which

some or all of the Atkinsons had accounts. These account statements enabled the Committee to refine its search terminology with the email review and, led to the discovery of various bank accounts and other investments.

21. The Committee, acting through its counsel, visited the St. Louis area homes of both Darain and Cory and interviewed them at length regarding their personal financial position. The Committee also informally interviewed other persons with extensive knowledge of the Atkinsons' personal financial position, including the current Controller of the Debtor and the former President of the Debtor.

22. The Committee has hired an appraiser (Ivey-Selkirk) to appraise the household goods and jewelry (located in the St. Louis area) of the Atkinsons. Ivey-Selkirk will assist in valuing the household furnishings and jewelry to ensure compliance with the settlement agreement, if approved by the Court, and to provide a basis for valuing the personal property of the Atkinsons.<sup>1</sup>

#### **D. Results of Investigation into Settling Defendants' Assets**

##### **i. Darain and Mia Atkinson's Assets**

23. As part of the settlement, Darain and Mia prepared and submitted under oath an affidavit identifying their assets and holdings. This affidavit is attached to the Darain Settlement (defined below) and attached hereto as part of Exhibit A. The affidavit attached to the Darain Settlement is consistent with the information that discovered by the Debtor and the Committee.

24. From records reviewed by the Committee, it appears that Darain and Mia spent over \$26 million on their home at 5 Lakeview Ct. in Lake St. Louis. Darain and Mia also acquired a \$4.5 million home on Rum Point in the Cayman Islands in 2007 and an extensive collection of automobiles, boats, and jewelry. These and similar purchases, together with their general lifestyle, have left Darain and Mia without any significant cash resources at the present time. To verify the Atkinsons' penury, the

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<sup>1</sup> The Committee also used information published in the press. For example, on April 19, 2009, the St. Louis Post-Dispatch published a list of assets owned by Darain and Cory. The Committee found this article particularly helpful as a starting point for the asset investigation.



Committee subpoenaed records from 12 banks and other financial institutions where Darain and Mia had historically maintained bank records. The Committee reviewed these records and other deposit information to determine whether Darain and Mia were concealing any deposit accounts or other investment assets. The Committee ultimately determined that Darain and Mia are, in fact, virtually without any cash resources.

25. Darain and Mia, however, do own substantial assets free and clear of any liens or other encumbrances. For example, the Committee's investigation reveals that Darain and Mia own the following real estate:

- 5 Lakeview Court, Lake St. Louis, MO (subject to some mechanic's liens)
- 215 Pigeon Drive, Lake St. Louis, MO
- 414 Water Cay Rd, Grand Cayman KY1-1106

26. Darain and Mia also own the following vehicles:

- 2009 Escalade
- 2007 Mercedes S550
- 2009 Ford F-150
- 2007 Toyota Fortuna (in Cayman Islands)

27. Darain and Mia also own the following boats:

- 2004 24 foot Malibu
- 2005 24 foot Harris Boat
- 2005 Searay 500 (in Cayman Islands)
- 2006 Boston Whaler 2700 (in Cayman Islands)
- 2009 Seadoo RXT 255 (in Cayman Islands)
- 2009 Seabob (in Cayman Islands)

28. Darain and Mia also own jewelry with a value (at cost) of over \$400,000 and insurance policies with a cash surrender value of in excess of \$400,000. The Committee has also engaged Ivey-Selkirk to value the remaining furnishings and fixtures owned by Darain and Mia.

29. Darain also owns an interest in a number of business enterprises, most of them in conjunction with Cory. Most of these business enterprises were connected in some fashion with the operation of the Debtor's business. While the Committee believes that many of these businesses are now defunct and have no value, it appears that a few of the businesses do own substantial assets and that there

may be value to Darain's interests in these businesses. The Committee and the Debtor are presently evaluating these business enterprises and have already begun to liquidate some of their assets.

**ii. Cory and Heather's Assets**

30. As part of the settlement, Cory and Heather have prepared an affidavit identifying their assets and holdings. This affidavit is attached to the Cory Settlement (defined below) and attached hereto as part of Exhibit B. The affidavit attached to the Cory Settlement is consistent with the information discovered by the Debtor and the Committee.

31. Cory and Heather have significantly more liquid assets than Darain and Mia, including but not limited to numerous investment and deposit accounts. Cory and Heather have banking relationships with U.S. Bank, Missouri Valley Federal Credit Union, and Frontenac Bank. In addition to the foregoing, Cory and Heather have substantial investment accounts, annuities, and mutual funds purchased through Merrill Lynch and Creative Financial Group. These total approximately \$9,200,000. Cory and Heather additionally have significant cash surrender value in life insurance policies.

32. Cory and Heather own the following real estate:

- 302 Atkinson Way, Wentzville, MO
- 45 Via Preminenta, Sunrise Beach, MO
- 1756 Grouse Rdg, Truckee, CA
- 229 Bless Us Drive East, Wentzville, MO
- 505 Lias Way, Wentzville, MO
- 718 Wenstone Crossing Way, Wentzville, MO
- 261 Three Cedars Drive, O'Fallon, MO (deed of trust only)

33. Cory and Heather own the following vehicles:

- 2009 Cadillac Escalade
- 2009 Dodge Ram
- 2009 Jeep Wrangler
- 2008 Chevy Suburban
- 2005 Ford Mustang
- 2008 Mercedes C350
- 1969 Dodge Super Bee

34. Cory and Heather own the following boats:

- 2008 Mastercraft X45

- Trailer for Mastercraft
- 2005 Formula
- Seadoos (2)

35. Cory and Heather also own a substantial number of ATVs and motorcycles:

- 2008 Polaris Sportsman XP 850
- 2009 Polaris Sportsman 800
- 2008 Suzuki Quad Sport 450
- 2008 Suzuki Quad Sport 400
- 2006 Kawasaki Brutforce 750
- 2009 Kymco UXV
- 2008 Harley Davidson VRCSCX
- 2009 Harley Davidson Limited
- 2006 Yamaha four wheeler
- 2009 Honda 2 WHL
- 2009 Honda 2WHL
- 2007 KYMC four wheelers (2) (youth size)
- John Deere Tractor

36. Cory also owns an interest in a number of business enterprises, most of them in conjunction with Darain. Most of these business enterprises were connected in some fashion with the operation of the Debtor's business. While the Committee believes that many of these businesses are now defunct and have no value, it appears that a few of the businesses do own substantial assets and that there may be value to Darain's interests in these businesses. The Committee and the Debtor are presently evaluating these business enterprises and have already begun to liquidate some of their assets.

## **THE SETTLEMENT TERMS**

### **A. The Darain Settlement**

37. The Committee, the Debtor, Darain and Mia have agreed to resolve all claims brought against Darain and/or Mia in the Committee Litigation and the Debtor Litigation and all other potential claims against Darain and/or Mia. The terms of the Darain Settlement are fully set forth in the Darain Settlement Agreement, a true and accurate copy of which is attached hereto as **Exhibit A** and incorporated by reference herein.

38. A summary of certain of the terms of the Darain Settlement are as follows:<sup>2</sup>
- a. Surrender of Assets. At Closing, Darain and Mia will surrender to the Estate all of their respective right, title and interest in and to all assets (the “D&M Assets”) owned by them in any capacity;
  - b. Payment to Mia. At Closing, the Estate shall transfer the following assets to Mia (the “Mia Settlement Assets”) from the D&M Assets:
    - i. \$500,000 in cash;
    - ii. Jewelry with an appraised liquidation value of no more than \$25,000 as established by an appraiser of the Estate’s choosing;
    - iii. Two vehicles with a NADA trade-in value of no more than \$75,000 in the aggregate;
    - iv. Bedroom furniture and toys for Darain and Mia’s children; and
    - v. Other household furnishings and clothing with an appraised liquidation value of no more than \$50,000 as established by an appraiser of the Estate’s choosing;
  - c. Use of Mia Settlement Assets. Mia may not transfer title to any portion of the Mia Settlement Assets to Darain.
  - d. Asset Verification. Darain and Mia shall each submit to an examination or deposition under oath by one representative of Debtor and one representative of the Committee regarding the accuracy and completeness of the Financial Statement and the conduct of Darain and Mia’s financial affairs from and since January 1, 2002 to the present. Upon request, Darain and Mia must also produce to the Estate any documents within their possession, custody or control pertaining to their financial position or the conduct of their financial affairs. Darain and Mia shall further instruct all attorneys,

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<sup>2</sup> All capitalized terms used in the subsections to this paragraph and not otherwise defined shall have the respective meanings set forth in the Darain Settlement Agreement.

financial advisors, accountants or other professionals with whom they have in the past retained or consulted to cooperate fully with the Estate's efforts to verify the accuracy and completeness of the Financial Statement or any other issue regarding the conduct of Darain and Mia's financial affairs from and since January 1, 2002 to the present;

- e. Consent Judgments. Simultaneously upon the filing of this Motion, Darain shall execute and deliver to the Estate a Consent Judgment in the Debtor Litigation for \$50 million, and Mia shall execute and deliver to the Estate a Consent Judgment in the Debtor Litigation for \$650,000. The Estate shall hold the Consent Judgments in escrow and will file the Consent Judgments upon the discovery that any of Darain and Mia's disclosures in the Financial Statement and/or the Atkinson Depositions were materially inaccurate or incomplete and compliance with the notice and objection procedures set forth in the Darain Settlement Agreement at paragraph 12.

**B. The Cory Atkinson Settlement**

39. The Committee, the Debtor, Cory and Heather have agreed to resolve all claims brought against Cory and/or Heather in the Committee Litigation and the Debtor Litigation and all other potential claims against Cory and/or Heather. The terms of the Cory Settlement are fully set forth in the Cory Settlement Agreement, a true and accurate copy of which is attached hereto as **Exhibit B** and incorporated by reference herein.

40. A summary of certain of the terms of the Cory Settlement are as follows:<sup>3</sup>

- a. Surrender of Assets. At Closing, Cory and Heather will surrender to the Estate all of their respective right, title and interest in and to all assets (the "C&H Assets") owned by them in any capacity;

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<sup>3</sup> All capitalized terms used in the subsections to this paragraph and not otherwise defined shall have the respective meanings set forth in the Cory Settlement Agreement.

- b. Payment to Heather. At Closing, the Estate shall transfer the following assets to Heather (the "Heather Settlement Assets") from the C&H Assets:
- vi. \$500,000 in cash;
  - vii. Jewelry and other household furnishings and clothing with an appraised liquidation value of no more than \$75,000 as established by an appraiser of the Estate's choosing; and
  - viii. Vehicles with a NADA trade-in value of no more than \$50,000 in the aggregate;
- c. 529 Plans. Upon approval of the Cory Settlement Agreement by the Court, the Estate and Cory and Heather will work cooperatively so that, in addition to the Settlement Assets, (a) Brenden Atkinson shall retain \$100,000 to be held in a qualified "529 account," (b) Kaden Miller shall retain \$75,000 in a qualified "529 account," and (c) Caleb Atkinson shall retain \$75,000 in a qualified "529 account";
- d. Asset Verification. Cory and Heather shall each submit to an examination or deposition under oath by one representative of Debtor and one representative of the Committee regarding the accuracy and completeness of the Financial Statement and the conduct of Cory and Heather's financial affairs from and since January 1, 2002 to the present. Upon request, Cory and Heather must also produce to the Estate any documents within their possession, custody or control pertaining to their financial position or the conduct of their financial affairs. Cory and Heather shall further instruct all attorneys, financial advisors, accountants or other professionals with whom they have in the past retained or consulted to cooperate fully with the Estate's efforts to verify the accuracy and completeness of the Financial Statement or any other issue regarding the conduct of Cory and Heather's financial affairs from and since January 1, 2002 to the present;

- e. Consent Judgments. Simultaneously upon the filing of this Motion, Cory shall execute and deliver to the Estate a Consent Judgment in the Debtor Litigation for \$40 million, and Heather shall execute and deliver to the Estate a Consent Judgment in the Debtor Litigation for \$875,000. The Estate shall hold the Consent Judgments in escrow and will file the Consent Judgments upon the discovery that any of Cory and Heather's disclosures in the Financial Statement and/or the Atkinson Depositions were materially inaccurate or incomplete and compliance with the notice and objection procedures set forth in the Cory Settlement Agreement at paragraph 10.

#### **RELIEF REQUESTED**

41. Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, the Court may approve a compromise or settlement entered into by a debtor. The Court has authority to approve a settlement proposed by the Committee pursuant to Rule 9019 through the use of its powers under 11 U.S.C. § 105(a) to issue any order "that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. See In re TSIC, Inc., 393 B.R. 71, 78 (Bankr. D. Del. 2008).

42. The authority to approve a settlement is within the sound discretion of the court. In doing so, the Court must conclude that the compromise is fair and equitable and in the best interests of the estate. Tri-State Fin., LLC v. Lovald, 525 F.3d 649, 654 (8th Cir. 2008). When considering whether a compromise is fair and equitable, a bankruptcy court should consider four criteria: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. See In re Flight Transportation Corporation Securities Litigation, 730 F.2d 1128, 1135 (8th Cir. 1984), *cert. denied*, 469 U.S. 1207 (1985) (*cited in In re Apex Oil Co.*, 92 B.R. 847, 867 (Bankr. E.D.Mo. 1988)) Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, 390 U.S. 414, 424 (1968); see also Tri-State, 525 F.3d at 654. The Court need not conclusively determine claims subject to compromise, nor find that the settlement constitutes the best result obtainable. Cosoff vs. Rodman (In re

W.T. Grant Co.), 699 F.2d 599, 608, 613 (2nd Cir. 1983), *cert. denied*, 464 U.S. 822 (1983). The Court needs only determine that the settlement does not fall "below the lowest point in the range of reasonableness." *Id.* at 608, *see also In re New Concept Housing, Inc.*, 951 F.2d 932, 938 (8th Cir. 1991).

43. Each of the Settlement Agreements is fair and equitable. While the Debtor and the Committee believe there is a high probability of success in the Debtor Litigation and the Committee Litigation against each of the Settling Defendants, the delay, expense and inconvenience to the Committee, Debtor and its estate that would result from having to go through a trial and then seek enforcement of a judgment recommend approval of the Settlement Agreements.

44. The Committee and the Debtor both believe that the Settlement Agreements are in the best interests of the bankruptcy estate. Not only do the Settlement Agreements resolve the Adversary Proceedings, negating the inherent risks associated with any litigation, but the Settlement Agreements resolve the expense and difficulty of enforcement. Had there been no settlement and if the Debtor had obtained a judgment against the Settling Defendants, the Debtor and/or Committee would have had to expend considerable time and resources collecting the judgment. These collection activities would have required levying and/or executing on :

- (a) 35 cars, boats and other items located in Missouri and the Caymans.
- (b) 11 separate pieces of real estate located in Missouri, California and the Caymans.
- (c) at least 19 separate bank and other accounts located in various jurisdictions.

45. Approval of each of the Settlement Agreements is in the best interests of Debtor's bankruptcy estate and all of its creditors because they achieve the best possible result without expending the significant amounts of time and money that would be required to go through a trial and then seek enforcement of a judgment.



WHEREFORE, the Committee respectfully requests that this Court enter an Order approving each of the Cory Settlement Agreement and the Darain Settlement Agreement and granting such other and further relief as it deems just and proper.

Dated: September 30, 2010  
St. Louis, Missouri

Respectfully submitted,

THOMPSON COBURN LLP

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### Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on all parties receiving notice through the Court's CM/ECF system this 30th day of September, 2010, as follows:

#### **VIA CM/ECF E-MAIL**

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/s/ David A. Warfield

**EXHIBIT A**

**Darain Settlement Agreement**

**EXHIBIT B**

**Cory Settlement Agreement**

## **FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT**

THIS FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT<sup>1</sup> is entered into on this 19th day of October, 2010 by and among DARAIN ATKINSON (“Darain”) and MIA ATKINSON (“Mia”), husband and wife, who are both residents of the State of Missouri (Darain and Mia will sometimes collectively be referred to as the “Atkinsons”), US FIDELIS, INC., a Missouri corporation that is presently a debtor in possession under Chapter 11 of the U.S. Bankruptcy Code in Case No. 10-41902 (“USF”) pending in the U.S. Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”); and the OFFICIAL UNSECURED CREDITORS’ COMMITTEE OF US Fidelis, Inc. (the “Committee”) (For ease of reference, USF and the Committee will sometimes be jointly referred to as the “Estate”).

### Preliminary Statement

At all times relevant to this Settlement Agreement Darain was the President of USF, a member of USF’s Board of Directors, and the owner of 50% of the issued and outstanding shares of stock in USF. The Committee has filed suit against Darain and Mia (among others) which litigation is pending in the Bankruptcy Court as Adversary Proceeding No. 10-4172 (the “Committee Litigation”). USF has filed suit against Darain and Mia (among others) which litigation is pending in the Bankruptcy Court as Adversary Proceeding No. 10-4225 (the “USF Litigation”). The Atkinsons, USF, and the Committee now wish to resolve the issues posed by the Committee Litigation, the USF Litigation, and other potential claims, all as is more particularly set forth in this Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Estate and the Atkinsons hereby agree as follows:

---

<sup>1</sup> This First Amended and Restated Settlement Agreement supercedes that certain Settlement Agreement dated September 29, 2010 among the parties.

1. Transfer of Assets. At Closing (as hereafter defined) and subject to their rights in paragraph 16 of this Settlement Agreement, the Atkinsons will transfer to the Estate all of the Atkinsons' respective right, title and interest in and to all assets or property (the "Assets") owned by them in any capacity, including but not limited to individually, jointly, or in trust. The Atkinsons agree that this paragraph is intended to result in the transfer to the Estate of all Assets, known or unknown, disclosed or undisclosed, in which the Atkinsons have any legal or equitable interest whatsoever, including but not limited to real property, personal property, cash, bank accounts, brokerage accounts, contract rights, stocks, bonds, notes, instruments, claims, rights to receive payments or distributions or dividends, causes of action, or any other property right of value. For the avoidance of any doubt, all funds in the escrow account established by Order of the Bankruptcy Court dated April 23, 2010 in the Committee Litigation (the "GP Escrow Account") will be transferred to the Estate at Closing. To facilitate the transfer of the Assets, the Atkinsons will each execute and deliver at Closing a Limited Power of Attorney substantially in form attached to this Settlement Agreement as Exhibit A.

2. Payment to the Atkinsons. At Closing, from the Assets transfer by the Atkinsons, the Estate will transfer to Mia Atkinson the following assets (collectively, the "Settlement Assets"): (a) \$500,000 in cash (less the Moving Advance described in Paragraph 7), (b) jewelry and other household furnishings and clothing with an appraised liquidation value of no more than \$75,000 as established by an appraiser of the Estate's choosing; (c) two vehicles with a Kelly Blue Book trade-in value of no more than \$75,000 in the aggregate; and (d) bedroom furniture and toys for the Atkinsons' children that has a modest value.

3. Restrictions on Use of Settlement Assets. Upon payment of the Settlement Assets and subject to the continuance of the Living Expense Injunction described in paragraph 18, Mia



Atkinson may utilize the Settlement Assets as she sees fit (including purchasing any of the Assets transferred to the Estate upon terms otherwise acceptable to the Estate), provided, however, that Mia may never transfer any interest in any of the Settlement Assets to Darain, either directly or indirectly, as co-tenants, tenants by the entirety, or otherwise unless required by court order.

4. Additional Terms Regarding Transfer of Assets. Notwithstanding the foregoing, in lieu of accepting the transfer of a particular Asset(s), at the Estate's sole option, at Closing the Atkinsons will grant to the Estate a lien, security interest, or other similar encumbrance on such Asset(s) together with a non-recourse promissory note secured by such encumbrance. In addition, the Estate retains the right to refuse to accept the transfer of any Asset that it believes would be burdensome or of inconsequential value to the Estate by delivering written notice to the Atkinsons.

5. Asset Proceeds Account. At Closing, USF will establish and maintain a separate, segregated bank account at an authorized depository into which the proceeds of all of the Assets will be deposited (the "Asset Proceeds Account"). Except as expressly set forth in this Settlement Agreement, USF will pay from the Asset Proceeds Account all costs of maintaining, insuring or holding any of the Assets pending their sale (the "Holding Costs"). Upon entry of the Settlement Order (as defined below), the Atkinsons will have no interest in the Asset Proceeds Account except as expressly described in paragraph 16 of this Settlement Agreement.

6. Marketing and Sale of Assets. After Closing, all non-cash Assets (including any Assets in which the Estate holds only a lien, security interest, or other encumbrance) will be marketed for sale by the Estate or professionals retained by the Estate. Until such time as USF confirms a plan (the "Bankruptcy Plan"), the Assets may be sold pursuant to 11 U.S.C. § 363

upon such notice as may be required by the Bankruptcy Court. The Atkinsons will cooperate in all respects with the marketing and sale of the Assets, including but not limited to executing any necessary transaction documents and responding to any reasonable information requests.

7. Lakeview Property. On or before the later of (a) the Closing Date, or (b) November 15, 2010, the Atkinsons shall vacate the home at 5 Lakeview, Lake St. Louis, MO and remove all contents described in paragraph 2(b), (c), and (d) hereof. Upon the execution of this Agreement, Mia Atkinson will receive \$9,000 from the GP Escrow Account for moving and related expenses ("Moving Advance"). The Atkinsons shall execute and deliver to the Estate a lease agreement for their occupancy of the Lakeview Property.

8. Pigeon Court Property. Mia Atkinson's grandparents, at their election, may continue to occupy the home located at 215 Pigeon Court, Lake St. Louis, MO 63367 ("Pigeon Property") without paying rent so long as they (a) execute and deliver to the Estate a lease agreement that permits the Estate to terminate their occupancy upon sixty (60) days written notice, (b) perform and pay for routine cleaning and maintenance on the Pigeon Property and (c) pay all utilities associated with their continued occupancy of the Pigeon Property. At all times, Mia Atkinson's grandparents must (x) refrain from damaging or committing waste upon the Pigeon Property, (y) cooperate fully in all efforts to market the Pigeon Property for sale, and (z) refrain from creating or permitting to be created a lien against the Pigeon Property.

9. Financial Statement. The Atkinsons each separately warrant and represent to USF and to the Committee that Exhibit B to this Settlement Agreement is a full and complete statement of all of the assets that the Atkinsons own as of September 29, 2010, either jointly, individually, in trust, or in any other manner whatsoever (the "Financial Statement"). The Atkinsons each separately agree and acknowledge that USF and the Committee have each relied

on the completeness and accuracy of the Financial Statement in making their respective determinations to enter into this Settlement Agreement and that the Financial Statement is provided under penalty of perjury under 28 U.S.C. § 1746.

10. Asset Verification. On or before October 18, 2010, the Atkinsons will each submit to an oral examination or deposition under oath by one representative of USF and one representative of the Committee (the “Atkinsons Depositions”) regarding the accuracy and completeness of the Financial Statement and the conduct of the Atkinsons’ financial affairs from and since January 1, 2002 to the present (the “Relevant Period”). Upon request, the Atkinsons must also produce to the Estate any documents within their possession, custody, or control pertaining to their financial position or the conduct of their financial affairs during the Relevant Period. The Atkinsons will instruct all attorneys, financial advisors, accountants, or other professionals with whom they have in the past retained or consulted to cooperate fully with the Estate’s efforts to verify the accuracy and completeness of the Financial Statement or any other issue regarding the conduct of the Atkinsons’ financial affairs for the Relevant Period, and the Settlement Order will require any such attorney, financial advisor, accountant, or other professional to so cooperate.

11. Withdrawal of Settlement Motion. If the Estate becomes dissatisfied at any time prior to entry of the Settlement Order with the results of or the Atkinsons’ cooperation with the asset verification procedures, the Estate may withdraw its Settlement Motion and proceed with the Committee Litigation, the USF Litigation, and the pursuit of other claims against the Atkinsons.

12. Consequences for Inaccurate or Incomplete Disclosure. If the Estate learns after entry of the Settlement Order that any of the Atkinsons’ disclosures in the Financial Statement or

the Atkinson Depositions were materially inaccurate or incomplete (an “Inaccurate Disclosure”), it will provide a written notice to the Atkinsons of the alleged Inaccurate Disclosure (the “Notice of Alleged Inaccurate Disclosure”). If the Atkinsons are unable to explain the alleged Inaccurate Disclosure to the Estate’s satisfaction within ten days after receipt of the Notice of Alleged Inaccurate Disclosure, the Estate may file a Notice of Inaccurate Disclosure with the Bankruptcy Court and the Atkinsons will have three business days thereafter to file an objection (the “Objection”) to the Notice of Inaccurate Disclosure. If the Atkinsons do not timely file an Objection or if the Bankruptcy Court overrules the Objection, the Estate may then file the Consent Judgments (as hereafter defined) in the USF Litigation. Furthermore, in such event, any Releases to the Atkinsons under this Settlement Agreement or the Settlement Order will be deemed to be immediately rescinded.

13. Consent Judgments. Simultaneously upon the filing of the Settlement Motion, Darain Atkinson will execute and deliver to the Estate a Consent Judgment in the USF Litigation for \$50 million and Mia Atkinson will execute a Consent Judgment in the USF Litigation for \$650,000 (the “Consent Judgments”). The Estate will hold the Consent Judgments and will file the Consent Judgments upon the discovery of (a) any Inaccurate Disclosure and compliance with the above notice and objection procedures or (b) any violation of the injunction imposed on the Atkinsons in the Committee Litigation (the “Living Expense Injunction”).

14. Attorney-in-Fact. Any undisclosed asset in which either or both of the Atkinsons has an interest on the date of the Settlement Order shall also be deemed an “Asset” that is transferred to the Estate. Darain and Mia Atkinson hereby appoint David A. Warfield as their limited attorney-in-fact with full authority to cause the transfer of any such undisclosed asset to

the Estate upon its discovery pursuant to the Limited Power of Attorney executed pursuant to section 1 of this Settlement Agreement.

15. Settlement Motion. Within five business days after execution of this Settlement Agreement, USF and the Committee will file a joint motion seeking approval of this Settlement Agreement under Bankruptcy Rule 9019 (the "Settlement Motion"). So long as the Estate is satisfied with the ATKINSONS' cooperation and compliance with this Settlement Agreement and the Living Expense Injunction and no Inaccurate Disclosure has been discovered, the Estate will prosecute the Settlement Motion and will use its best efforts to obtain from the Bankruptcy Court an order in a form reasonably satisfactory to the Estate and to the ATKINSONS approving the Settlement Motion (the "Settlement Order") which will contain a release (consistent with this Settlement Agreement) by the Estate of all claims against the ATKINSONS (the "Release").

16. Confirmation of USF Plan. If the Settlement Order is entered, the Estate will in due course file and prosecute a plan of liquidation for USF (a "Plan") that will, *inter alia*, contain a procedure where creditors of USF that also assert a claim against one or both of the ATKINSONS may choose to release such claims (such releases shall be referred to generically as "Third Party Releases"). If a Plan containing Third Party Releases is confirmed by March 31, 2011, the ATKINSONS shall, in such event, be deemed to have relinquished all claims whatsoever to the funds in the Asset Proceeds Account. If a Plan containing Third Party Releases is not confirmed by March 31, 2011, (or such other date that the ATKINSONS may agree upon or the Court may fix), then, the USF Litigation will be reopened and the ATKINSONS will be free to claim entitlement to the funds then in the Asset Proceeds Account and the Assets that have not at that time been sold, provided, however that the ATKINSONS will not, in such event, ever be entitled to recover (a) the first \$1 million deposited in the Asset Proceeds Account, or (b) any Holding Costs expended by

the Estate in connection with the Assets, or (c) any claims for damages or waste arising out of the Estate's ownership of the Assets after approval of the Settlement Order.

17. Mechanic's Lien Claimants. Creditors of the Atkinsons that have filed mechanic's liens against the Lakeview Property arising out of work performed on the construction or repair of the Lakeview Property ("Construction Claims") shall be permitted to file proofs of claim against the Debtor in the Bankruptcy Case and neither the Debtor nor the Committee shall object to such Construction Claims on the basis that the Debtor is not obligated contractually to pay Construction Claims. Nothing shall prohibit the Debtor, the Committee or any other party from objecting to Construction Claims on any other appropriate grounds. Creditors holding Construction Claims shall be given an opportunity to provide a Third Party Release to the Atkinsons in a Plan on the same terms as offered to all other creditors.

18. Litigation. Upon entry of the Settlement Order, the USF Litigation will be held in abeyance, and neither USF nor the Atkinsons shall take any action in connection with the USF Litigation unless (a) there is an Inaccurate Disclosure (and the lapse or passage of any applicable cure periods as set forth herein) at which time USF is authorized to file the Consent Judgments, or (b) the USF Litigation is reopened by the failure to confirm a Plan before the deadline established under this Settlement Agreement. The Committee will use its best efforts to obtain from the Bankruptcy Court an order extending the terms of all pending injunctions in the Committee Litigation (including but not limited to the Living Expense Injunction) through the earlier to occur of (a) confirmation of a Plan, or (b) March 31, 2011, provided, however that Mia Atkinson may expend up to \$16,000 from the Settlement Assets (over and above the monthly amount called for in the Living Expense Injunction) in connection with actual moving and housing expenses incurred in such period. If Mia Atkinson concludes that she must spend in

excess of \$16,000 for such moving and housing expenses, (x) she may move for modification of the Living Expense Injunction to allow for such additional expenditures, or (z) both Mia Atkinson and Darain Atkinsons may waive the benefits of the Living Expense Injunction by written notice to the Estate and spend the remaining Settlement Assets as she deems appropriate.

19. Attorneys' Fees. The Atkinsons will be entitled to retain counsel in connection with the Bankruptcy Case to implement the terms of the settlement, and such counsel may be compensated through and including entry of the Closing pursuant to the court order dated July 9, 2010 governing the payment of certain legal fees and costs.

20. Graves Bartle Marcus & Garrett, LLC. If the Settlement Order is entered and the Closing occurs, the Estate will not pursue any avoidance claims against the law firm of Graves Bartle Marcus & Garrett, LLC ("Graves Firm") for payment by USF of attorneys' fees in connection with the Graves Firm's representation of Darain Atkinson in criminal matters (the "Criminal Representation Fees"). Notwithstanding the foregoing, the Estate reserves its rights to sue the Graves Firm for the avoidance of any transfers from US Fidelis, Inc. to the Graves Firm for (a) payment of any amounts other than the Criminal Representation Fees, or (b) for the Criminal Representation Fees if the Estate learns of any Inaccurate Disclosure.

21. Closing. The Closing shall occur no later than ten business days after entry of the Settlement Order at such place and on such date and time as the parties may agree upon.

22. Miscellaneous. This Agreement may be executed in counterparts. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement will be prohibited by, or invalid under, applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of

this Agreement. This Agreement shall be binding upon and inure to the benefit of the Estate and the Atkinsons, and their respective successors and assigns. This Agreement encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. Notices shall be given by the parties to their counsel of record by electronic mail and shall be deemed received on the day that they are sent.

US Fidelis, Inc.: [reggmann@lathropgage.com](mailto:reggmann@lathropgage.com) and [bfenimore@lathropgage.com](mailto:bfenimore@lathropgage.com)

Darain Atkinson: [nwp@goldsteinpressman.com](mailto:nwp@goldsteinpressman.com) and [kmk@goldsteinpressman.com](mailto:kmk@goldsteinpressman.com)

Mia Atkinson: [tdewoskin@dmfirm.com](mailto:tdewoskin@dmfirm.com)

Committee: [dwarfield@thompsoncoburn.com](mailto:dwarfield@thompsoncoburn.com) and [bhockett@thompsoncoburn.com](mailto:bhockett@thompsoncoburn.com)

23. Governing Law. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of Missouri without regard to conflict of law principles.

(SIGNATURE PAGE FOLLOWS)



IN WITNESS WHEREOF, the parties have executed this First Amended and Restated Settlement Agreement as of the date and year first above written.

US FIDELIS, INC.

OFFICIAL UNSECURED CREDITORS'  
COMMITTEE OF US FIDELIS, INC.

By:



\_\_\_\_\_  
Scott Eisenberg, Chief Restructuring Officer

By:

\_\_\_\_\_  
David A. Warfield, Counsel

\_\_\_\_\_  
Darain Atkinson

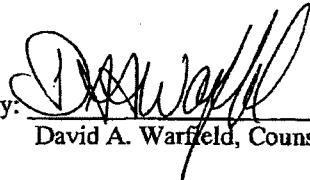
\_\_\_\_\_  
Mia Atkinson

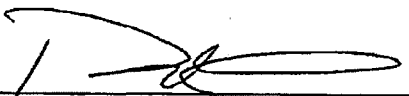
IN WITNESS WHEREOF, the parties have executed this First Amended and Restated Settlement Agreement as of the date and year first above written.

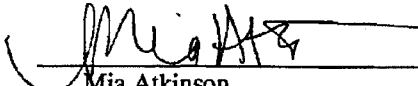
US FIDELIS, INC.

OFFICIAL UNSECURED CREDITORS'  
COMMITTEE OF US FIDELIS, INC.

By: \_\_\_\_\_  
Scott Eisenberg, Chief Restructuring Officer

By:  \_\_\_\_\_  
David A. Warfield, Counsel

 \_\_\_\_\_  
Darain Atkinson

 \_\_\_\_\_  
Mia Atkinson

## **Exhibit A**

**DARAIN AND MIA ATKINSON  
POWER OF ATTORNEY**

THIS POWER OF ATTORNEY made this \_\_\_\_\_ day of October 2010 by **DARAIN ATKINSON and MIA ATKINSON**, husband and wife, who are residents of the State of Missouri ("the Atkinsons").

WITNESSETH:

WHEREAS, the Atkinsons entered into that certain Settlement Agreement dated September \_\_, 2010 (the "Settlement Agreement") by and among the Atkinsons, US Fidelis, Inc. ("USF"), a debtor in possession in proceedings before the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"), and the Official Unsecured Creditors' Committee for US Fidelis, Inc. (the "Committee");

WHEREAS, the Settlement Agreement requires the Atkinsons to execute and deliver this Power of Attorney; and

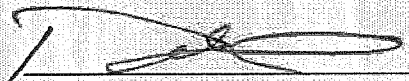
WHEREAS, the Atkinsons wish to execute and deliver this Power of Attorney to facilitate approval of the Settlement Agreement by the Bankruptcy Court.

1. The Atkinsons hereby irrevocably constitute and appoint **DAVID A. WARFIELD**, counsel to the Committee, to be their true and lawful attorney-in-fact and in their name, place and stead to do all or any of the following acts, matters and things namely:-

- (a) to do all other acts and things as the said attorney should in his absolute and unfettered discretion deem necessary or advisable for the purpose of giving effect to all or any of the matters and transactions contemplated by the Settlement Agreement and (without prejudice to the generality of the foregoing) to make, sign, seal, deliver, execute and do all such deeds, instruments, agreements, applications, oaths, affidavits, declarations, confirmations, notices of assignment and otherwise and acknowledgments thereof, letters, certificates, protocols, guarantees, indemnities, undertakings, and any other documents whatsoever (whether of a like nature or not) (including any notarial acts) which may be necessary or advisable in carrying out the provisions of the Settlement Agreement, including executing documents needed to transfer title to any of the Assets (as defined in the Settlement Agreement) to the Estate (as defined in the Settlement Agreement) or to any third party; and
  - (c) to nominate and appoint (whether under hand or seal) one or more person or persons as substitute or substitutes as attorney or attorneys for all or any of the purposes aforesaid.
2. This power of attorney shall be irrevocable until the confirmation of a Plan (as defined in

the Settlement Agreement), and shall be conclusive and binding upon the Atkinsons and no person or corporation having dealings with the said attorney or his substitute or substitutes under this Power of Attorney shall be under any obligation to make any enquiries as to whether or not this Power of Attorney has been revoked and all acts hereunder shall be valid and binding on the Atkinsons until express notice of its revocation be received by such person or corporation.

IN WITNESS WHEREOF the Atkinsons has executed this Deed the day and year first before written.

  
Darain Atkinson


  
Mia Atkinson

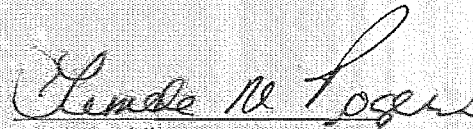
SUBSCRIBED AND SWORN to before me this  
29<sup>th</sup> day of ~~October~~, 2010.


*September*

SUBSCRIBED AND SWORN to before me this  
29 day of ~~October~~, 2010.


*September*

  
Notary Public

  
Notary Public

My commission expires  
  
LINDA M. ROGERS  
My Commission Expires  
September 22, 2014  
St. Louis County  
Commission #10427670

(seal)

My commission expires  
  
LINDA M. ROGERS  
My Commission Expires  
September 22, 2014  
St. Louis County  
Commission #10427670

(seal)

## CAYMAN ISLANDS

The Registered Land Law (2004 Revision)  
The Registered Land Rules (2003 Revision)

## THIRD SCHEDULE

## POWER OF ATTORNEY

REGISTRATION SECTION

BLOCK

PARCEL

Rum Point

33E

64

XX We, Darain Atkinson and Miyong Kim Atkinson

HEREBY APPOINT David A. Warfield

of 145 Gray Avenue, St. Louis, Missouri (USA) 63119

to be my attorney and generally in relation to my interest in the land comprised in the above-mentioned title to do anything and everything that I myself could do, and for me and in my name to execute all such instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given.

(If the power is to be limited to particular acts only, delete everything after the word "attorney" and set out below what powers are to be conferred.)

Dated this

day of

October

2010

Signed by the Donor

in the presence of:-

## FOR OFFICIAL USE ONLY

I, the Registrar of Lands in the Cayman Islands hereby certify that this document was received by me for registration on the..... day of ..... 201..... and that stamp duty assessed/adjudicated by me/Treasury at C.I.\$ ..... and Land Registry fees at C.I.\$ ..... relating thereto have been paid.

REGISTERED this

day of

201

REGISTRAR OF LANDS  
CAYMAN ISLANDS



**CERTIFICATE OF IDENTIFICATION**

Name.....Darain Atkinson.....

I HEREBY CERTIFY that the above named Darain Atkinson.....appeared before me on the.....day  
of.....October.....2010.....and being identified by\* review of his Missouri driver's license.....  
(or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and  
voluntarily executed this instrument and understood its contents.

.....  
Signature and designation of the person certifying

**CERTIFICATE OF IDENTIFICATION**

Name.....Miyong Kim Atkinson.....

I HEREBY CERTIFY that the above named Miyong Kim Atkinson.....appeared before me on the.....day  
of.....October.....2010.....and being identified by\* review of her Missouri driver's license.....  
(or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and  
voluntarily executed this instrument and understood its contents.

.....  
Signature and designation of the person certifying

**CERTIFICATE OF IDENTIFICATION**

Name.....

I HEREBY CERTIFY that the above named .....appeared before me on the.....day  
of.....201.....and being identified by\* .....  
(or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and  
voluntarily executed this instrument and understood its contents.

.....  
Signature and designation of the person certifying

**CERTIFICATE OF IDENTIFICATION**

Name.....

I HEREBY CERTIFY that the above named .....appeared before me on the.....day  
of.....201.....and being identified by\* .....  
(or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and  
voluntarily executed this instrument and understood its contents.

.....  
Signature and designation of the person certifying

\*NOTE: Please ensure that the appropriate insertions and/or deletions are made so that the method of identification  
is clear.

## **Exhibit B**



**ASSET DISCLOSURE OF  
DARAIN E. ATKINSON AND MIA K. ATKINSON**

---

<u>Exhibit</u>	<u>Description</u>
1	Real Estate
2	Automobiles & Boats
3	Business Interests
4	Cash; Bank, Brokerage, and Similar Accounts
5	Jewelry
6	Household Goods
7	Life Insurance
8	Interests in Trusts
9	Contract Rights and Claims

Come now DARAIN E. ATKINSON and MIA K. ATKINSON and state under penalty of perjury as set out at 28 U.S.C. § 1746 that this disclosure of assets owned by either of us, or in which either of us has any ownership interest, whether individually, jointly, or in trust, as of the date hereof, is a compilation of information from various sources, including Robert Fish, Christopher Riley, Tammy Graning, and Richard Gravino, as well as information accumulated by the Creditors' Committee. It is complete and accurate to the best of our knowledge, information, and belief.



DARAIN E. ATKINSON



MIA K. ATKINSON

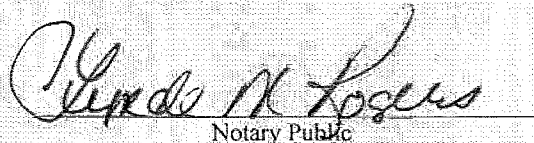
STATE OF MISSOURI )  
COUNTY OF ST. LOUIS )

On this 29<sup>th</sup> day of September, 2010, before me, the undersigned notary public, personally appeared DARAIN E. ATKINSON and MIA K. ATKINSON, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



LYNDA M. ROGERS  
My Commission Expires  
September 22, 2014  
St. Louis County  
Commission #10427679

  
Notary Public

My commission expires:

**EXHIBIT 1  
REAL ESTATE**

<b>Address</b>	<b>Location</b>	<b>Purchase Date</b>	<b>Purchase Price</b>
5 Lakeview Ct. (includes the former 15 Woodview Dr. which Debtors purchased on 1/13/2006 for \$575,000 and is now included in this parcel)	Lake St. Louis	Built by Atkinsons from 2006 to present	\$26,696,319.12 expended through 9/09
215 Pigeon Drive	Lake St. Louis	6/17/2008	330,000.00
414 Water Cay Rd.	Rum Point; British West Indies	3/9/2007	\$4,500,000 plus stamp duty (includes home and furnishings)

## EXHIBIT 2 AUTOMOBILES & BOATS

Year	Make/Model	S/N or VIN	Value Sep 2010
2005	Harris-Kayot Crowne Pontoon, 24'	HAMP99311405	\$15,090
2005	President Boat Trailer (for pontoon)	4JHBS22175D002565	\$2,900
2005	Suzuki Outboard Motor, 115HP (pontoon)	11501F510232	\$3,405
2005	Malibu Response LXi Ski Boat, 20'	MB2P2826E505	\$18,780
2005	Bear Boat Trailer (for ski boat)	41YAB272252011246	\$1,550
2005	<b>Sea Ray Sundancer, 50' (Isabelle)</b>	SERY1212J405	\$350,000
2006	<b>Boston Whaler 2700 Outrage</b>		\$62,350
2007	Mercedes Benz S550	WDDNG71X07A050588	\$42,925
2007	<b>Toyota Fortuna 4Runner (Cayman Car)</b>		\$22,425
2009	Cadillac Escalade ESV	1GYFK16259R110175	\$47,875
2009	Ford F-150 Supercrew Pickup	1FTPW14V59FA42974	\$26,350
2009	Seadoo RXT 255		\$9,320
2009	<b>Seabob (underwater propulsion unit)</b>		Unknown

\*Items in bold are located on the Cayman property

NADA "average retail" value used for watercraft; Kelly Blue Book "average trade-in" value for vehicles..

**EXHIBIT 3  
BUSINESS INTERESTS**

<b>Entity Name</b>	<b>Ownership</b>	<b>Purpose</b>	<b>Remaining Assets</b>
AGI Administration Services, Inc. (AGI")	Darain 50% Cory 50%	Insurance administration services	Owns 10% of Association for Service Contract Administrators, Inc.
Aria (SAC), Ltd.	Darain 100%	Reinsuring contracts	Interest in segregated accounts SA 030 and 031, from which claims are currently being paid. Uncertain residual value
Association of Service Contract Administrators	90% USFAS 10% AGI	Insurance holding company	100% of US Fidelis Insurance Risk Retention Group, Inc.
Atkinson Construction, Inc.	Darain 50% Cory 50%	Built out USF building and Darain's parents' home	None
Atkinson Group of Companies, Inc.	Darain 50% Cory 50%	Holding Company	None
Atkinson Realty, LLC	Darain 50% Cory 50%	Owned real estate	10 acres across from GM plant in Wentzville
Atkinson Reinsurance, Ltd.	Darain 50% Cory 50%	Reinsuring contracts	Bank account from which claims are being administered. Account may have as much as \$4M in residual value when all contracts expire. Warrantech claims a 25% interest in residual values.
Atkinson II Reinsurance, Ltd.	Darain 50% Cory 50%	Reinsuring contracts	Account from which claims are being paid. Account may have as much as \$3M in residual value when all contracts expire.
Crescent Manufacturing, LLC	Darain 50% Cory 50%	Auto additive warranty sales	Account from which claims are currently being paid. Uncertain residual value
DC Atkinson Realty, LLC	Darain 50% Cory 50%	Owned real estate	Owns 145 acre farm in St. Charles County
DS Direct, Inc.	Darain 50% Cory 50%	Printing company	Various personal property
Elenkhos Group LLC	Darain 33% Others (unrelated) 67%	Investment company	Bank account with \$8,800 balance
Exodus, LLC	Darain 50% Cory 50%	Christian nightclub	Bank balance of \$9,676.22 as of May 31, 2010. Other restaurant related property
First Automotive Agents, Inc.		Reinsuring contracts	Unknown at this point
Huge, LLC	Darain 33% Cory 33% Eddie Struckmann 33%	Holding company for various Internet related businesses	None
US Fidelis Administration Services, Inc. ("USFAS")	Darain 50% Cory 50%	Used to sell in-house warranties and brokerage sales	None



Entity Name	Ownership	Purpose	Remaining Assets
US Fidelis, Inc. (f/k/a National Auto Warranty Services, Inc.; f/k/a Big Time Productions, Inc.)	Darain 50% Cory 50%	Marketed vehicle service contracts	TBD
US Fidelis Insurance Risk Retention Group, Inc.	The Association of Service Contract Administrators	Risk Retention Group	Recently dissolved in Montana. Approximately \$750,000 remains in a bank account.
Wentzville International Speedway, L.L.C.	Darain 50% Cory 50%	Formed to operate race track (never opened)	None
Zing Advisors, LLC	50% Darain Trust 50% Cory Trust	Consulting Company (never operated)	None

# **EXHIBIT 4** **BANK ACCOUNTS**

Owner	Bank	Account #	Approx. Value
Darain & Mia Atkinson	U.S. Bank	REDACTED	\$8,279
Darain Atkinson	Commercial Bank	REDACTED	\$252
Darain Atkinson	Champion Bank	REDACTED	\$100
Darain & Mia Atkinson	Frontenac Bank	REDACTED	\$838
Darain & Mia Atkinson	UMB Bank	REDACTED	\$116
Ernest E. Atkinson Trust	U.S. Bank	REDACTED	\$4,984
Darain & Mia Atkinson (held in trust by Goldstein & Pressman, P.C. per 4/23/10 order)	Various	REDACTED	Approximately \$1,218,000 as of September 20, 2010

Cash – Approximately \$1,000 total in Missouri and Caymans

No brokerage accounts, stocks, bonds or similar assets except as set forth in Exhibit 3

# **EXHIBIT 5** **JEWELRY**

Purchase Date	Description	Vendor
2001	Inexpensive Rolex w/ inscription (gift to Darain from former partner)	
2002	Darain's wedding band – plain gold	
2002	Original engagement ring – 2 ct diamond solitaire on plain white gold band (stone now a pendant on a necklace)	
2002	Original wedding ring – plain gold band with less than 1 ct diamond chips	
08/11/05	Ring Cigare Santos Dumont White Gold Falcon Eye	Cartier
09/28/05	Love Bracelet in White Gold - 17	Cartier
05/08/06	Panthere White Gold Ring with Diamonds	Cartier
07/20/06	Panthere Ring White Gold	Cartier
07/29/06	Laniere Bracelet White Gold Diamond	Cartier
12/18/06	Love Bracelet White Gold Diamond	Cartier
01/13/07	Yijing Ring White Gold Hawk Eye Quartz	Cartier
08/01/07	Love Ring White Gold Diamond	Cartier
08/15/07	Bracelet, Love White Gold, Ceramic Diamond Paved	Cartier
08/22/07	Love Bracelet White Gold Pave	Cartier
07/24/09	Trinity Classic 3 Gold Ring	Cartier
2008	Roberto Coin Necklace	Cayman Islands
	Rolex Daytona	Cayman Islands
	Rolex Cellini	Cayman Islands
	Men's BRM Chrono-Automatic Watch, Gator Strap	Neiman Marcus
02/07/08	33mm White Ceramic Chanel J12 Watch with Diamond Bezel, 112 round brilliant cut diamonds totaling 1.0 carats	Neiman Marcus
12/22/08	33mm Black Ceramic Chanel J12 Watch with Diamond Bezel, 112 round brilliant cut diamonds totaling 1.0 carats	Neiman Marcus
	Diamond and Sapphire Bracelet	Roemer's Jewelry
	Diamond Stud Earrings	Roemer's Jewelry
04/21/05	4 carat loose diamond	Saettele Jewelry
04/27/05	Platinum diamond eternity full circle ring by Tiffany with 19 round brilliant cut diamonds each weighing .08ct, 1.52 tcw, set with 1 round brilliant cut diamond (4ct)	
04/27/05	Ladies 14K white gold four-prong basket style setting, 2.02 round brilliant cut diamond, 14k white gold 16" pendant chain	Saettele Jewelry
12/01/04	Ladies steel and 18kt white gold Rolex wristwatch DateJust model with Jubilee style bracelet. Steel with 18 kt white gold fluted bezel, mother-of-pearl and diamond dial	Simons
12/01/05	Rolex steel and gold Submariner	Simons
12/01/06	Rolex 18kt white gold Pearlmaster with diamond mother-of-pearl dial and diamond bezel	Simons
02/13/04	Platinum Full Circle Diamond/Sapphire Ring, Size 4.5	Tiffany & Co.
03/10/05	Platinum shared-setting full circle band ring, 20 round brilliant cut diamonds, 1.60 tcw	Tiffany & Co.
03/10/05	Platinum shared-setting full circle band ring, 20 round brilliant cut diamonds, 1.60 tcw	Tiffany & Co.
12/09/05	Platinum and diamond octagonal bar pendant, Voile Collection, set with round brilliant cut diamonds, .78 tcw, 16" long	Tiffany & Co.

12/09/05	Platinum and diamond ring, Voile Collection, set with round brilliant cut diamonds, .54 tcw	Tiffany & Co.
12/26/05	Platinum and diamond long drop pendant suspending baguette cut diamond, .13ct on 17" chain	Tiffany & Co.
12/26/05	Platinum and diamond "Tiffany Jazz" long drop earrings, bezel set, w baguette cut diamonds, .26 tcw, 28 round brilliant cut diamonds, .84 tcw	Tiffany & Co.
02/02/06	Platinum shared-setting band ring with Full circle Diamonds, 3.00mm, Size 5	Tiffany & Co.
02/02/06	Platinum Victoria Line Sapphire & Diamond Necklace	Tiffany & Co.
02/10/09	Platinum Schlumberger 16 Stone Diamond 1.18tw Ring, Size 5.5	Tiffany & Co.
02/16/09	Platinum Etoile four-row band ring with 140 Round Diamond 3.3tw ring, Size 5.5	Tiffany & Co.
07/31/09	Platinum, sapphire, emerald and diamond band ring, milgrain border, bezel set with square-faceted sapphires (1 tcw), bezel set marquise-faceted emeralds (1.22 tcw), bead set with round brilliant cut diamonds (.98 tcw), size 5	Tiffany & Co.
02/26/07	Ladies Michael Beaudry, 32" platinum diamonds forever necklace, 120 round brilliant cut diamonds (8.85 tcw) bezel set throughout chain	Ylang-Ylang
02/26/07	Ladies Michael Beaudry, platinum and diamond cross style pendant, .36ct lily cut diamond bezel set center, four radiant cut diamonds (.66ct) bezel set in corners, 144 round brilliant cut diamonds set throughout	Ylang-Ylang
04/27/07	Michael Beaudry Ladies Ring	Ylang-Ylang
04/27/07	Michael Beaudry Men's Band	Ylang-Ylang
09/18/07	Heather Moore ID Tag	Ylang-Ylang
09/18/07	Heather Moore Gold Chain	Ylang-Ylang
08/01/08	Sevan Love Ring	Ylang-Ylang
2008	Sevan Necklace	Ylang-Ylang
2007	Men's Black Onyx Cartier Ring	



## **EXHIBIT 6 HOUSEHOLD GOODS**

### **FURNISHINGS LOCATED AT 5 LAKEVIEW COURT:**

**South Apartment:** 1 sectional couch, 1 coffee table, 1 king size bed and mattress, 2 night stands, 1 dresser

**North Apartment:** 1 queen bed, no mattress, 1 chair and ottoman in bedroom, 1 TV, 1 round kitchen table, 4 chairs, 2 bar chairs, 1 sectional, 1 coffee table, 1 night stand, 1 entertainment center

**Master Bedroom 1:** 1 crib, 3 chairs, 1 ottoman, 1 couch, 3 nightstands, 1 king size bed and mattress, 1 baby dresser, 1 TV

**Isabella's Room, Bedroom 2:** 1 four post full size bed, 2 nightstands, 1 shelf, 1 chair, 2 little play green chairs, 1 small kids table, toys, accessories

**Makena's Room, Bedroom 3:** 2 chairs, 2 nightstands, 1 kids full size bed and mattress, 1 shelf table, toys, accessories

**Bedroom 4 Baby's room:** 1 crib and mattress, 1 night stand, 1 dresser and changing table, 1 chair and ottoman

**Bedroom 5:** Vestibule marble table, 2 chairs, 1 sectional, 1 coffee table, 2 night stands, 1 baby bed, 1 queen 4 post bed with mattress, 1 long cushion at the end of the bed, 1 high night stand, many accessories, 1 TV

**Bedroom 6:** 1 couch, 1 coffee table, 1 queen bed and mattress, 1 dresser, 1 nightstand, 1 TV, Accessories

**Bedroom 7:** 1 couch, 1 chair, 1 queen bed and mattress, 1 dresser, 2 nightstands, 1 TV, Accessories

**Upstairs Laundry:** 1 washer and dryer

**Meditation Room:** 1 couch, 1 coffee table, 1 rug

**Gym:** 3 TVs, 1 treadmill, 1 abs machine, free weights dumbbells, 1 G5 machine, 1 bench, toys

**Art Room:** 1 coffee table, 1 TV

**Card Room:** 1 green chair, 1 big screen, 1 TV, toys

**Basement Lounge:** 5 chairs, 1 couch, 1 ottoman, 1 rug, 1 projector

**Billiards Room:** 1 chair, 1 couch, 1 coffee table, 1 TV, 5 speakers

**Guitar Room:** 2 chairs, 3 guitars, 2 kid's guitars, 1 drum set

**Bowling Room:** 2 coffee tables, 1 couch, 1 chair

**Basketball Court:** Storage for miscellaneous wood moldings and paint

**Downstairs Garage:** 1 kids table, 1 picture, some toys

**Kids Play Room:** 1 couch, 6 cubbies, 1 low art table, 1 nightstand, toys, 1 TV

**Master Laundry Room:** 1 washer and dryer

**Mia's Beauty Salon:** 2 chairs

**Mia's Closet:** 1 chase lounge, 1 ottoman

**Library:** 5 chairs, 2 ottomans, 1 desk

**Grand Salon:** 2 couches, 1 ottoman, 1 piano

**Formal Dining Room:** 1 dining room table, 12 dining room chairs, 1 side chair

**Main Level Bar:** 2 bar chairs

**Kitchen:** 2 bar chairs, 4 kitchen chairs, 1 art table, 4 little kids' chairs (Note: the Atkinsons do not have any fine china, sterling silver, crystal and the like)

**Family Room:** 2 chairs, 1 couch, 1 rug, 1 couch, 1 TV, 1 nightstand, toys,

**Mail Room:** 1 chair

**Outside Deck, Off the Kitchen:** 1 couch, 12 chairs, 1 table, 1 grill, 1 low table, 1 ottoman

**Outside Play Area:** 1 trampoline, 1 kids play fort with swings, little plastic play sets

**Main Garage:** Darain's old furniture from prior to marriage, Lots of accessories from old house, toys, 5 mopeds, 2 adult bikes, 3 kids' bikes, 2 couches, 7 chairs, lots of old baby furniture from old houses, 1 TV, left over building materials

#### **FURNISHINGS LOCATED AT 215 PIGEON DRIVE:**

**Front Hall:** 1 table

**Dining Room:** 1 table, 6 chairs, 1 china cabinet

**Living Room:** 1 couch, 2 chairs, 2 end tables, 1 coffee table, 1 ottoman

**Sun Room:** 1 chair, 1 couch, 1 entertainment center, 1 end table, 1 ottoman

**Bedroom 1, Master:** 1 bed and mattress, 2 nightstands, 1 chair, 1 entertainment center, 1 treadmill, 1 dresser

**Bedroom 2, Guestroom:** 1 bed and mattress, 2 nightstands, 1 dresser

**NOTE:** All other furniture in the house Mia's grandparents brought with them from California

#### **FURNISHINGS LOCATED AT 414 WATER CAY ROAD, CAYMAN ISLANDS:**

**Master Bedroom:** Double bed with linen base, mattress and sheets, chaise lounge, large floor rug, reed floor mat, 2 bedside tables, 2 bedside table lamps, ceiling fan, 8 timber chairs, timber table, 2 folding timber sun loungers, 2 wicker armchairs, wicker forest, timer table, large solid timber cupboard, timber table with drawers, standard lamp, 3 reed window blinds, wicker fruit basket, metal floor standing picture within a timber frame

**Master Bedroom Seating Area:** Reed floor mat, 2 wicker chairs and a two-seat sofa and table, wicker chest, telephone, set of free-standing bamboo shelves, timber cabinet, ceramic lamp, wicker lamp

stand/dresser, built-in kitchenette shelves and base cabinets, stainless steel kettle, small television, refrigerator, timber venetian window blinds

**Master Bedroom Bathroom Suite:** Timber framed wall-mounted mirror, built-in base unit cabinets with wicker doors, 8 wicker storage baskets, towels and toiletries, floor rug, metal chair, towel racks, shower fittings, 2 timber ceiling fans

**Toilet:** Wall-mounted picture, timber Venetian window blind, timber wall ornament

**Dressing Area 1:** Timber dressing table, metal shelves, Aiwa stereo, CD player and amp, 3 rolled-up floor mats, wicker laundry basket

**Dressing Area 2:** Built-in wall safe, floor mat, chair, 10 wicker baskets, metal shelves, wall-mounted mirror

**Bedroom 2:** Fabric-covered chaise lounge with cushions, double bed with mattress, linen and cushions, 2 timber bedside tables (bowls resting on metal stands), 2 wall-mounted bedside lights, wall-mounted timber-carved ornament, ceiling fan, 2 wall-mounted pictures, rattan floor rug, 2 small coffee tables, 2 folding bamboo deck chairs, timber desk and folding chair, timber framed wicker chair, small table lamp, low seat, roll-up reed window blind

**Screened Porch, Accessed Off Bedroom 2:** 3 bamboo tables with stone tops, 2 earthenware planters, ceiling fans

**Upper Floor, Rear Terrace:** Timber table with stone top

**Office:** 3 drawer desk, wooden swivel chair, chaise lounge, timber phone table, wooden model boat, timber/wicker rocking chair, wooden table, built-in shelves, 3 wall-mounted carved timber ornaments, wicker waste basket, telephone, ceiling fan

**Stairs Landing:** Large metal chandelier light fitting, 2 floor-standing bamboo candle holders

**Entrance Hallway:** 2 additional wall-mounted pictures, 2 umbrella stands, wooden bowl, 2 floor mats, ceramic pelican ornament

**Under Stairs Closet:** 4 wooden folding chairs, 1 metal folding chair, mop and bucket, vacuum cleaner, shelves

**Bedroom 3:** 2 single beds and linen, swivel armchair, wicker mat, small JVC television, floor lamp, small table lamp, timber framed mirror, wicker roller blind, wicker waste basket, 2 wall-mounted pictures, ceiling fan, 2 bamboo and wicker bedside cabinets, timber and wicker chair, rubber-covered metal shelves, 2 wicker baskets and linen, 1 further basket

**Bedroom 3 En Suite Shower Room:** Stone-topped timber and wicker vanity unit, timber framed mirror, 2 mats and towels, shower curtains, glass ceiling light shade

**Bedroom 4:** 2 single beds with linen, bamboo rug, 2 rattan/woven linen baskets, 2 wood/rattan bed end seats, 2 chairs and table, curtains and wicker roller blinds, ceiling fan, built-in cupboard with metal shelves, 2 baskets, towels, wall mirror, waste basket

**Bedroom 4 En Suite Bathroom:** Shower curtains, 2 rugs, toilet roll holder and towel rail, timber framed mirror, built-in Corian-topped timber and wicker vanity unit

**Lounge:** Large timber coffee table, 2 sofas with cushions, 4 bamboo stools, 2 folding director chairs/stools, timber bench, 2 low stools/coffee tables, table with a bamboo lamp, stone lamp, large mirror in carved timber frame, 2 ceiling fans, 2 bamboo tables, wicker basket, 2 timber and rattan armchairs, bamboo standard lamp, 4 chairs and low tables, table, roller blinds

**Kitchen:** 8 cushioned timber chairs, carved wood wall feature, various kitchen utensils, large built-in refrigerator/freezer with icemaker, built-in Profile Performance microwave/convection oven, toaster, GE Monogram dishwasher, built-in white Thermador oven and hob, 3 stainless steel sinks, mixer tap and garbage disposal unit, wicker window blinds, drinks blender, coffee machine, cocktail shaker, plates and general crockery, glasses and other drinking utensils, cutlery, GE Monogram wine chiller, ceiling fan, U-Line icemaker

**Snug:** Double sofa, footrest, rattan rug, 3 coffee tables, 2 rattan lamps, ceiling fans, large wooden bookshelves/TV stand with cupboards, 2 wall pictures, large Sony TV, Sony/Aiwa stereo

**Half Bathroom:** Metal-framed mirror, 1 wall-mounted picture, towel rail and toilet roll holder, waste bin, tissue box cover, 2 wall lights, glass ceiling light

**Airing Cupboard:** shelves, towels

**Laundry Room:** 12 wicker baskets, Gibson washing machine, Gibson dryer, built-in ironing board, iron, ceiling fan, stainless steel sink, built-in wall and base units

**Gymnasium:** Cybex exercise bike, Cybex running machine, ceiling-mounted TV, Precor strength trainer, ceiling fan, wicker stool, built-in cupboard and shelves, small JVC stereo

**Garage:** 2 canoes, 3 bicycles, ladder, paint, garden implements

**NOTE:** All of the above came with the house. Items bought after property purchase include: 2 baby cribs, lots of toys, 1 play set, 1 trampoline, 1 grill, 2 TVs with Bose lifestyle stereos, stove, Subzero refrigerator, microwave, dishwasher, icemaker, beverage refrigerator, 1 rug in media room, 2 turtle shells, accessories

**NOTE:** This Cayman list was compiled from memory



**EXHIBIT 7  
LIFE INSURANCE**

Policy Date	Company	Policy #	Owner	Insured	Death Benefit	Beneficiary	Loan Balance And Accrued Interest	Net CSV
12/24/08	MetLife	1Y500091	D & M Atkinson	D Atkinson	\$58M	Mia	\$2,829,075.35	\$231,004.98
2/4/09	MetLife	1Y500119	D & M Atkinson	D Atkinson	\$12M	Mia	\$311,355.46	\$201,321.28

We have tried diligently to get information for all of the other policies which once were in force, but the only information we've received thus far is that they have all lapsed.

These policies were a form of insurance product called COLI (Company Owned Life Insurance) by MetLife, but these policies were never owned by the company. They were originally owned by Cory Atkinson insuring Darain's life as part of a shareholder agreement and Darain owned similar policies insuring Cory's life (MetLife Policies #1Y500092 and #1Y500120). Ownership of the policies was swapped December of 2009, so that each wife now is the beneficiary of her husband's policy.

## **EXHIBIT 8**

### **INTERESTS IN TRUSTS**

In 2009, a beneficiary controlled trust was established that was known as the "Ernest Atkinson Trust for the Family of Darin (the "Trust"). The beneficiaries of the Trust were Darain, Mia and their family. Darain loaned \$500,000 to the Trust so that it could purchase 520,834 shares of TravelSuite, Inc. (the "Stock"). Efforts to sell the Stock but have been unsuccessful.

Another trust was created, denominated the Mia Kim Atkinson 2009 Irrevocable Trust, which was meant to be an Irrevocable Life Insurance Trust. Although an initial premium was paid for the life insurance policy, it lapsed in June 2010 for failure to make the next premium payment.

**EXHIBIT 9**  
**CONTRACT RIGHTS AND CLAIMS; MISCELLANEOUS**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
5/15/2009	Loan to E. Atkinson Trust	\$500,000.00
3/10/2010	Retainer trust deposit with Norman C. Witte in Mich – Bruno suit.-amount remaining	\$8,439.81
N/A	Mural for theatre room – completed, but not installed; \$25,000 remains due	\$50,00.00
N/A	Fabric being held by Diane Breckenridge	\$2,500.00





## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into on this 29th day of September, 2010 by and among CORY ATKINSON ("Cory") and HEATHER ATKINSON ("Heather"), husband and wife who are both residents of the State of Missouri (Cory and Heather shall sometimes collectively be referred to as the "Atkinsons"), US FIDELIS, INC., a Missouri corporation that is presently a debtor in possession under Chapter 11 of the U.S. Bankruptcy Code in Case No. 10-41902 ("USF") pending in the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court") and the OFFICIAL UNSECURED CREDITORS' COMMITTEE OF US Fidelis, Inc. (the "Committee"). (For ease of reference, USF and the Committee shall sometimes be jointly referred to as the "Estate").

### Preliminary Statement

At all times relevant to this Settlement Agreement, Cory was the Vice President of USF, a member of USF's Board of Directors, and the owner of 50% of the issued and outstanding shares of stock in USF. The Committee has filed suit against Cory and Heather (among others) which litigation is pending in the Bankruptcy Court as Adversary Proceeding No. 10-4172 (the "Committee Litigation"). USF has filed suit against Cory and Heather (among others) which litigation is pending in the Bankruptcy Court as Adversary Proceeding No. 10-4225 (the "USF Litigation"). The Atkinsons, USF, and the Committee now wish to resolve the issues posed by the Committee Litigation, the USF Litigation, and other potential claims, all as is more particularly set forth in this Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Estate and the Atkinsons hereby agree as follows:

1. Transfer of Assets. At Closing (as hereafter defined) and subject to the provisions of paragraph 2 pertaining to the qualified Section 529 education plans established for the benefit of their children (the “529 Plans”) and their rights in paragraph 15 of this Settlement Agreement, the Atkinsons will transfer to the Estate all of the Atkinsons’ respective right, title and interest in and to all assets or property (the “Assets”) owned by them in any capacity, including but not limited to individually, jointly, or in trust. The Atkinsons agree that this paragraph is intended to result in the transfer to the Estate of all Assets, known or unknown, disclosed or undisclosed, in which the Atkinsons have any legal or equitable interest whatsoever, including but not limited to real property, personal property, cash, bank accounts, brokerage accounts, contract rights, stocks, bonds, notes, instruments, claims, rights to receive payments or distributions or dividends, causes of action, or any other property right of value. To facilitate the transfer of the Assets, the Atkinsons will each execute and deliver at Closing a Limited Power of Attorney substantially in form attached hereto as Exhibit A.

2. Payment to the Atkinsons; 529 Plans. At Closing, from the Assets transferred by the Atkinsons, the Estate shall transfer to Heather Atkinson the following assets (collectively, the “Settlement Assets”): (a) \$500,000 in cash, (b) jewelry and other household furnishings and clothing with an appraised liquidation value of no more than \$75,000 as established by an appraiser of the Estate’s choosing; and (c) vehicles with a NADA trade-in value of no more than \$50,000 in the aggregate. The Atkinsons shall also partially liquidate the 529 Plans at or before Closing and pay to the Estate the proceeds of such partial liquidation so that immediately following such partial liquidation only the following funds remain in the 529 Accounts: (a) Brenden Atkinson - \$100,000, (b) Kaden Atkinson - \$75,000, and (c) Caleb Atkinson - \$75,000.

3. Restrictions on Use of Settlement Assets. Upon payment of the Settlement Assets, Heather Atkinson may utilize the Settlement Assets as she sees fit (including purchasing any of the Assets transferred to the Estate upon terms otherwise acceptable to the Estate), provided, however, that Heather Atkinson may never transfer any interest in any of the Settlement Assets to Cory, either directly or indirectly, as co-tenants, tenants by the entirety, or otherwise unless required by court order.

4. Additional Terms Regarding Transfer of Assets. Notwithstanding the foregoing, in lieu of accepting the transfer of a particular Asset(s), at the Estate's sole option, at Closing the Atkinsons will grant to the Estate a lien, security interest or other similar encumbrance on such Asset(s), together with a non-recourse promissory note secured by such encumbrance. In addition, the Estate retains the right to refuse to accept the transfer of any Asset that it believes would be burdensome or of inconsequential value to the Estate by delivering written notice to the Atkinsons.

5. Asset Proceeds Account. At Closing, USF will establish and maintain a separate, segregated bank account at an authorized depository into which the proceeds of all of the Assets shall be deposited (the "Asset Proceeds Account"). Except as expressly set forth in this Settlement Agreement, USF will pay from the Asset Proceeds Account all costs of maintaining, insuring or holding any of the Assets pending their sale (the "Holding Costs"). Upon entry of the Settlement Order (as defined below), the Atkinsons will have no interest in the Asset Proceeds Account except as expressly described in paragraph 15 hereof.

6. Marketing and Sale of Assets. After Closing, all non-cash Assets (including any Assets in which the Estate holds only a lien, security interest, or other encumbrance) will be marketed for sale by the Estate or professionals retained by the Estate. Until such time as USF

confirms a plan (the "Bankruptcy Plan"), the Assets may be sold pursuant to 11 U.S.C. § 363 upon such notice as may be required by the Bankruptcy Court. The Atkinsons will cooperate in all respects with the marketing and sale of the Assets, including but not limited to executing any necessary transaction documents and responding to any reasonable information requests.

7. 302 Atkinson Way. On or before November 8, 2010, the Atkinsons shall vacate the home at 302 Atkinson Way, Wentzville, Missouri and remove all of contents described in paragraph 2(b).

8. Financial Statement. The Atkinsons each separately warrant and represent to USF and to the Committee that Exhibit B to this Settlement Agreement is a full and complete statement of all of the assets that the Atkinsons own as of September 28, 2010, either jointly, individually, in trust, or in any other manner whatsoever (the "Financial Statement"). The Atkinsons each separately agree and acknowledge that USF and the Committee have each relied on the completeness and accuracy of the Financial Statement in making their respective determinations to enter into this Settlement Agreement and that the Financial Statement is provided under penalty of perjury under 28 U.S.C. § 1746.

9. Asset Verification. On or before October 18, 2010, the Atkinsons will each submit to an oral examination or deposition under oath by one representative of USF and one representative of the Committee (the "Atkinsons Depositions") regarding the accuracy and completeness of the Financial Statement and the conduct of the Atkinsons' financial affairs from and since January 1, 2002 to the present (the "Relevant Period"). Upon request, the Atkinsons must also produce to the Estate any documents within their possession, custody, or control pertaining to their financial position or the conduct of their financial affairs during the Relevant Period. The Atkinsons will instruct all attorneys, financial advisors, accountants, or other

professionals with whom they have in the past retained or consulted to cooperate fully with the Estate's efforts to verify the accuracy and completeness of the Financial Statement or any other issue regarding the conduct of the Atkinsons' financial affairs for the Relevant Period, and the Settlement Order will require any such attorney, financial advisor, accountant, or other professional to so cooperate.

10. Withdrawal of Settlement Motion. If the Estate becomes dissatisfied at any time prior to entry of the Settlement Order with the results of or the Atkinsons' cooperation with the asset verification procedures, the Estate may withdraw its Settlement Motion and proceed with the Committee Litigation, the USF Litigation, and the pursuit of other claims against the Atkinsons.

11. Consequences for Inaccurate or Incomplete Disclosure. If the Estate learns after entry of the Settlement Order that any of the Atkinsons' disclosures in the Financial Statement or the Atkinson Depositions were materially inaccurate or incomplete (an "Inaccurate Disclosure"), it will provide a written notice to the Atkinsons of the alleged Inaccurate Disclosure (the "Notice of Alleged Inaccurate Disclosure"). If the Atkinsons are unable to explain the alleged Inaccurate Disclosure to the Estate's satisfaction within ten days after receipt of the Notice of Alleged Inaccurate Disclosure, the Estate may file a Notice of Inaccurate Disclosure with the Bankruptcy Court and the Atkinsons will have three business days thereafter to file an objection (the "Objection") to the Notice of Inaccurate Disclosure. If the Atkinsons do not timely file an Objection or if the Bankruptcy Court overrules the Objection, the Estate may then file the Consent Judgments (as hereafter defined) in the USF Litigation. Furthermore, in such event, any Releases to the Atkinsons under this Settlement Agreement or Settlement Order will be deemed to be immediately rescinded.

12. Consent Judgments. Simultaneously upon the filing of the Settlement Motion, Cory Atkinson will execute and deliver to the Estate a Consent Judgment in the USF Litigation for \$40 million and Heather Atkinson will execute a Consent Judgment in the USF Litigation for \$875,000 (the “Consent Judgments”). The Estate will hold the Consent Judgments and will file the Consent Judgments upon the discovery of (a) any Inaccurate Disclosure and compliance with the above notice and objection procedures or (b) any violation of the injunction imposed on the Atkinsons in the Committee Litigation (the “Living Expense Injunction”).

13. Attorney-in-Fact. Any undisclosed asset in which either or both of the Atkinsons has an interest on the date of the Settlement Order will also be deemed an “Asset” that is transferred to the Estate. Cory and Heather Atkinson hereby appoint David A. Warfield as their limited attorney-in-fact with full authority to cause the transfer of any such undisclosed asset to the Estate upon its discovery pursuant to the Limited Power of Attorney executed pursuant to section 1 of this Settlement Agreement.

14. Settlement Motion. Within five business days after execution of this Settlement Agreement, USF and the Committee will file a joint motion seeking approval of this Settlement Agreement under Bankruptcy Rule 9019 (the “Settlement Motion”). So long as the Estate is satisfied with the Atkinsons’ cooperation and compliance with this Settlement Agreement and the Living Expense Injunction and no Inaccurate Disclosure has been discovered, the Estate will prosecute the Settlement Motion and will use its best efforts to obtain from the Bankruptcy Court an order in a form reasonably satisfactory to the Estate and to the Atkinsons approving the Settlement Motion (the “Settlement Order”) which will contain a release (consistent with this Settlement Agreement) by the Estate of all claims against the Atkinsons (the “Release”).

15. Confirmation of USF Plan. If the Settlement Order is entered, the Estate will in due course file and prosecute a plan of liquidation for USF (a "Plan") that will, *inter alia*, contain a procedure where creditors of USF that also assert a claim against one or both of the Atkinsons may choose to release such claims (such releases will be referred to generically as "Third Party Releases"). If a Plan containing Third Party Releases is confirmed by March 31, 2011, the Atkinsons will, in such event, be deemed to have relinquished all claims whatsoever to the funds in the Asset Proceeds Account. If a Plan containing Third Party Releases, in a form acceptable to the Atkinsons in their sole discretion, is not confirmed by March 31, 2011, (or such other date that the Atkinsons may agree upon or the Court may fix), then, the USF Litigation will be reopened and the Atkinsons will be free to claim entitlement to the funds then in the Asset Proceeds Account and the Assets that have not at that time been sold, provided, however that the Atkinsons will not, in such event, ever be entitled to recover (a) the first \$1 million deposited in the Asset Proceeds Account, (b) any Holding Costs expended by the Estate in connection with the Assets, or (c) any claims for damages or waste arising out of the Estate's ownership of the Assets after approval of the Settlement Order.

16. Litigation. Upon entry of the Settlement Order, the USF Litigation will be held in abeyance, and neither USF nor the Atkinsons will take any action in connection with the USF Litigation unless (a) there is an Inaccurate Disclosure (and the lapse or passage of any applicable cure periods as set forth herein) at which time USF is authorized to file the Consent Judgments, or (b) the USF Litigation is reopened by the failure to confirm a Plan before the deadline established under this Settlement Agreement. The Committee will use its best efforts to obtain from the Bankruptcy Court an order extending the terms of all pending injunctions in the

Committee Litigation (including but not limited to the Living Expense Injunction) through the earlier to occur of (a) confirmation of a Plan, or (b) March 31, 2011.

17. Berkowitz, Oliver, Williams, Shaw & Eisenbrandt, LLP; Desai Law Firm. If the Settlement Order is entered, the Estate will not pursue any avoidance claims against the law firm of Berkowitz, Oliver, Williams, Shaw & Eisenbrandt, LLP (the "Berkowitz Firm") for payment by USF. of attorneys' fees in connection with the Graves Firm's representation of Cory Atkinson in criminal matters (the "Criminal Representation Fees"). Notwithstanding the foregoing, the Estate reserves its rights to sue the Berkowitz Firm for the avoidance of any transfers from US Fidelis, Inc. to the Graves Firm for (a) payment of any amounts other than the Criminal Representation Fees, or (b) for the Criminal Representation Fees if the Estate learns of any Inaccurate Disclosure. Upon entry of the Settlement Order, the Desai Law Firm will transfer to the Estate all funds then remaining in its trust account for deposit into the Asset Proceeds Account.

18. Closing. The Closing will occur no later than ten business days after entry of the Settlement Order at such place and on such date and time as the parties may agree upon.

19. Miscellaneous. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement will be prohibited by, or invalid under, applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement will be binding upon and inure to the benefit of the Estate and the Atkinsons, and their respective successors and assigns. Notices shall be given by the parties to their counsel of record by electronic mail and shall be deemed received on the day that they are sent.



US Fidelis, Inc.: [rogermann@lathropgate.com](mailto:rogermann@lathropgate.com) and [hcnimore@lathropgate.com](mailto:hcnimore@lathropgate.com)

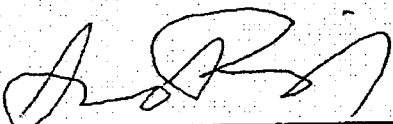
Cory and Heather Atkinson: [sdesai@desailawfirmllc.com](mailto:sdesai@desailawfirmllc.com)

Committee: [dwarfield@thompsoncoburn.com](mailto:dwarfield@thompsoncoburn.com) and [bhockett@thompsoncoburn.com](mailto:bhockett@thompsoncoburn.com)

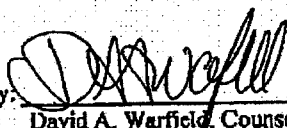
This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of Missouri without regard to conflict of law principles.

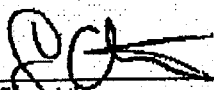
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

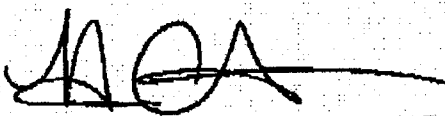
US FIDELIS, INC.

By:   
Scott Eisenberg, Chief Restructuring Officer

OFFICIAL UNSECURED CREDITORS'  
COMMITTEE OF US FIDELIS, INC.

By:   
David A. Warfield, Counsel

  
Cory Atkinson

  
Heather Atkinson

# FINANCIAL STATEMENT

Name: Cory and Heather Atkinson  
Address: 302 Atkinson Way, Wentzville, Missouri 63385

## REAL ESTATE

Location & Description  
45 Via Preminenta, Sunrise Beach, Missouri 65079  
302 Atkinson Way, Wentzville, MO 63385  
505 Lias Way, Wentzville, MO 63385 (rental property)  
718 Wenstone Crossing Way, Wentzville, MO (rental property)  
229 Bless US Drive, Wentzville, MO (rental property)  
1756 Grouse Ridge Road, Tahoe City, CA

## HOUSEHOLD GOODS

See attached list - TAB A

## OTHER ASSETS

### AUTOMOBILES, BOATS, ATV

	Estimated NADA Value
2008 Mercedes C350; VIN #XXXXXXXXXX4283	\$22,500.00
2008 Chevrolet Suburban Sport Wg; VIN #XXXXXXXXXX4160	\$25,000.00
1969 Dodge Coronet 2 door Coupe 383 V8; VIN #XXXXXXXXXX8447	\$7,281.00
2008 Mastercraft X45; #XXXXXXA808	\$50,000.00
2008 Trailer for Mastercraft; #XXXXXXXXXX0267	\$10,000.00
2006 Seadoo; #XXXXXXXXXF606	\$4,000.00
2006 Honda 2 WHL; (Ruckus Scooter) VIN #XXXXXXXXXX03543	\$4,000.00
2009 Honda 2 WHL; (Ruckus Scooter) VIN #XXXXXXXXXX2287	\$1,500.00
2007 KYMC 4WHL; Mongoose 90 Kid ATV VIN #XXXXXXXXXX0691	\$1,500.00
John Deere Tractor	\$500.00
2009 Dodge Ram 1500; VIN #XXXXXXXXXX3291	\$10,000.00
2009 Jeep Wrangler Sport Wg; VIN #XXXXXXXXXX1169	\$20,000.00
2005 Ford Mustang; VIN #XXXXXXXXXX1491	\$20,000.00
2009 Cadillac Escalade E Sport Wg; VIN #XXXXXXXXXX2416	\$9,000.00
2005 Formula	\$20,000.00
2007 KYMC 4WHL; Mongoose) VIN #XXXXXXXXXX0528	\$200,000.00
2006 KAWK 4 WHL; VIN #XXXXXXXXXX3805	\$500.00
2006 YAMA 4 WHL; VIN #XXXXXXXXXX7882	\$2,000.00
2008 SUZ 4 WHL; VIN #XXXXXXXXXX8542	\$2,000.00
2008 SUZ 4WHL; VIN #XXXXXXXXXX1321	\$4,000.00
2009 Polaris 4WHL; VIN #XXXXXXXXXX2967	\$4,000.00
2008 Polaris 4WHL; VIN #XXXXXXXXXX0012	\$4,000.00
2009 Harley Davidson FLSTC Cruiser; VIN #XXXXXXXXXX23425	\$4,000.00
2009 Harley Davidson VRCSDX Cruiser; VIN #XXXXXXXXXX6053	\$12,000.00
2009 Kymco UXV	\$12,000.00
	\$4,000.00

## JEWELRY

See attached list - TAB B  
Costume Jewelry (115) pieces

# CASH ACCOUNTS, INVESTMENT ACCOUNTS, ANNUITIES

Bank Name	Account Number	Amount
Missouri Valley Credit Union Checking	account ending 0011	\$308,930.37
Missouri Valley Credit Union Money Market	account ending 0032	\$517,302.88
Waddell & Reed 529 Plan for Caleb Atkinson	account ending 6558	\$111,833.00
Waddell & Reed 529 Plan for Kaden Miller	account ending 6578	\$116,437.00
Waddell & Reed 529 Plan for Kayla Miller	account ending 6569	*\$102,332.00
Waddell & Reed 529 Plan for Brenden Atkinson	account ending 6592	\$113,133.00
US Bank Account	account ending 1459	\$40,508.41
US Bank Account	account ending 2248	\$13,100.81
MetLife Money Market Account for Cory Atkinson	account ending 7520	\$404,697.27
Waddell & Reed Statement for Cory C Atkinson Rev Trust	account ending 4502	\$734,221.12
Merrill Lynch Investment Account****	account ending 1948	\$76,769.20
Waddell & Reed Mutual Fund Investment for Heather Atkinson Rev Trust	account ending 0192	\$344,733.00
Clark Capital - Pershing Brokerage account for Heather Atkinson****	account ending 7955	\$360,800.80
Ganworth Financial for Cory C Atkinson Rev Trust	account ending 6480	\$3,577,346.52
NEF Forrunner for Cory C Atkinson Rev Trust	account ending 5703	\$106,146.46
Advisors Select Preferred Annuity for Cory C Atkinson Rev Trust	account ending 2493	\$814,264.00
Pershing Brokerage Account for Cory and Heather Atkinson		\$1,178,859.16
Endowment Fund Capital Account		\$200,842.57

## PROMISSORY NOTES AND OTHER INTERESTS

Promissory Note from Eggerts secured by 261 Three Cedars Dr.  
Ernest Edward Atkinson Trust for the Benefit of Cory's Family

## STOCKS/BONDS/SECURITIES

Ridgewood Energy A-1 Fund; Certificate #XXXXA-01\*\*

## BUSINESS INTERESTS

	No. of Shares	Type of Business	Owner	Fair Market Value
Salon Visions, LLC	0.5	Retail Salon	see attachment	\$0.00
AGI Administration Services, Inc.		see attachment	see attachment	
Atkinson Realty, LLC		see attachment	see attachment	
Atkinson Reinsurance, Ltd.		see attachment	see attachment	
Crescent Manufacturing, LLC		see attachment	see attachment	
DC Atkinson Realty, LLC		see attachment	see attachment	
DS Direct, Inc.		see attachment	see attachment	
National Auto Warranty Services, Inc.		see attachment	see attachment	
US Fideis Administration Services, Inc.		see attachment	see attachment	
Association of Service Contract Administrators		see attachment	see attachment	
Atkinson Construction, Inc.		see attachment	see attachment	
Atkinson Group of Companies, Inc.		see attachment	see attachment	
Atkinson II Reinsurance, Ltd.		see attachment	see attachment	
Big Time Productions, Inc.		see attachment	see attachment	
Exodus, LLC		see attachment	see attachment	
Huge, LLC		see attachment	see attachment	
US Fideis, Inc.		see attachment	see attachment	
US Fideis Risk Retention Group, Inc.		see attachment	see attachment	
Wentville International Speedway, LLC		see attachment	see attachment	
Zing Advisors, LLC		see attachment	see attachment	
Dealer Services		see attachment	see attachment	

CASH VALUE OF LIFE INSURANCE

Name of Insurance Company	Face Value	Cash Value
New England Financial; policy no. XXXX0092	\$56,000,000.00	\$419,290.18 as of 4/1/10
New England Financial; policy no. XXXX0120	\$14,000,000.00	\$320,121.89 as of 2/3/10
Life Insurance on Cory Atkinson ***	\$5,000,000.00	\$0.00 as of 11/12/08
MetLife Policy for Heather Atkinson; policy no. XXXX709PR	\$19,090,540.00	\$17,372.82 as of 5/20/10
MetLife Investors USA Insurance Company; policy no. XXXX580USA	\$11,000,000.00	\$115,013.81 as of 5/19/10

RETAINERS

Berkowitz Oliver	\$332,277.78	Advance deposit
Berkowitz Oliver	\$300,000.00	Trust
Desai Law Firm LLC	\$40,000.00	Retainer

\* Not all items listed were purchased by Atkinsons  
 \*\* Asset is illiquid. Market value is based on initial investment.  
 \*\*\* Undetermined if life insurance policy is still in place  
 \*\*\*\* Undetermined if still open or rolled into other investment

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VERIFICATION

We, Cory Atkinson and Heather Atkinson, declare under penalty of perjury that we have read the foregoing Affidavit Statement and that it is true and correct to the best of our knowledge, information, and belief.

Date: 9.28.10

SAC  
Cory Atkinson

HA  
Heather Atkinson

Non HCH furniture

**45 Via Preminente, Sunrise Beach MO**

**Main level**

Living room/kitchen

- Kitchen Table and 6 chairs
- Yellow Leather sofa
- Fabric/wood chair w/ matching ottoman
- Cloth circle ottoman
- Sofa Table
- End table
- 4 rugs
- Piano
- Black chaise lounge
- Wood buffet table
- Black bar server
- 3 trees

Master BR

- Black 4 poster king bed
- Black hope chest
- Black night stand
- King size box spring and mattress
- Black cloth/wood chair w/ matching ottoman
- 2 decorator tables with fabric

Upper BR

- Boat toy box

Upper Patio

- Patio table
- 4 chairs
- 1 swivel chair

Upper Laundry room

- Washer
- Dryer

**Lower level**

LL Family Room

- Red microfiber sectional sofa
- 3 piece stacked end table
- Card table with 4 microfiber chairs
- Wood bar table

- 3-wicker bar chairs
- 2- twin beds w/trundles
- 2- twin mattress

#### LL green BR

- White queen bed
- Queen mattress & box springs
- White dresser
- White night stand
- Green floral armoire

#### LL BR

- Queen size organizing headboard
- Queen size mattress & box spring

#### Lower patio

- 2 white wood chairs w/foot ottomans

#### Lower patio 2

- Hot tub w/cover
- Bar table
- 2 bar chairs
- Wicker storage

#### Lower Laundry room

- Washer
- Dryer

\*Assortment of Value city, Garden Ridge, Home Goods pictures, lamps and furnishings.

**302 Atkinson way, Wentzville MO 63385**

#### Upper Level

##### Upper Level Office

- Blue sectional sofa
- Black filing cabinet
- Black desk
- Rug

##### Upper bedroom 1

- Love sac
- Office chair
- Queen size mattress

#### Upper bedroom 2

- 2 -twin mattress

#### Game room

- Large leather sectional sofa
- 3- black theatre chairs
- black wood barstool
- Black entertainment counsel

### **Main Level**

#### Kitchen

- Black/wood kitchen table
- Black/wood kitchen hutch
- Rod iron wall art
- 2-wicker bar stools
- 2-roosters
- Assortment of accessories

#### Dining room

- Large black/silver mirror
- Jesus statue

#### Office

- Moose head
- Random accessories in bookshelves
- Computer

#### Main hall

- 4-wooden art pieces

#### Master BR Bath

- Rug
- Art behind door

#### Main BR 1

- Train set
- Child table
- 4-child chairs
- 2-aquariums
- Disney clear art piece

#### Laundry room

- Washer



- Dryer

### **Lower Level**

#### **Family room**

- Corner hutch
- Short wood table w/accessories
- 2-leather/wood benches

#### **Bar**

- 4-wood/leather bar stools
- Black pool table with cover and accessories
- Stuffed fish/Marlin

#### **Theater**

- 5-D-Box motion theater chairs
- 2- D-Box non motion love seats
- Spiderman sculpture
- Batman sculpture
- 4-theater posters
- 1-little nemo poster

#### **Gym**

- Elliptical machine
- Weight bench
- Circuit weight system

#### **Salon**

- Blow dryer
- Shampoo chair
- Styling chair
- Massage chair
- Cabinets and mirror

#### **Wine room**

- 2-wine pictures

### **Detached Garage Apartment**

#### **Bedroom**

- Queen size iron bed
- Queen size mattress and box spring
- Washer
- Dryer

#### **Barn**

#### **Inside**

- Weed eater
- Chain saw
- Log splitter
- Leaf blower
- Power washer
- Paintball guns

#### Outside

- John deer tractor
- Brush hog
- Riding mower
- Push mower

#### Pool house

- Stuffed fish/shark
- BBQ Grill electric/gas

#### Back Patio

- All Wicker outdoor furniture by HCH(sofa, chair, ottoman, single chaise, double chaise)
- Cabana
- 5-Metal single chaise lounge
- 2-metal double chaise lounge
- 14-metal chairs
- 1- large round metal table
- 3-small round metal table
- 2-sq end metal tables
- 2 buffet metal tables
- 1- picnic metal table
- 2 -metal couch

#### Garage

- Air compressor
- Grey work bench
- 2-Grey tool box
- 2-grey cabinets
- Red work bench
- 2- red tool box
- 2-red cabinets

#### Basement storage

- Halloween decorations
- Christmas tree
- Assortment of random accessories

#### Storage Unit

- Christmas decorations
- Easter decorations
- Hand weights
- Tents
- Folding chairs
- 2-mountain bikes
- Rubbermaid storage shelves
- Golf clubs
- Stuffed teen floor sofa group

### **Rental Home**

#### **Main level**

##### Kids BR

- 2-twin beds w/trundle
- 2-twin mattress
- 2-trundle mattress
- Red kid media cabinet
- Red kid dresser
- Wood kid book shelf

##### Kitchen

- Wood/black table
- 8-wood/black chairs

##### Living room

- Leather chair and ottoman

##### Master BR

- King wood bed
- King mattress with base
- 2 blue fabric chairs from HCH
- 1-blue fabric ottoman from HCH
- 2-rugs from HCH
- Wood dresser
- 2-night stands
- 2-lamps from HCH

#### **Lower Level**

##### Family room

- Desk

- Dresser
- Big lots wicker coffee table

Paul Stuart Custom Jeweler, Inc.  
4101 Mexico Rd  
St. Peters, Mo 63376  
636 928 1883  
Since 1978  
[www.paulstuartjewelers.com](http://www.paulstuartjewelers.com)  
[Paulstn@aol.com](mailto:Paulstn@aol.com)

Estate of:  
Cory Atkinson  
302 Atkinson Way  
Wentzville, mo. 63385

I have listed 24 hour cash values, not insurance as new appraised values for the listed items. I do not state that I will buy the listed items at the cash value or any part of the cash value.

2.43ct modern brilliant round marked # 19294307 Tiffany and Co 950 platinum diamond ring  
Apparently VSI-1 cc:G  
Cash value: \$ 11,000.00

Two of Tiffany and Company platinum bands  
2.8 dwt 950 platinum band set with 40 of modern brilliant round  
About .03ct each (2ct t.w. approx each band)  
Cash value: \$ 644.00 each of two

Interlocking Tiffany and Co rings 4.6 dwt one is 18KY and one is sterling silver  
Cash value \$65.00

Bracelets, interlocking 33.4 dwt(together) one is 18K and one is sterling silver the 18KY band is  
approx 20dwt 5mm diameter concave bands  
Cash value: 440.00

Louis Vuitton gents watch Tambour GMT REVEIL AUTOMATIQUE LV113  
REFERENCE Q11520 serial number #RD7067  
1500.00

Gucci watch 116.3 Signoria 18Ky serial# 11610021  
86.2 dwt malachite face square face lady's  
Cash value \$2500.00

Chopard lady's watch 94001-0038 diamond dial, there are three mbr diamonds bezel set which "float" in the  
face Limited Edition 334/1000 ceramic dial  
28/8507 1465001 8507  
Cash value 1622.00

Cartier Automatic 2379 stainless steel 27 jewel 816595 UF Pasha water resistant  
Drawbridge closure sapphire crown  
Cash value 1444.00

Louis Vuitton watch black band stainless watch Swiss Made 100M  
DP 8712 01312  
Cash value 965.00

Cartier Roadster Automatic Stainless steel water resistant 100m 564288CB 2618  
Cash value 1100.00

Louis Vuitton gents watch KV0883 QH18F stainless  
Cash value \$25.00

Page 2 of two Paul Stuart 8-25-10

## BUSINESS INTERESTS

Entity Name	Ownership	Purpose	Remaining Assets
AGI Administration Services, Inc.(AGI")	Darain 50% Cory 50%	Insurance administration services	Owns 10% of Association for Service Contract Administrators, Inc.
Aria (SAC), Ltd.			
Association of Service Contract Administrators	90% USFAS 10% AGI	Insurance holding company	100% of US Fidelis Insurance Risk Retention Group, Inc.
Atkinson Construction, Inc.	Darain 50% Cory 50%	Built out USF building and Darain's parents' home	None
Atkinson Group of Companies, Inc.	Darain 50% Cory 50%	Holding Company	None
Atkinson Realty, LLC	Darain 50% Cory 50%	Owned real estate	10 across from GM plant in Wentzville
Atkinson Reinsurance, Ltd.	Darain 50% Cory 50%	Reinsuring contracts	Bank account from which claims are being administered. Account may have as much as \$4M in residual value when all contracts expire. Warrantech claims a 25% interest in residual values..
Atkinson II Reinsurance, Ltd.	Darain 50% Cory 50%	Reinsuring contracts	Bank account from which claims are being administered. Account may have as much as \$3M in residual value when all contracts expire.
Crescent Manufacturing, LLC	Darain 50% Cory 50%	Auto additive warranty sales	Account from which claims are currently being paid. Uncertain residual value
DC Atkinson Realty, LLC	Darain 50% Cory 50%	Owned real estate	Owns 145 acre farm in St. Charles County
DS Direct, Inc.	Darain 50% Cory 50%	Printing company	Various personal property
Elenkhos Group LLC	Darain 33% Others (unrelated) 67%	Investment company	Bank account with \$8,800 balance
Exodus, LLC	Darain 50% Cory 50%	Christian nightclub	Bank balance of \$9,676.22 as of May 31, 2010. Other restaurant related property
First Automotive Agents, Inc.			
Huge, LLC	Darain 33% Cory 33% Eddie Struckmann 33%	Holding company for various Internet related businesses	None

Entity Name	Ownership	Purpose	Remaining Assets
US Fidelis Administration Services, Inc. ("USFAS")	Darain 50% Cory 50%	Used to sell in-house warranties and brokerage sales	None
US Fidelis, Inc. (f/k/a National Auto Warranty Services, Inc.; f/k/a Big Time Productions, Inc.)	Darain 50% Cory 50%	Marketed vehicle service contracts	TBD
US Fidelis Insurance Risk Retention Group, Inc.	The Association of Service Contract Administrators	Risk Retention Group	Recently dissolved in Montana. Approximately \$750,000 remains in a bank account.
Wentzville International Speedway, L.L.C.	Darain 50% Cory 50%	Formed to operate race track (never opened)	None
Zing Advisors, LLC	50% Darain Trust 50% Cory Trust	Consulting Company (never operated)	None