

The Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Seattle, WA  
Hearing Date: April 7, 2016  
Hearing Time: 9:30 am  
Response Due: At the time of hearing

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

NORTHWEST TERRITORIAL MINT, LLC

Debtor.

No. 16-11767-CMA

DEBTOR'S EMERGENCY MOTION  
PURSUANT TO 11 U.S.C. §§ 105(a) AND  
363(b) FOR ENTRY OF AN ORDER  
AUTHORIZING THE RETENTION OF  
BILL WEISFIELD AND STUART HEATH  
OF ELLIOTT BAY ASSET SOLUTIONS,  
LLC AS CHIEF RESTRUCTURING  
OFFICERS *NUNC PRO TUNC*

Northwest Territorial Mint, LLC, the debtor-in-possession in this Chapter 11 case (“NWTM and/or Debtor”), by and through Counsel, J. Todd Tracy, Steven J. Reilly, and The Tracy Law Group PLLC (“TTLG”), applies to this Court for an order authorizing the retention of Bill Weisfield and Stuart Heath of Elliott Bay Asset Solutions, LLC (“EBAS”), solely in their respective capacities as principals of EBAS, as its Chief Restructuring Officers (“CROs”) *nunc pro tunc* as of April 3, 2016. Debtor makes this application pursuant to 11 U.S.C. §§ 105(a) and 363(b). In support of this application, Debtor submits the Declaration of Bill Weisfield, a principal of EBAS, and states as follows:

DEBTOR'S EMERGENCY MOTION PURSUANT TO  
11 U.S.C. §§ 105(a) AND 363(b) FOR ENTRY OF AN  
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EMPLOYMENT OF BILL WEISFIELD AND  
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## I. RELIEF REQUESTED

1. By this Motion, Debtor requests entry of an order, substantially in the form or proposed order submitted concurrently herewith, (i) authorizing the employment and retention of EBAS to provide interim management and restructuring services *nunc pro tunc* to the date of the execution of that certain engagement letter dated April 2, 2016 by and between EBAS and the Debtor (the “Engagement Letter”), a copy of which is attached to the Declaration of Bill Weisfield submitted in support of this Application, and (ii) designating Bill Weisfield and Stuart Heath, solely in their respective capacities as principals at EBAS, as Chief Restructuring Officers, in accordance with the terms and conditions set forth in the Engagement Letter and as described herein.

## II. JURISDICTION

2. The United States Bankruptcy Court for the Western District of Washington (the “Court”) has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. S 157(b)(2).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

## III. BACKGROUND

4. NWTM filed a Chapter 11 petition on April 1, 2016.

5. NWTM is a debtor-in-possession under 11 U.S.C. §§ 1107(a) and 1108(b).

6. NWTM is one of the nation’s largest private full service mints, a precious metals dealer, and a minted products retailer. NWTM has online sales via its website as well as sales via physical retail stores, and has operations in Washington, Nevada, Texas,

Wisconsin, Hawaii, and Virginia. NWTM has over two hundred employees.

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10. EBAS has spent considerable time consulting with NWTM on how to best address the aforementioned \$12.5 million judgment and how to preserve and protect the value of NWTM on a going forward basis.

11. In recognition of EBAS's extensive experience in dealing with distressed companies, and in light of EBAS's familiarity with NWTM operations and current financial issues, NWTM now wishes to retain Mr. Weisfield and Mr. Heath, solely in their capacity as principals of EBAS, as it's CROs. Mr. Weisfield and Mr. Heath are well qualified to assist NWTM and its bankruptcy estate as CROs in this Chapter 11 case.

**V. MANAGEMENT AUTHORITY AND SERVICES TO BE PROVIDED**

12. As provided in the Engagement Letter, NWTM has agreed that Bill Weisfield and Stuart Heath, solely in their capacity as principals of EBAS, shall serve as Debtor's CROs. Upon court approval of this Motion, and as detailed in the Engagement Letter, Mr. Weisfield and Mr. Heath shall be granted exclusive possession and control over all assets of the Debtor and shall have sole and exclusive authority to manage the Debtor. This includes but is not limited to the following provisions:<sup>1</sup>

- The sole power to do all things reasonable and necessary to preserve, protect, use, refinance, renegotiate, foreclose upon, sell or otherwise dispose of NWTM's assets including, without limitation, the sole power to incur or pay expenses necessary and incidental to NWTM's preservation, protection, use, refinancing, renegotiation, foreclosure, sale or other disposition of its assets.
- The sole power to do all things which NWTM might do (including giving authorization for or delegation to NWTM's agents and employees to take

<sup>1</sup> While the CROs will have exclusive authority to do the following, they will still seek court approval to perform such actions as contemplated by the Bankruptcy Code and other applicable law.

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1 such action) in the ordinary course of the operation of its business as a going  
2 concern.

- 3
- 4 • The sole power to hire security, change locks and security codes, and do
- 5 anything else necessary and incidental to inventory, preserve and protect
- 6 NWTM's assets.
- 7
- 8 • The sole power to obtain appraisals, accountings, investigations and reports
- 9 with respect to the assets of the bankruptcy estate as necessary.
- 10
- 11 • The sole power to continue or discontinue, in EBAS' reasonable discretion
- 12 and business judgment, any contracts presently existing.
- 13
- 14 • The sole power to enter into or modify contracts affecting the bankruptcy
- 15 estate.
- 16
- 17 • The sole power to hire professionals, such as accountants and lawyers, as
- 18 necessary to preserve and protect the assets of the bankruptcy estate.
- 19
- 20 • NWTM and all of its existing and former members, officers, directors,
- 21 managers, attorneys, accountants, agents, consultants, and employees shall
- 22 cooperate with EBAS in connection with their management and operation of
- 23 NWTM. Each of them shall relinquish and turn over to EBAS all records,
- 24 books, contracts, lease documents, plans and specifications, accounting
- 25 records, deposits, and documents relating to NWTM, as EBAS may demand,
- 26 and each of them are enjoined from interfering with the possession, control,
- 27 operation and maintenance of the assets of the bankruptcy estate by EBAS.
- 28 Failure to comply with this provision shall constitute a sanctionable offense.
- 29
- 30 • The sole power to open or close bank accounts and/or other financial
- 31 accounts.
- 32
- 33 • The sole power to sell assets of the estate.
- 34
- 35 • The sole power to incur obligations on behalf of the estate.
- 36

37 As stated previously, where any of the above actions (or the actions described in the  
38 Engagement Letter) would require court approval, the CROs will seek such approval from  
39 this Court.  
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## 43 VI. PROFESSIONAL COMPENSATION

44 13. EBAS' decision to accept this engagement to act as CRO for the Debtor is

45 conditioned upon its ability to be retained in accordance with the terms set forth in the

46 DEBTOR'S EMERGENCY MOTION PURSUANT TO  
47 11 U.S.C. §§ 105(a) AND 363(b) FOR ENTRY OF AN  
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1 Engagement Letter and to be compensated for its services and reimbursed for the out-of-  
2  
3 pocket expenses once every two weeks, as described in greater detail below. EBAS shall also  
4  
5 be entitled to the fees and costs it incurred advising the Debtor pre-petition, subject to the  
6  
7 other compensation provisions contained herein. EBAS requests that it be paid an initial  
8  
9 post-petition retainer of \$100,000.00.  
10

11  
12 14. Pursuant to the Engagement Letter, the hourly rate for Mr. Weisfield and Mr.  
13  
14 Heath is \$350 an hour. Hourly rates for administrative professionals employed by EBAS  
15  
16 range from \$95 to \$195.  
17

18  
19 15. EBAS will submit semi-monthly invoices to the Debtor, and the Debtor  
20  
21 requests the authority to pay, in the ordinary course of business, all reasonable amounts  
22  
23 invoiced by EBAS for fees and expenses.  
24

25  
26 16. Because EBAS is not being employed as a professional under section 327 of  
27  
28 the Bankruptcy Code, it will not submit quarterly fee applications pursuant to Bankruptcy  
29  
30 Code sections 330 and 331. EBAS will, however, file with the Court, and provide notice to  
31  
32 the U.S. Trustee and the proposed counsel to the Creditors' Committee, if any is appointed,  
33  
34 reports of compensation earned and expenses incurred on at least a quarterly basis. Such  
35  
36 reports shall summarize the services provided, identify the compensation earned by each  
37  
38 executive officer and staff employee provided, and itemize the expenses incurred. Such  
39  
40 compensation and expenses will be subject to Court review in the event an objection is filed.  
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43 17. EBAS and its personnel shall be required to: (i) maintain contemporaneous  
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45 time records in tenth of an hour increments and (ii) conform to any schedule of hourly rates  
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47 contained in the Engagement Letter.

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1 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code provides that transactions not in  
2 the ordinary course of business must be approved by court order. If a debtor’s proposed use  
3 of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable  
4 business judgment on the part of the debtor, such use should be approved. *See, e.g., Myers v.*  
5 *Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (*citing Fulton State Bank v. Schipper (In re*  
6 *Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re*  
7 *Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Delaware & Hudson Ry. Co.*, 124 B.R.  
8 169, 175-76 (D. Del. 1991) (courts have applied the “sound business purpose” test to  
9 evaluate motions brought pursuant to section 363(b)); *Comm. of Asbestos-Related Litigants v.*  
10 *Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)  
11 (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a  
12 decision made arbitrarily or capriciously), courts will generally not entertain objections to the  
13 debtor’s conduct.”).

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23. The retention of EBAS and its principals, Mr. Weisfield and Mr. Heath, is a  
sound exercise of the Debtor’s business judgment. EBAS has extensive experience as a  
senior officer and advisor for numerous financially troubled companies. Additionally, EBAS  
has acquired significant knowledge of the Debtor and its business operations as a result of  
numerous pre-petition consultations with the Debtor. The Debtor believes that the CROs  
will provide services that benefit the Debtor’s estate and creditors.

## X. ALTERNATIVE RELIEF REQUESTED

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1           24.     In the alternative, if and only if this Court determines that EBAS is a  
2  
3 ‘professional’ under § 327 of the Code, EBAS requests that it be employed as Debtor’s CRO  
4  
5 pursuant to § 327 of the Code.  
6

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8           25.     If and only if EBAS’s retention is approved under § 327 of the Code, rather  
9  
10 than under §§ 105 and 363, EBAS requests that it be compensated as follows:  
11

- 12       • EBAS is authorized to obtain reimbursement on a semi-monthly basis (twice a  
13  
14 month) for its costs and payment of 80% of its fees. EBAS would be authorized to  
15  
16 receive reimbursement for all of its costs and 80% of its fees no later than ten (10)  
17  
18 days after filing a Notice of Filing of Billing Statements with the Court and serving  
19  
20 the Notice on the ECF parties and parties requesting special notice (collectively  
21  
22 “Notified Parties”); provided however, that in the event that one or more of the  
23  
24 Notified Parties objects, EBAS will be authorized to seek an order approving  
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26 payment of its fees and costs on a 10-day notice to the objecting party or parties.  
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28 EBAS will be further required to file interim and final fee applications to approve its  
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30 fees approximately every 120 days.  
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35           26.     The proposed alternative compensation scheme is appropriate. In *U.S.*  
36  
37 *Trustee v. Knudsen Corp.*, 84 B.R. 668 (9th Cir BAP 1988), the Ninth Circuit Bankruptcy  
38  
39 Appellate Panel held that it is appropriate to approve a fee payment that permits periodic  
40  
41 post-petition payments where the following four conditions are met:  
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44           A.     The case is an unusually large one where an exceptionally large amount of  
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46 fees accrue each month;  
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1 B. An undue hardship would be placed on the professional if he or she were  
2 forced to wait an extended period of time for payment;  
3

4 C. The professional has the ability to respond to any reassessment; and  
5

6 D. The payment procedure is the subject of a noticed hearing prior to any  
7  
8 payment under the procedure. *Id.* at 672.  
9

10  
11 Courts in the Ninth Circuit have since recognized that the establishment of *Knudsen*  
12 interim payment procedures may often be necessary today, whereas this was not the case  
13 when the Bankruptcy Code was enacted in 1978. As one court explained:  
14

15  
16 The provision for hearings every 120 days was intended to - and did - put  
17 bankruptcy counsel on essentially the same payment schedule as other  
18 lawyers. In 1978, when the Code was enacted, attorneys customarily billed  
19 their clients on a quarterly basis. Times have changed. Lawyers now run  
20 their practices in a more business-like fashion. Computerization has  
21 simplified and speeded the billing process. As widely documented in the  
22 legal press, the billing cycle has shifted to monthly statements. The 120-day  
23 provision of Section 331, intended to be a help to lawyers in 1978, has  
24 become a straight-jacket [sic] for lawyers of the '90s. Thus, even payments  
25 every 120 days no longer compensate bankruptcy attorneys on a fully  
26 equivalent basis with their nonbankruptcy colleagues.  
27

28  
29 *In re Commercial Consortium of California*, 135 B.R. 120, 123-124 (Bankr.C.D.Cal. 1991).  
30  
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32  
33 27. Here, because the underlying case is unusually large (Debtor has operations  
34 in six states and has over 200 employees) and exceptionally large amount of fees are  
35 expected to accrue each month, establishment of the proposed interim payment procedures  
36 will ensure that EBAS will not be subject to undue hardship and will be in the position to  
37 respond to any reassessment.  
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40  
41 WHEREFORE, for the reasons stated in this Motion, Debtor requests that the  
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43  
44 Court enter an order authorizing the retention of Bill Weisfield and Stuart Heath, solely in  
45 DEBTOR'S EMERGENCY MOTION PURSUANT TO **THE TRACY LAW GROUP** P.L.L.C.  
46 11 U.S.C. §§ 105(a) AND 363(b) FOR ENTRY OF AN 720 Olive Way, Suite 1000  
47 ORDER AUTHORIZING THE RETENTION AND SEATTLE, WA 98101  
EMPLOYMENT OF BILL WEISFIELD AND 206-624-9894 phone / 206-624-8598 fax  
STUART HEATH OF ELLIOTT BAY ASSET [www.thetracylawgroup.com](http://www.thetracylawgroup.com)  
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1 their capacity as principals of EBAS, to act as CROs of NWMT under the terms set forth in  
2  
3 the Engagement Letter, or in the alternative, if EBAS is deemed a 'professional' under § 327  
4  
5 of the Code, under the terms set forth in the Engagement Letter subject to the  
6  
7 compensation provisions provided in paragraph 25 above.<sup>2</sup>  
8  
9

10 DATED this 5<sup>th</sup> day of April, 2016.

11 Respectfully submitted:

12  
13 THE TRACY LAW GROUP PLLC  
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18  
19 By /s/ Steven J. Reilly  
20 J. Todd Tracy, WSBA #17342  
21 Steven J. Reilly, WSBA #44306  
22 Attorneys for Debtor  
23  
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26

27 NORTHWEST TERRITORIAL MINT,  
28 LLC  
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31 By /s/ Ross B. Hansen  
32 Ross B. Hansen, Sole Member and  
33 Manager of Northwest Territorial Mint, LLC  
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<sup>2</sup> The signature of the 100% owner, sole member and manager of the Debtor, Ross B. Hansen, is included only inasmuch as the Court considers the present Motion to be an employment application under 11 U.S.C. §327.