

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

_____)	
In re)	Chapter 11, No. 09-30623-HJB
)	(Jointly Administered)
ERVING INDUSTRIES, INC., et al)	
)	
Debtor)	
_____)	

FIFTH INTERIM APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES
BY FIDUCIARY COUNSELORS, ERISA CONSULTANT
TO THE CHAPTER 11 DEBTOR

Submitted by:

Fiduciary Counselors Inc.
700 12th Street, NW, Suite 700
Washington, DC 20005
202-558-5141
Laura.Rosenberg@fiduciarycounselors.com

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FIFTH INTERIM APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES
BY FIDUCIARY COUNSELORS, ERISA CONSULTANT
TO THE DEBTOR

To the HONORABLE HENRY J. BOROFF, Bankruptcy Judge:

NOW comes your Applicant Fiduciary Counselors, the ERISA consultant employed by the Debtors in the above-captioned, jointly administrated case and pursuant to sections 330 and 331 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure, Rule 2016-1 of the Local Bankruptcy Rules (MLBR), and a Case Management Order dated April 22, 2009 and request the award of fees and reimbursement of out-of-pocket expenses incurred in connection with services rendered to the Debtors. In support of its Application Fiduciary Counselors represents as follows:

1. On April 20, 2009, the Debtors¹, Erving Industries, Inc. ("EII"), Erving Paper Mills, Inc. ("Paper") and ERSECO, Inc. ("ERSECO") filed Voluntary Petitions seeking relief under the provisions of Chapter 11 of the Bankruptcy Code. Since the commencement of the case, these Debtors have continued to operate their business and manage their affairs as Debtors-In-Possession. An Order providing for Joint Administration with Erving Industries, Inc. was entered two days after the initial filing.

¹ On October 2, 2009, Erving Realty, Inc., a wholly owned subsidiary of Erving Industries, Inc., filed a voluntary petition seeking relief under the provisions of Chapter 11. Shortly thereafter, the Court entered an order of joint administration under the lead case, Erving Industries, Inc., 09-3062-hjb.

2. On April 22, 2009, an Order was entered providing for the employment of your Applicant. A copy of the Order is annexed hereto as Exhibit "A".

3. Pursuant to MLBR 2016-1, your Applicant has attached a brief biography of those individuals who have contributed services to the Debtors. These documents are marked Exhibit "B".

4. During the time period of September 1 through December 31, 2010, Laura Rosenberg has contributed 0.9 hours of professional services, billed at an average hourly rate of \$750.00.

5. Your Applicant seeks an allowance of fees for professional services in the amount of \$675.00 together with \$0.00 as reimbursement of reasonable and necessary out-of-pocket expenses incurred.

6. Pursuant to a Case Management Order entered on April 22, 2009, your Applicant has submitted monthly invoices detailing the time devoted, the professional devoting services, the billing rate, and a brief description of the services provided. Absent objection, these invoices have been paid subject to a 10% holdback on fees all as more fully set forth by the Case Management Order.

7. Among the services performed by your Applicant during the time period covered by this Application are:

The review of the plan termination process, review of Finds of Fact, discussion on the completion of necessary Pension Benefit Guaranty Corporation forms for plan termination, and a review of the trusteeship agreements.

8. Exhibit "C" attached to this Application contains details of the services provided, the time expended,


identification of the individual providing the services and their applicable billing rates.

9. The fees requested in this Interim Application represent reasonable compensation for actual and necessary services rendered in connection with representing the Debtors' interest in this Chapter 11 case, and will not be shared, pooled or divided with any other person or firm. As evidenced by Exhibit "C", the services rendered by your Applicant have been sufficiently well defined so as to avoid duplication of professional services.

WHEREFORE your Applicant respectfully requests the entry of an Order awarding fees in the amount of \$675.00 together with reimbursement of out-of-pocket expenses totaling \$0.00.

Fiduciary Counselors Inc.

Dated: February 7, 2011

By: 

Laura Rosenberg
Senior Vice President, Finance
Fiduciary Counselors Inc.
700 12th Street, NW
Suite 700
Washington, DC 20005
(202) 558-5141
Laura.Rosenberg@fiduciarycounselors.com

SUMMARY SHEET

(Per UST Guidelines)

_____)	
In re)	Chapter 11, No. 09-30623-HJB
ERVING INDUSTRIES, INC. et al)	(Jointly Administered)
Debtors)	
_____)	

Fees Previously Requested	\$ 49795.00	NAME OF APPLICANT:
Fees Previously Awarded	\$ 49795.00	Fiduciary Counselors Inc.
Expenses Previously Requested	\$ 162.34	ROLE IN CASE:
Expenses Previously Requested	\$ 162.34	ERISA Consultant
Retainer (as of Dec. 31, 2010)	\$ 0.00	CURRENT APPLICATION:
		Fees Requested: 675.00
		Expenses Requested: 0.00

FEE APPLICATION

<u>PARTNERS</u>	<u>Hours Billed</u>	<u>Rate</u>	<u>Total for Application</u>
Laura Rosenberg	0.9	\$750.00	\$675.00

ASSOCIATES:

TOTAL BLENDED HOURLY RATE: \$750.00
(excluding paraprofessionals)

FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

_____))
In re) Chapter 11, No. 09-30623-HJB
) (Jointly Administered)
ERVING INDUSTRIES, INC., et al))
))
Debtor))
_____)

ORDER ON FIFTH INTERIM APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES
BY FIDUCIARY COUNSELORS INC., ERISA CONSULTANT TO THE CHAPTER 11
DEBTORS

At Springfield, in said District, on this the _____ day of _____, 2011.

Upon consideration of the Application of Fiduciary Counselors in the above matter, seeking an interim award of fees and expenses, after notice and hearing an for cause shown, it is hereby

ORDERED that the firm of Fiduciary Counselors be awarded fees in the amount of \$675.00 for professional services rendered together with reimbursement for out-of-pocket expenses in the amount of \$0.00 incurred during the period from September 1, 2010 through December 31, 2010.

By: _____
HONORABLE HENRY J. BOROFF
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>)	
In re))	Chapter 11, No. 09-30623-HJB
ERVING INDUSTRIES, INC.))	
))	
Debtor))	
<hr/>)	
In re))	Chapter 11, No. 09-30624-HJB
ERVING PAPER MILLS, INC.))	
))	
Debtor))	
<hr/>)	
In re))	Chapter 11, No. 09-30625-HJB
ERSECO, INC.))	
))	
Debtor))	
<hr/>)	

**ORDER ON APPLICATION TO EMPLOY FIDUCIARY COUNSELORS INC. AS
CONSULTANT FOR ERISA MATTERS**

At SPRINGFIELD, in said District, on this *22nd* day of April, 2009.

Upon the Application of ERVING INDUSTRIES, INC. (EII), ERVING PAPER MILLS, INC. (Paper), and ERSECO, INC. (ERSECO), the Debtors and Debtors-in-Possession in the above matter, seeking the entry of an Order authorizing the employment of Fiduciary Counselors, Inc. as consultant for ERISA matters pursuant to Section 327 (of the Bankruptcy Code, after adequate and

sufficient notice and opportunity for hearing, finding that employment of Fiduciary Counselors is necessary and in the best interest of the Debtors and their estates, it is hereby

ORDERED that the Debtors are authorized to employ the firm of Fiduciary Counselors, Inc. as consultants on the terms and conditions set forth in the attached application.



HONORABLE HENRY J. BOROFF
Bankruptcy Judge

Exhibit B

Nell Hennessy
President & Chief Executive Officer

Phone (202) 558-5141 ■ Email nell.hennessy@fiduciarycounselors.com

Ms. Hennessy, President & Chief Executive Officer, has headed Fiduciary Counselors Inc. since its incorporation in 1999. From 1993 to 1998, she served as Deputy Executive Director and Chief Negotiator of the Pension Benefit Guaranty Corporation (PBGC), the federal agency that guarantees private defined benefit pensions. She represented PBGC in negotiations with major corporate pension plan sponsors and unions in a wide range of industries, including auto, steel, chemical, textile and airlines. Working closely with the Department of Labor, she negotiated an agreement with General Motors that permitted GM to contribute employer stock to its hourly plan – the largest such transaction in U.S. history -- forming the basis for a ground-breaking prohibited transaction exemption that allowed GM to subsequently spin off its EDS subsidiary. She negotiated the restructuring of TWA's debt to PBGC and Carl Ichan, which allowed TWA to successfully reorganize. The Early Warning Program she headed at PBGC was awarded one of the first federal Innovations in American Government Awards by the Ford Foundation and the Kennedy School of Government at Harvard University.

Prior to joining PBGC, Ms. Hennessy was a partner in the law firm of Willkie Farr & Gallagher. In her twelve years of private law practice, she advised clients on a wide range of benefit, investment and corporate governance issues. She began her legal career as an attorney in two of the three federal agencies that regulate employee benefits, first in the Office of the Chief Counsel at the Internal Revenue Service (1978-80) and then at the PBGC (1980-81).

Ms. Hennessy has chaired the ABA Joint Committee on Employee Benefits and the Employee Benefits and Executive Compensation Committee in the ABA Section of Business Law. She was a member of the ABA Standing Committee on Technology and Information Systems and was a member of the ABA Presidential Task Force on Corporate Responsibility, which produced the "Cheek Report" cited favorably by the SEC in regulations regulating the conduct of lawyers under the Sarbanes-Oxley Act.

Since 1985 Ms. Hennessy has been an adjunct professor at Georgetown University Law Center, where she helped develop the graduate certificate program in employee benefits. She currently teaches a graduate law seminar on Employee Benefits in Corporate Transactions. She was a founding Board member of the American College of Employee Benefits Counsel and she is also a founding member and past President of the Worldwide Employee Benefits Network (WEB). Ms. Hennessy is also a member of the National Bankruptcy Conference, a non-partisan, organization of approximately 60 lawyers, law professors and bankruptcy judges who advise Congress on bankruptcy law.

Ms. Hennessy received her B.A. from James Madison College at Michigan State University in 1971, her J.D. from the Catholic University of America in 1978 and her L.L.M. in Taxation from Georgetown University Law Center in 1984. Her publications include ERISA—Fiduciary Responsibility and Prohibited Transactions (BNA Tax Management Portfolio No. 365) and the HR and Benefits Guide to Mergers and Acquisitions (Thompson Publishing 2001).

Laura Rosenberg, CFA, CIRA, CDBV
Senior Vice President, Finance

Phone (202) 558-5135 ■ Email laura.rosenberg@fiduciarycounselors.com

Ms. Rosenberg is Senior Vice President, Finance of Fiduciary Counselors Inc. She has more than 20 years of experience in corporate finance and pensions, with a concentration in corporate restructurings, mergers & acquisitions, bankruptcies, capital markets.

Ms. Rosenberg joined Fiduciary Counselors in 2004 from the Pension Benefit Guaranty Corporation (PBGC) where she served for 12 years. She was a manager in the Corporate Finance & Negotiations Department where she was responsible for credit analysis and negotiations with major corporate pension plan sponsors in a wide range of industry sectors including aviation, automotive and steel.

Ms. Rosenberg was a principal architect of the PBGC's Early Warning Program and successfully negotiated the restructuring of over \$18 billion of pension debt in more than 100 transactions with major corporations both in and out of bankruptcy. She led PBGC's negotiations to settle claims in numerous bankruptcies including TWA, United Airlines, US Airways, LTV Steel, Bethlehem Steel and Kaiser Aluminum, where the pension claim was often the largest creditor in the proceeding. Additionally, Ms. Rosenberg led PBGC's involvement in the Northwest Airlines prohibited transaction exemption and minimum funding waiver request. She also served as PBGC's appointee on creditors committees and as an expert witness in a key litigation case.

Prior to serving at PBGC, Ms. Rosenberg was the Capital Markets Manager and Cash Manager at MCI Communications Corporation, where she analyzed investment bankers' capital structure proposals and managed the pension asset managers and pension asset allocations.

Ms. Rosenberg is a frequent author and speaker on financial and pension matters and is widely quoted as an expert in these subjects.

Ms. Rosenberg received her B.S. degree in Finance from the University of Maryland, her M.B.A. in Finance from The George Washington University and a Certificate in Government Affairs from Georgetown University. She is a Chartered Financial Analyst (CFA), a Certified Insolvency and Restructuring Advisor (CIRA), and holds a Certification in Distressed Business Valuation (CDBV). Ms. Rosenberg teaches courses on pensions and valuations.

Exhibit C

Fees:

<u>Date</u>	<u>Provider</u>	<u>Time</u>	<u>Description</u>
09/30/2010	Laura Rosenberg	0:12	Conversation with Denis Emmett (Erving CFO) re: the status of the plan termination process.
11/04/2010	Laura Rosenberg	0:18	Reviewed and commented on the Findings of Fact.
11/12/2010	Laura Rosenberg	0:12	Call with Denis Emmett (Erving CFO) to discuss completing the necessary PBGC forms for the plan termination.
12/28/2010	Laura Rosenberg	0:12	Review trusteeship agreements
	Total Time: Laura Rosenberg	0:54	
	Fees: Laura Rosenberg @ \$750/hr.	675.00	
Total Fees		675.00	
Reimbursable Expenses:			
Total Expenses		-	