

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE:	§	
	§	CHAPTER 11
BULLIONDIRECT, INC.,	§	
	§	CASE NO. 15-10940-tmd
Debtor.	§	

**RESPONSE TO LIMITED OBJECTION TO  
APPLICATION FOR EMPLOYMENT OF ATTORNEYS (Relates to dkt#8)**

**COMES NOW** Applicant and in response to *Limited Objection to Application for Employment of Attorneys* (Doc#48) would show as follows: Each paragraph of this Response replies to the paragraph of the Objection bearing the same number.

1. Admitted.
2. Applicant can neither admit nor deny what customers thought, but it is likely that customers believed that they would receive what they had purchased when they requested it.
3. Admitted. The former BDI management has indicated a certain understanding of the meaning of the Terms of Service Agreement dated October 3, 2012, specifically Section 6.7. As noted, former management contended that purchasers through the [www.bulliondirect.com](http://www.bulliondirect.com) website received title to the product purchased only if the buyer took possession of the product. If the buyer did not take possession, the purchased item would be stored in the vault on a *fungible* basis with the purchaser retaining an undivided interest in the stored contents of the vault. The term “fungible” appears to have been interpreted by former management to allow BDI to *use* those vault contents and to take orders for purchase of other product without actually acquiring the product necessary to complete the purported sale. The order became like a coupon for a certain product that BDI was obligated to acquire if the purchaser demanded possession.

Former management's interpretation of the Terms of Service Agreement was at least commercially unreasonable and, as many have alleged, possibly fraudulent.

4. Debtor has not valued the precious metals under the control of BDI as of the petition date, but would agree that the value is likely to be substantially below the probable claims in the case.

5. On information and belief, BullionDirect, Inc. and its former management are the subject of inquiries and investigations by numerous state attorneys-general, including the Texas Attorney-General, the FBI, the Travis County District Attorney and Austin Police Department.

6. Debtor does not know the status of responses to the U S Trustee's inquiry, but believes it to be correct. Debtor was not aware that Dr. Suzuki was a candidate to serve on the committee. His legal position, as stated in a demand letter to Debtor's counsel dated July 28, 2015, a copy of which is attached as Exhibit A, seems to separate his interests from those of general unsecured creditors.

7. Debtor cannot speak to Creditor's intent in filing the objection without contacting the undersigned. The deadline for objections was not until the following Monday. Creditor has repeatedly demanded other non-public information from the undersigned on unrelated matters as recently as the evening when the "Limited Objection" was drafted and filed.

8. To address Creditor's implied objection, the undersigned offers the following history.

A. **October 9, 2012.** The undersigned first met with a lawyer representing BDI and a reluctant Charles McAllister, then chief operating officer of BDI, on October 9, 2012, for the purpose of giving an overview of the Chapter 11 process. BDI provided no records or agreements<sup>1</sup>, but the premise for the meeting was that BDI

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<sup>1</sup> The undersigned later downloaded the October 3, 2012, Terms of Service Agreement from the [www.bulliondirect.com](http://www.bulliondirect.com) website. The applicant law firm has never drafted a terms of service agreement, did

had suffered very large losses and many more creditors than it had assets, neither of which losses or creditors were quantified by BDI at the meeting. In the meeting the Chapter 11 process and possible administrative costs were described in generic terms, essentially “Chapter 11 101”.

- B. October 15, 2012 - Applicant billed BDI \$510.45.
  - C. October 17, 2012 - BDI, possibly through its law firm, sent a retainer for \$100,000.00, premised on the possible need to file Chapter 11 in the foreseeable future. No information which would have been necessary for filing accompanied the retainer.
  - D. November 21, 2012 - Applicant billed BDI \$121.00 based on the undersigned’s 18-minute examination of the website on October 16, 2012, including the Terms of Service Agreement and the “Nucleo Exchange,” and \$1.00 for a Secretary of State web access fee.
  - E. Remainder of 2012 - No contact with BDI. No billing or payment.
  - F. July 18, 2013 - Applicant billed BDI \$122.00 for preparation and execution of documents necessary to open a Trust Account<sup>2</sup> for retainer and inquiry regarding Public Information Reports.
  - G. August 4, 2014 - BDI requires return of all but \$20,000.00 of retainer. No explanation given. No billing or payment for all of 2014.
  - H. January 1, 2015, through June 15, 2015 - No contact, no billing or payment.
  - I. June 16, 2015 - McAllister reappears. BDI has apparently suspended operations and is under many investigations. Filing a Chapter 11 was conditioned by undersigned on removal of McAllister from any management position and his cooperation in gathering data.
9. Correct.

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not write the October 3, 2012, agreement and never engaged in a discussion with McAllister until June 2015 regarding its interpretation. Like most Terms of Service Agreements, the undersigned did not try very hard to understand it on first reading. On information and belief that version of the Terms of Service Agreement was drafted and adopted by BDI before the undersigned knew of BDI’s existence.

<sup>2</sup> The BDI retainer had originally been deposited into Applicant’s IOLTA account based on the assumption that a filing would happen sooner, rather than later, but with no communication from BDI, it was decided to deposit the retainer in a separate BDI trust account.

10. Creditor does not describe what “funds received by Debtor and apparently transferred” he is referring to. No funds have been received and transferred by Debtor without court approval. “Debtor” has existed only since July 20, 2015. This allegation appears to be an effort to conflate what BDI may have done pre-petition with the Debtor-in-Possession. Debtor agrees that all of the actions of the former management should be examined by the Committee. In fact, all causes of action against former management will be assigned by Debtor to the Committee, if requested. Dr. Suzuki’s plea to use very limited estate funds to prove his case alone is hardly fair to the actual unsecured creditors.

11. As a practical matter, the formation of a Committee will have occurred before this matter is heard. Mr. Bensimon is painfully aware of the shortage of funds in this case. Not only will the normal administrative duties of the Debtor have to be carried out, but, in order to have any chance of selling or licensing any of the Debtor’s intellectual property, a core rationale for a Chapter 11 rather than a Chapter 7, funds will have to be found.

12. Postponement to allow Committee involvement is not opposed. Application to be employed is sought under 11 U.S.C. § 327.

13. Duly noted.

WHEREFORE, Respondent requests that the Court deny the Limited Objection and enter an Order approving its Application for Employment of Attorneys, and for such other relief as is just.

Respectfully submitted,

MARTINEC, WINN, VICKERS & MCELROY, P.C.  
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Austin, TX 78701-2117  
(512) 476-0750/FAX (512) 476-0753  
[martinec@mwvmlaw.com](mailto:martinec@mwvmlaw.com)

By: /s/ Joseph D. Martinec  
Joseph D. Martinec  
State Bar No. 13137500  
PROPOSED ATTORNEYS FOR DEBTOR

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Response* has been served via the Court's ECF Noticing System, by First Class Mail, postage prepaid, e-mail or facsimile transmission, if so indicated, on the 17<sup>th</sup> day of August, 2015, upon the current Master Service List, including the following:

Peter C. Ruggero  
Ruggero Law Firm PC  
1411 West Avenue, Ste. 200  
Austin, TX 78701  
(via ECF)

/s/ Joseph D. Martinec  
Joseph D. Martinec



**Peter C. Ruggero**  
 peter@ruggeroalaw.com

1411 West Ave, Ste 200  
 Austin, Texas 78701  
 phone 512.473.8676  
 fax 512.852.4407

July 28, 2015

Via email martinec@mwwmlaw.com

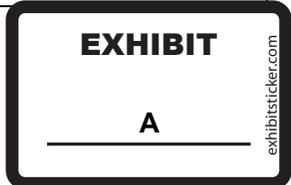
Joe Martinec  
 Martinec Winn & Vickers, P.C.  
 Capitol Center Building  
 919 Congress Avenue, Suite 200  
 Austin, Texas 78701

Re: *In re Bullion Direct, Inc.*, Bankruptcy Case No. 15-10940-TMD, pending In the U.S. Bankruptcy Court for the Western District of Texas, Austin Division.  
**Account No.** [REDACTED] 9577; Kazu Suzuki, MD

Dear Mr. Martinec,

Our firm represents Dr. Kazu Suzuki in BullionDirect, Inc.'s bankruptcy case. Dr. Suzuki paid substantial funds to BullionDirect for coins. His account number is [REDACTED] 9577. As of the filing of the bankruptcy case on July 20, 2015, BullionDirect was holding the following property for Dr. Suzuki:

Symbol	Product	Total Quantity
SIAE001	US Mint American Eagle Silver Coin (1.000 oz.)	500
SIAE001:2010	American Eagle Silver Bullion Coin *2010* (1.000 oz.)	500
SIAE500	US Mint Sealed Crate 500 American Eagle Silver Coins (500.000 oz.)	2
SICM001	Canadian Maple Leaf Silver Coin (1.000 oz.)	1500
SICW:2011:WOLF	Canadian Wildlife Series Silver Coin *2011* Wolf (1.000 oz.)	600
SICW:2012:COUGAR	Canadian Wildlife Series Silver Coin 2012 Cougar (1.000 oz.)	500
GCAE100	American Eagle Gold Coin (1.000 oz.)	40
GCCM100	Canadian Maple Gold Coin (1.000 oz.)	210
	Canadian Maple Leaf Gold Coin (1.000 oz.)	10

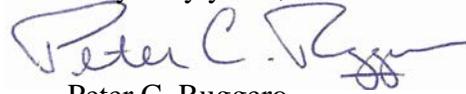


Joe Martinec  
July 28, 2015  
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Dr. Suzuki demands that his property be delivered to him within five calendar days. To the extent the property is not delivered to Dr. Suzuki, Dr. Suzuki demands that his property immediately be segregated, inventoried, set aside and properly protected including adequately insured.

Please direct all questions to my office. I am available to discuss further with you.

Very truly yours,

A handwritten signature in blue ink that reads "Peter C. Ruggero". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peter C. Ruggero