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The Honorable Christopher M. Alston
Chapter 11
Hearing Date: May 6, 2016
Hearing Time: 9:30 a.m.
Response Date: May 2, 2016

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re
NORTHWEST TERRITORIAL MINT,
LLC,
Debtor.

Case No. 16-11767-CMA
RESPONSE OF THE OFFICIAL
UNSECURED CREDITORS' COMMITTEE
TO MOTION FOR AUTHORITY TO
WITHDRAW AS COUNSEL TO THE
DEBTOR

The Official Unsecured Creditors' Committee (the "Committee"), by its undersigned counsel, responds as follows to the Tracy Law Group's Motion for Authority to Withdraw as Attorney for Debtor (Dkt. # 76; the "Withdrawal Motion"):

In its Withdrawal Motion, the Tracy Law Group ("Debtor's Counsel") seeks authority "to withdraw as Counsel of Record for the Debtor." The Committee objects to the withdrawal, unless substitute counsel for the Debtor appears and is appointed prior to the withdrawal of current Debtor's Counsel or, alternatively, the Court is prepared to make findings of fact and conclusions of law that withdrawal of Debtor's Counsel and continuing lack of counsel for the Debtor will not constitute legal grounds for any party in interest to seek dismissal of the bankruptcy case.

Requirement of Representation. Local Rule 83.2(b)(3), W.D. Wash., provides as follows:

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2 (3) *A business entity, except a sole proprietorship, must be*
3 *represented by counsel.* If the attorney for a business entity,
4 except a sole proprietorship, is seeking to withdraw, the attorney
5 shall certify to the court that he or she has advised the business
6 entity that it is required by law to be represented by an attorney
admitted to practice before this court and that failure to obtain a
replacement attorney by the date the withdrawal is effective may
result in the dismissal of the business entity's claims for failure to
prosecute and/or entry of default against the business entity as to
any claims of other parties. [Emphasis added.]

7 LBR 9029-2 incorporates this rule by reference as a rule of this bankruptcy court.

8 These local rules express the ancient, fundamental precept that “artificial entities may not
9 appear in federal court through a non-lawyer agent or employees.” *In re Interiors of Yesterday,*
10 *LLC*, 284 B.R. 19, 23 (Bankr. D. Conn. 2002). *See, also, In re Bigelow*, 179 F.3d 1164, 1165
11 (9th Cir. 1999) (“The law is clear that a corporation can be represented only by a licensed
12 attorney.”). Numerous courts have followed this rule, which also applies to limited liability
13 companies. *See, e.g., In re ICLNDS Notes Acquisitions, LLC*, 259 B.R. 289, 294 (Bankr. N.D.
14 Ohio 2001) (“Thus, whether an LLC is viewed as a corporation or a partnership or hybrid, it may
15 only appear in court through an attorney.”); *Interiors of Yesterday, LLC*, 284 B.R. at 24 (same).
16 The common sense basis for the rule is plain: the rule is “intended to protect the courts and the
17 public from unscrupulous and irresponsible behavior by persons who do not have legal training
18 and who are not subject to the ethical standards that bind attorneys.” *National Independent*
19 *Theatre Exhibitors, Inc. v. Buena Vista*, 748 F.2d 602, 609 (11th Cir. 1984).

20 Significantly, failure of a company or LLC to be represented by counsel is grounds for
21 dismissal of the case. *See, e.g., ICLNDS Notes Acquisitions, LLC*, 259 B.R. at 294-5; *Carrico v.*
22 *Village of Sugar Mountain*, 114 F.Supp. 2d 422, 424 (W.D.N.C. 2000) (“No attorney has
23 appeared for any Plaintiff... Thus, on this ground alone, the corporate Plaintiffs’ claims must be
24 dismissed.”).

25 This bankruptcy case is large (approximately 3,400 identified creditors), highly complex,
26 and presents a multitude of different creditor constituencies and parties in interest, some of

1 whom might view it in their best interests to see this case dismissed. Dismissal, however, would
2 wreak havoc on a vast number of creditors and would eliminate all of the protections and negate
3 all of the important work that the Court and the Chapter 11 Trustee have so far provided. Under
4 these circumstances, the Committee opposes the creation of any fact pattern or scenario—such as
5 the absence of Debtor’s counsel—that could conceivably provide a legal basis for someone to
6 argue that dismissal of this case is either appropriate or required.

7 **Effect of Trustee Appointment on Requirement of Representation.** The offices of
8 “debtor-in-possession” and “trustee” are mutually exclusive. Bankruptcy Code §1101(1)
9 provides that “debtor-in-possession means ‘debtor’ except when a person that has qualified under
10 §322 of this title is serving as trustee.” Accordingly, on the appointment and qualification of a
11 trustee in a Chapter 11 case, the debtor-in-possession ceases to exist and the debtor’s obligations
12 are therefore defined under Bankruptcy Code §521, not under Bankruptcy Code §1107. Further,
13 on appointment of a Chapter 11 trustee, the attorney for the debtor-in-possession loses his client,
14 because the debtor-in-possession has ceased to exist; and in most cases, the debtor-in-
15 possession’s original counsel then transitions to representing the debtor.¹

16 As a threshold matter, the Committee is unaware of any case law or legal authority
17 standing for the proposition that the appointment of a Chapter 11 trustee abrogates the
18 underlying requirement that the business entity debtor continue to be represented by its own
19 counsel. Indeed, case law suggests that “an attorney representing the debtor in bankruptcy
20 proceedings prior to the appointment of an estate trustee may continue to owe certain duties to
21 his client even after appointment.” *In re Intern. Gospel Party Boosting Jesus Groups*, 487 B.R.
22 12, 18 (D. Mass 2013). *See, also, Rome v. Braunstein*, 19 F.3d 54, 62 (1st Cir. 1994) (“Counsel
23 to a chapter 11 debtor owes continuing loyalty to the debtor throughout the chapter 11
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25 _____
26 ¹ *See, Jackson, Dillon, “Lamenting Lamie and the Appointment of the Chapter 11 Trustee,” 23 Am. Bankr. Inst. J.*
28 (November 2004).

1 proceedings; appointment of a chapter 11 trustee does not end counsel’s obligation to the debtor
2 entity.”).

3 **Counsel’s Arguments.** In the Withdrawal Motion (pp. 3-4), Debtor’s Counsel posits
4 three arguments in support of the relief it seeks: 1) Counsel’s engagement letter authorizes
5 Counsel to terminate the engagement postpetition if the Court fails to appoint a Chief
6 Restructuring Officer—and the Court did, in fact, fail to make such an appointment; 2) the
7 working relationship between Counsel and the Debtor has deteriorated to an unworkable status;
8 and 3) as a consequence of the decision in *Lamie v. United States Trustee*, 540 U.S. 526 (2004),
9 Counsel will be unable to be compensated from the bankruptcy estate if he is compelled to
10 continue representing the Debtor.

11 The Committee is sympathetic to Counsel’s position; and Counsel’s assertions that its
12 relationship with the Debtor has become strained and that *Lamie* precludes compensation from
13 the estate following appointment of the Chapter 11 Trustee on April 11, 2016 may arguably be
14 true. It is the Committee’s position, however, that the Court should not relieve Debtor’s Counsel
15 of its current burdens and responsibilities as counsel by granting the Withdrawal Motion, if
16 granting the Withdrawal Motion will in any conceivable way expose the current case to dismissal
17 or place at risk the continued viability of the entire bankruptcy.

18 **The Retainer.** Debtor’s Counsel acknowledges that it is holding \$125,857.50 in trust.
19 Withdrawal Motion, pp. 1-2, 4. This sum represents the balance of an advance fee deposit. The
20 Committee concurs with the positions stated in the Trustee’s Response to Motion for Authority
21 to Withdraw as Attorney for Debtor (Dkt. #89) and the Response by Creditors Bradley S. Cohen
22 and Cohen Asset Management, Inc. to Motion to Withdraw as Attorney for Debtor (Dkt. #81)
23 that the \$125,857.50 either be turned over to the Trustee, to be held in trust, or be deposited into
24 the Court’s registry, pending a resolution of the ownership of the funds, as the Court may direct.
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1 **Conclusion**

2 The Committee does not oppose the Withdrawal Motion, provided that the Court requires
3 that withdrawal will be contingent on the Debtor's prior retention, and the Court's appointment,
4 of replacement counsel. The Committee otherwise urges the Court to deny the Withdrawal
5 Motion, unless the Court is prepared to make findings of fact and conclusions of law that
6 withdrawal of Debtor's Counsel and continuing lack of counsel for the Debtor will not constitute
7 legal grounds for any party in interest to seek dismissal of the bankruptcy case.

8 DATED this 2nd day of May, 2016.

9
10 MILLER NASH GRAHAM & DUNN LLP

11 /s/ Mark D. Northrup

12 Mark D. Northrup

13 WSBA No. 16947

14 mark.northrup@millernash.com

15 (206) 624-8300

16 Counsel for the Unsecured Creditors' Committee
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