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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: Friday, May 6, 2016
Hearing Time: 9:30 a.m.
Response Date: May 2, 2016

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 In re:
12 NORTHWEST TERRITORIAL MINT, LLC,
13 Debtor.

Case No. 16-11767-CMA

MOTION FOR ORDER
ESTABLISHING PROCEDURES FOR
INTERIM PAYMENT OF FEES AND
COSTS TO PROFESSIONALS

14 Mark Calvert, the Chapter 11 Trustee (the "Trustee"), moves the Court for an Order
15 establishing procedures for interim payment of fees to the Trustee and each of the professionals
16 retained by the Trustee, including the Trustee's counsel, financial advisors to the Trustee, Cascade
17 Capital Group, and counsel for the Unsecured Creditors Committee (each, individually, a
18 "Professional" and collectively, "Professionals"). This motion is based on the files and records
19 herein and on the accompanying Declaration of Michael J. Gearin.

20 **I. PROPOSED PAYMENT PROCEDURES**

21 The Trustee requests that the Trustee and his Professionals be authorized to obtain
22 reimbursement for their costs and payment of 80% of their fees on a monthly basis. Each
23 Professional would be authorized to receive reimbursement for all of its costs and payment for 80%
24 of its fees seven days after sending a billing statement to the Trustee, counsel for the Trustee,
25 counsel for the U.S. Trustee, the Unsecured Creditors Committee ("Committee") and its counsel,
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1 and parties requesting special notice. The Professionals will submit fee applications to the Court
2 seeking approval of fees and expenses periodically in accordance with section 331 of the Code.

3 **II. FACTUAL BACKGROUND**

4 **A. Trustee Appointed**

5 On April 1, 2016, the Debtor filed a voluntary bankruptcy petition under Chapter 11 of Title
6 11 of the United States Code. An order approving the appointment of Mark Thomas Calvert as
7 Chapter 11 Trustee was entered on April 11, 2016. The Court approved the employment of K&L
8 Gates LLP as counsel to the Trustee. An application for employment of Cascade Capital Group as
9 financial advisors to the Trustee is pending. The United States Trustee has formed a creditors
10 committee (the "Committee") and the Committee is expected to apply to employ counsel soon.

11 **B. Substantial Work by Professionals**

12 Because of the complex nature of this case, the Trustee anticipates that the Professionals will
13 devote substantial amounts of time and energy to these bankruptcy proceedings and incur substantial
14 fees and costs. The Professionals, in particular the Trustee, generally depend on monthly cash flow
15 to pay ongoing salaries and expenses. Accordingly, the Trustee brings this motion on behalf of all
16 Professionals for payment procedures so Professionals will not be required to wait a protracted time
17 period for payment.

18 **III. ANALYSIS**

19 Although 11 U.S.C. § 331 provides that a professional may apply to the court "not more than
20 once every 120 days" for compensation, Courts in the Ninth Circuit have recognized the
21 appropriateness of alternative payment procedures. In *United States Trustee v. Knudsen Corp.*, 84
22 B.R. 668, 672-673 (9th Cir. BAP 1988), the Ninth Circuit Bankruptcy Appellate Panel held that it is
23 appropriate to approve a fee payment and application procedure that permits periodic post-petition
24 payments where the following four conditions are met:
25
26

- 1 1. The case is unusually large on in which an exceptionally large amount of fees accrue
2 each month;
- 3 2. Where waiting an extended period for payment would place an undue hardship on a
4 professional;
- 5 3. The professional has the ability to respond to any reassessment;
- 6 4. The fee payment procedure is, in itself, the subject of a noticed hearing prior to any
7 payment thereunder.

8 *Id.* at 672-673.

9 The *Knudsen* interim payment procedures may be particularly necessary to ensure equivalent
10 payments for bankruptcy professionals:

11 The provision for hearings every 120 days was intended to—and did—put bankruptcy
12 counsel on essentially the same payment schedule as other lawyers. In 1978, when
13 the Code was enacted, attorneys customarily billed their clients on a quarterly basis.
14 Times have changed. Lawyers now run their practices in a more business-like
15 fashion. Computerization has simplified and speeded the billing process. As widely
16 documented in the legal press, the billing cycle has shifted to monthly statements.
17 The 120-day provision of Section 331, intended to be a help to lawyers in 1978, has
18 become a straight-jacket for the lawyers of the '90s. Thus, even payments every 120
19 days no longer compensate bankruptcy attorneys on a fully equivalent basis with their
20 non-bankruptcy colleagues.

21 *In re Commercial Consortium of California*, 135 B.R. 120, 123-124 (Bankr. C.D. Cal. 1991). In this
22 case, the establishment of the proposed interim payment procedures will ensure Professionals will
23 not be required to wait for quarterly payments and that all Professionals will be treated equally.

24 Following *Knudsen*, Courts in the Ninth Circuit have, in large and complex cases such as this
25 one, allowed professionals compensation on an interim basis provided that fees and costs are subject
26 to final review and a hearing. *See, e.g., In re Home Express, Inc.*, 213 B.R. 162 (Bankr. N.D. Cal.
1997) (court approved payment procedure whereby Chapter 11 professionals were paid fees on a
monthly basis by the debtor-in-possession, assuming the fees were acceptable); *In re Lotus Props.,*
LP, 200 B.R. 388, 398 (Bankr. C.D. Cal. 1996) (finding that the message behind *Knudsen* and the
intent of the U.S. Trustee Guidelines were satisfied by allowing counsel to utilize the proposed fee

1 statement procedure during the initial post-petition period); *In re Commercial Consortium of*
2 *California*, 135 B.R. 120 (Bankr. C.D. Cal. 1991) (interim Chapter 7 trustee fees appropriate where
3 funds are available and closing is not imminent).

4 The procedures proposed herein meet each of the four *Knudsen* requirements. First, as
5 described, this is a large case that will require substantial work by Professionals employed by the
6 Trustee and the Committee.

7 Second, forcing the Professionals to wait a protracted period for payment would work an
8 undue hardship on them. While the hardship may vary with respect to each Professional, it would be
9 appropriate to treat all Professionals in an equal manner, including those employed by the
10 Committee. Because of the size of the case, many of the Professionals will likely be required to
11 devote substantial time and energy to the bankruptcy proceedings and forgo other work that would
12 pay on a more frequent basis.

13 Third, the Professionals have the ability to respond to a potential reassessment by the Court.
14 In *Knudsen*, the BAP held that “[i]f the funds are recoverable and if adequate opportunity for review
15 of detailed fee requests is provided, the court’s control over the funds is undiminished.” 84 B.R. at
16 672. Here, the Professionals’ submission of monthly reports and fee applications not less frequently
17 than every 120 days would provide adequate opportunity to review.

18 Fourth, this Motion and the payment and noticing procedures proposed herein are the subject
19 of a noticed hearing.

20 IV. CONCLUSION

21 The proposed interim fee procedures comply with the *Knudsen* requirements and are
22 reasonable and appropriate. Based on the foregoing, the Trustee respectfully requests an Order
23 authorizing monthly payments to the Professionals as described herein.
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RESPECTFULLY SUBMITTED this 22nd day of April, 2016.

K&L GATES LLP

By /s/ Michael J. Gearin
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Attorneys for Mark Calvert, Chapter 11 Trustee

MOTION FOR ORDER ESTABLISHING PROCEDURES
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