

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	Chapter 11
In re)	
)	Case No. 09-13038 (KG)
CYNERGY DATA, LLC, <i>et al.</i> ¹)	
)	Hearing Date: TBD
Debtor.)	Objection Deadline: TBD
_____)	

**APPLICATION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR ORDER AUTHORIZING EMPLOYMENT
AND RETENTION OF JAGER SMITH P.C. AS COUNSEL**

The Official Committee of Unsecured Creditors (the “Committee”) of Cynergy Data, LLC, Cynergy Data Holdings, Inc., and Cynergy Property Plus, LLC (the “Debtors”) hereby submits this application (the “Application”) for the entry of an order authorizing the employment and retention of the law firm of Jager Smith P.C. (“Jager Smith”) as counsel to the Committee effective as of September 10, 2009, pursuant to Sections 328 and 1103(a) of Title 11 of the United States Code, (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and in support thereof respectfully represents as follows:

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

Jurisdiction, Venue and Basis for Relief Requested

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the statutory predicates for the relief requested herein are Sections 328 and 1103(a) of the Bankruptcy Code, along with Bankruptcy Rule 2014(a) and Local Rule 2014-1.

Pertinent Procedural History

2. On September 1, 2009, the Debtors filed a *Voluntary Petition* for relief under Chapter 11 of the Bankruptcy Code. Since that date, the Debtors have continued in the possession of their assets and in the operation of their businesses as a debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. On September 10, 2009, the Office of the United States Trustee appointed the Committee. During its first meeting immediately following its formation, the Committee selected (a) Jager Smith to serve as counsel to the Committee; (b) Ashby & Geddes (“Ashby”) to serve as the Committee’s Delaware counsel, and (c) Deloitte Financial Advisory Services to serve as the Committee’s financial advisor.

Relief Requested

3. By this Application, the Committee seeks an order authorizing and approving the employment and retention of Jager Smith as its counsel, effective as of September 10, 2009.

4. The Committee selected Jager Smith as its counsel because of Jager Smith’s experience and knowledge in the field of bankruptcy and creditors’ rights. The

Committee believes that Jager Smith is well qualified to represent it as counsel in connection with this case.

5. Subject to the direction of the Committee and further order of this Court, the professional services to be rendered by Jager Smith to the Committee will include but will not necessarily be limited to the following:

- a. advising the Committee and representing it with respect to proposals and pleadings submitted by the Debtors or others to the Court;
 - b. representing the Committee with respect to any plans of reorganization or disposition of assets proposed in this case;
 - c. attending hearings, drafting pleadings and generally advocating positions which further the interests of the creditors represented by the Committee;
 - d. assisting in the examination of the Debtors' affairs and a review of their operations;
 - e. advising the Committee as to the progress of the Chapter 11 case;
- and
- f. performing such other professional services as are in the best interests of those represented by the Committee, including without limitation those delineated in Section 1103(c) of the Bankruptcy Code.

6. Jager Smith intends to work closely with the Committee, Ashby, Deloitte and any other professionals the Committee may employ to ensure that there is no unnecessary duplication of services performed or charged to the Debtors' estate.

7. The individuals presently designated to represent the Committee are Bruce F. Smith, a partner whose hourly billing rate is \$500.00, Steven C. Reingold, a partner

whose hourly billing rate is \$400.00, Michael J. Fencer, a partner whose hourly billing rate is \$400.00, and certain paralegals, the hourly billing rates for whom range from \$125.00 to \$175.00. The average blended rate will not exceed \$425.00/hour for any given billing period.

8. It is the firm's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among others, telecopier charges, mail and express mail charges, photocopying charges and computerized research. The firm will charge the Committee for those expenses in a manner and at rates consistent with charges made generally to the firm's other clients.

9. The Committee believes that it is necessary to employ attorneys to render the professional services described above to the Committee, and that without such professional assistance, neither the Committee's evaluation of the operations of the Debtors nor its meaningful participation in the negotiation, promulgation and evaluation of any plan of reorganization would be possible.

10. To the best of the Committee's knowledge, Jager Smith has had no prior connection with the Debtors, their creditors or any other party in interest except as may be stated in the *Affidavit of Bruce F. Smith* submitted herewith. Upon information and belief, Jager Smith does not hold or represent any interest adverse to the Debtors' estate or to the Committee or the creditors the Committee represents in the matters upon which it has been and is to be engaged.

11. The Committee respectfully requests that this Court authorize the employment and retention of Jager Smith effective as of September 10, 2009, the date the Committee was formed by the Office of the United States Trustee.

12. Subject to Court approval in accordance with Sections 330 and 331 of the Bankruptcy Code, and subject to the terms of any order that may be entered governing the compensation of professionals, compensation will be payable to Jager Smith on an hourly basis, plus reimbursement of actual, necessary expenses incurred.

Notice

13. Notice of this objection has been served, via first class mail, postage prepaid, upon: (i) counsel to the Debtors; (ii) counsel to the United States Trustee; (iii) the respective counsel to each of the Debtors' secured lenders; (iv) and counsel to Harris. The Committee respectfully submits that, in light of the nature of the issues raised herein, such notice is good and sufficient under the circumstances, and that no other or further notice is required.

No Prior Application

14. No prior application for the relief sought herein has been made to this or any other Court.

Conclusion

WHEREFORE, the Committee respectfully requests that this Court enter an order, in the form submitted herewith, authorizing the employment and retention of the law firm of Jager Smith as counsel to the Committee effective as of September 10, 2009, together with such other and further relief as the Court deems just and proper.

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

By: */s/ Maria Aprile Sawczuk*
Maria Aprile Sawczuk, counsel for
Iworks, Inc.
Chairman of the Committee

Dated: 9/18/09

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
CYNERGY DATA, LLC, <i>et al.</i> , ¹) Case No. 09-13038 (KG)
)
Debtors.) (Jointly Administered)
) Hearing Date: TBD
) Objection Deadline: TBD

**NOTICE OF APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR ORDER AUTHORIZING EMPLOYMENT
AND RETENTION OF JAGER SMITH P.C. AS COUNSEL**

PLEASE TAKE NOTICE that on September 21, 2009, the Official Committee of Unsecured Creditors filed its **Application of the Official Committee of Unsecured Creditors for Order Authorizing Employment and Retention of Jager Smith P.C. as Counsel** (the “Application”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Application must be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, filed with the Bankruptcy Court and served upon, so as to be received by, the undersigned proposed counsel on **a date to be determined**.

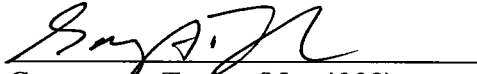
PLEASE TAKE FURTHER NOTICE that this Application is scheduled to be heard by the Court on **a date to be determined** before The Honorable Kevin Gross, Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom #3, Wilmington, Delaware 19801.

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

PLEASE TAKE FURTHER NOTICE that the Committee will provide further notice of the hearing date and objection deadline with respect to the Application.

Dated: September 21, 2009
Wilmington, Delaware

ASHBY & GEDDES, P.A.



Gregory A. Taylor (No. 4008)
Karen B. Skomorucha (No. 4759)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, Delaware 19899
Telephone: 302-654-1888
Facsimile: 302-654-2067

-and-

JAGER SMITH P.C.

Bruce F. Smith (*admission pro hac vice pending*)
Steven C. Reingold
Michael J. Fencer (*admission pro hac vice pending*)
One Financial Center
Boston, Massachusetts 02111
Telephone: (617) 951-0500
Facsimile: (617) 951-2412

*Proposed Co-Counsel to Official Committee of
Unsecured Creditors*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

_____)	Chapter 11
In re)	
)	Case No. 09-13038 (KG)
CYNERGY DATA, LLC, <i>et al.</i> ¹)	
)	
Debtor.)	
_____)	

AFFIDAVIT OF BRUCE F. SMITH

COMMONWEALTH OF MASSACHUSETTS)
) ss
COUNTY OF SUFFOLK)

I, Bruce F. Smith, being duly sworn, hereby depose and say as follows:

1. I am a partner in the law firm of Jager Smith P.C. (“Jager Smith”), which maintains offices for the practice of law at One Financial Center, Boston, Massachusetts 02111 and at 485 Madison Avenue, New York, New York 10022.

2. I submit this Affidavit in support of the *Motion of Official Committee of Unsecured Creditors for Order Authorizing Employment and Retention of Jager Smith P.C. as Counsel* (the “Motion”), pursuant to which the Official Committee of Unsecured Creditors (the “Committee”) of Cynergy Data, LLC, et al. (the “Debtors”) seek an order pursuant to Sections 328 and 1103 of Title 11 of the United States Code, (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Committee to employ and retain Jager

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Smith as its counsel effective as of September 10, 2009.

3. Unless otherwise stated, I have personal knowledge of the facts set forth herein. To the extent that any information disclosed herein requires amendment or modification upon Jager Smith's further analysis or as additional party-in-interest information becomes available to it, a supplemental affidavit will be submitted to the Court reflecting such amended or modified information.

4. Neither I, Jager Smith, nor any member of, counsel to or associate of Jager Smith, insofar as I have been able to determine, represents any entities (or their attorneys or accountants) or has any connection with the Debtor, its creditors or any other party in interest herein, except that Bruce F. Smith, a partner at Jager Smith P.C. is married to Sheila Smith who is a Principal at Deloitte Financial Advisory Services, LLC, which is the Committee's choice for financial advisor. Also, Jager Smith P.C. is presently using the services of Akerman Senterfitt, LLP with regard to a small fee collection matter in Palm Beach, Florida. Akerman Senterfitt, LLP is counsel to the stalking horse bidder in this case. We have also represented Wells Fargo Trade Capital in another matter unrelated to the Debtors, and that representation was terminated on August 11, 2009. Jager Smith does appear in many cases, proceedings and transactions involving different attorneys, financial consultants and investment bankers, some of whom may now or in the future represent an interested party in this case. From time to time, Jager Smith will review its disclosures and, in the event that additional material connections are discovered, Jager Smith will disclose such information to the Court.

5. Jager Smith is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, in that Jager Smith, its members, counsel and associates:

- a. are not creditors, equity security holders or insiders of the Debtor;
- b. are not and were not, within two years before the date on which the Debtor

commenced this case, directors, officers or employees of the Debtor; and

c. do not have an interest materially adverse to the interests of the Debtor's estate or of any class of the Debtor's creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtor for any reason.

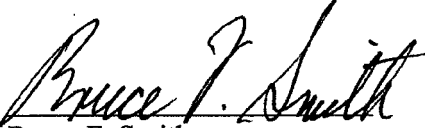
6. Based on the foregoing, insofar as I have been able to determine after diligent inquiry, I believe Jager Smith does not hold or represent an interest adverse to the Debtor's estate in matters upon which Jager Smith is to be employed, and has no connections with the Debtor or other parties in interest, except as otherwise set forth herein.

7. The individuals presently designated to represent the Committee are Bruce F. Smith, a partner whose hourly billing rate is \$500.00, Steven C. Reingold, a partner whose hourly billing rate is \$400.00, Michael J. Fencer, a partner whose hourly billing rate is \$400.00, and certain paralegals, the hourly billing rates for whom range from \$125.00 to \$175.00. The average blended rate will not exceed \$425.00/hour for any given billing period.

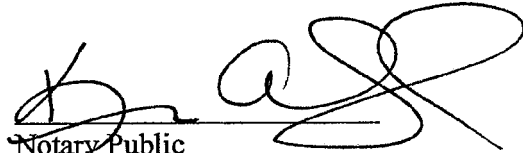
8. It is Jager Smith's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, amongst others, telecopier charges, mail and express mail charges, photocopying charges and computerized research. Jager Smith will charge the Committee for those expenses in a manner and at rates consistent with charges made generally to the firm's other clients.

9. No promises have been received by Jager Smith, nor any member of, counsel to or associate of Jager Smith, as to payment or compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of this Court. Jager Smith has no agreement with any other entity to share any compensation received by Jager Smith in connection with this case or the representation of the Committee.

10. Based upon the foregoing, I respectfully request that the Court grant the relief sought in the Motion.


Bruce F. Smith

On this 17th day of September, 2009, before me, the undersigned notary public, personally appeared Bruce F. Smith, proved to me through satisfactory evidence of identification, which was my personal knowledge of his identity, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



Notary Public

My commission expires:



KRISTIN A. SLACK
Notary Public
Commonwealth of Massachusetts
My Commission Expires
September 10, 2015

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
CYNERGY DATA, LLC, *et al.*,¹)
Debtors.) Case No. 09-13038 (KG)
)
) (Jointly Administered)
)
) Related Docket No. _____

**ORDER PURSUANT TO 11 U.S.C. §§ 328, 330, AND 1103, AND
FED. R. BANKR. P. 2014 AUTHORIZING THE EMPLOYMENT AND RETENTION
OF JAGER SMITH P.C. AS COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS *NUNC PRO TUNC* TO SEPTEMBER 10, 2009**

Upon consideration of the application dated September 21, 2009 (the “Application”)² of the Official Committee of Unsecured Creditors of the above captioned debtors and debtors in possession (the “Committee”), for an order authorizing the Committee to retain and employ the law firm of Jager Smith P.C. (the “Firm” or “Jager Smith”) as counsel *nunc pro tunc* to September 10, 2009 pursuant to sections 328, 330, and 1103 of the Bankruptcy Code, and Bankruptcy Rule 2014; and upon consideration of the Smith Affidavit filed in support thereof; and the Court being satisfied based upon the representations made in the Application and the Smith Affidavit that Jager Smith represents no interest adverse to the Committee or the Debtors’ unsecured creditors with respect to matters upon which the Firm is to be engaged, that Jager Smith is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and that Jager Smith’s employment is necessary and is in the best interests of the Committee and the Debtors’ unsecured creditors; and due and adequate notice of the Application having been given; and it

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² Capitalized terms not defined herein shall have the meanings ascribed to them in the Application.

appearing that no further or other notice is required; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Application is hereby **GRANTED**.

2. In accordance with section 328 and 1003 of the Bankruptcy Code, the Committee is hereby authorized to retain and employ the law firm of Jager Smith as counsel on the terms set forth in the Application and the Smith Affidavit, effective *nunc pro tunc* to September 10, 2009.

3. Jager Smith shall be entitled to an allowance of compensation and reimbursement of expenses upon the filing and approval of interim and final applications pursuant to the Bankruptcy Code, Bankruptcy Rules, the Local Rules and such other Orders as the Court may direct.

4. The Committee is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
_____, 2009

The Honorable Kevin Gross
United States Bankruptcy Court