

Honorable Christopher M. Alston  
Chapter 11  
Hearing Date: April 7, 2016  
Hearing Time: 9:30 a.m.  
Response Due: At Hearing

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In Re: ) Case No. 16-11767  
)  
Northwest Territorial Mint LLC., )  
)  
Debtor. ) OBJECTION OF UNITED STATES  
) TRUSTEE TO EMPLOYMENT OF  
) CRO; REQUEST TO APPOINT  
) CHAPTER 11 TRUSTEE;  
) DECLARATION OF MARTIN L.  
) SMITH

The United States Trustee hereby objects to the motion filed by Northwest Territorial Mint, LLC (the “Debtor”) to employ a Chief Restructuring Officer (“CRO”) pursuant to §§ 105 and 363 (the “Motion”). As discussed below, the United States Trustee requests that the Court instead *sua sponte* order the appointment of a chapter 11 trustee.

The Bankruptcy Code entrusts the management of a chapter 11 debtor to either a) a debtor-in-possession, or b) a trustee appointed under section 1104. The CRO is neither. And yet, the Debtor requests that the CRO be given complete and unfettered management and control over the day-to-day operations of the Debtor and its assets without any of the safeguards and obligations imposed on a chapter 11 trustee for the protection of the estate’s creditors. Under the Debtor’s proposal, the CRO would be accountable to no one since there is no independent board of directors in place. In addition, the CRO would receive a \$100,000 retainer, be paid on an hourly basis, and not have to seek approval of his fees.<sup>1</sup> This attempted end-run around appointment of a chapter 11 trustee under § 1104 should be denied.

<sup>1</sup> The Debtor requests that if the CRO is employed under §§ 327 and 329, instead of §§ 105 and 363, that 80% of the fees be paid semi-monthly. The Motion does not adequately justify the

1 Everyone seems to agree that the Debtor's principal Ross Hansen should not stay in  
2 charge of the Debtor. That conclusion appears justified in light of his prepetition actions that  
3 lead to a jury awarding a total of over \$38,000,000 in judgments, including \$3,000,000 in  
4 punitive damages, for conduct "amounting to fraud, oppression and malice." See Judgment on  
5 Jury Verdict, attached as Exhibit 1 to the attached Declaration of Martin L. Smith.

6 The solution here is not employment of a CRO, but the appointment of a chapter 11  
7 trustee. The case was only filed on April 1, 2016, and the United States Trustee has not yet filed  
8 a separate motion for the appointment of a trustee. Under these circumstances, the Court should  
9 make the appointment *sua sponte* after the Debtor has an opportunity to address the matter at the  
10 upcoming hearing. *Fukutomi v. United States Trustee (In re Bibo, Inc.)*, 76 F.3d 256, 258 (9th  
11 Cir. 1996) (in affirming the bankruptcy court's appointment of chapter 11 trustee under § 1104  
12 where a motion had not yet been filed, the court held: "[e]ven without such a request, the court is  
13 empowered to *sua sponte* appoint a trustee in order to protect the estate."). *Accord In re*  
14 *McKenna*, No. CA 10-472 ML, 2011 WL 2214763, (D. Rhode Island May 31, 2011) (citing  
15 *Bibo*, and relying on the court's authority under § 105(a), the court upheld the bankruptcy  
16 court's *sua sponte* appointment).

17 In conclusion, the United States Trustee requests that the Motion be denied and that the  
18 Court order the appointment of a chapter 11 trustee.

19 DATED this 6<sup>th</sup> day of April, 2016.

20 Respectfully submitted,

21 Gail Brehm Geiger  
22 Acting U.S. Trustee for Region 18

23 /s/ Martin L. Smith  
24 Martin L. Smith, WSBA #24861  
Attorney for United States Trustee

25 request to deviate from standard billing and payment procedures. Also, the Motion states that  
26 "EBAS shall also be entitled to the fees and costs it incurred advising the Debtor pre-petition".  
Motion, p.6, ¶ 13. Accordingly, it appears that the proposed CRO is a prepetition creditor of the  
Debtor, and therefore not disinterested under the definition set forth in § 101(14).

OBJECTION - 2

Office of the United States Trustee  
700 Stewart Street, Suite 5103  
Seattle, WA 98101-1271  
206-553-2000, 206-553-2566 (fax)

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DECLARATION OF MARTIN L. SMITH

I, Martin L. Smith, declare as follows:

1. I am a trial attorney employed by the United States Department of Justice in the Office of the United States Trustee.

2. I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify competently thereto.

3. Attached as **Exhibit 1** is a copy of a document entitled Judgment on Jury Verdict, and a related Exemplification Certificate, that I requested and received from counsel for creditor Bradley Steven Cohan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of April, 2016.

/s/ Martin L. Smith  
Martin L. Smith

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EXHIBIT 1

OBJECTION - 4

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BRADLEY STEPHEN COHEN, an individual; and COHEN ASSET MANAGEMENT, INC., a California corporation,

Plaintiffs,

v.

ROSS B. HANSEN, an individual; NORTHWEST TERRITORIAL MINT, LLC, a Washington limited liability company; and STEVEN EARL FIREBAUGH, an individual,

Defendants.

Case No. 2:12-cv-01401-JCM-PAL

**JUDGMENT ON JURY VERDICT**

This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its unanimous verdict in favor of Plaintiffs and against Defendants.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered as follows:

In favor of Plaintiff Bradley S. Cohen and against Defendant Ross B. Hansen on Plaintiff Bradley S. Cohen's defamation *per se* claim in the amount of \$7,000,000.00 in compensatory damages and \$500,000.00 in punitive damages. The above finding of liability for damages was based upon conduct of the aforementioned Defendant amounting to fraud, oppression and malice.

JUDGMENT ON JURY VERDICT

1 In favor of Plaintiff Bradley S. Cohen and against Defendant Northwest  
2 Territorial Mint, LLC on Plaintiff Bradley S. Cohen's defamation *per se* claim in the  
3 amount of \$3,000,000.00 in compensatory damages and \$500,000.00 in punitive  
4 damages. The above finding of liability for damages was based upon conduct of the  
5 aforementioned Defendant amounting to fraud, oppression and malice.

6 In favor of Plaintiff Bradley S. Cohen and against Defendant Steven Earl  
7 Firebaugh on Plaintiff Bradley S. Cohen's defamation *per se* claim in the amount of  
8 \$100,000.00 in compensatory damages and \$0.00 in punitive damages. The above  
9 finding of liability for damages was based upon conduct of the aforementioned  
10 Defendant amounting to fraud, oppression and malice.

11 In favor of Plaintiff Cohen Asset Management, Inc. and against Defendant  
12 Ross B. Hansen on Plaintiff Cohen Asset Management, Inc.'s defamation *per se*  
13 claim in the amount of \$10,000,000.00 in compensatory damages and \$500,000.00  
14 in punitive damages. The above finding of liability for damages was based upon  
15 conduct of the aforementioned Defendant amounting to fraud, oppression and  
16 malice.

17 In favor of Plaintiff Cohen Asset Management, Inc. and against Defendant  
18 Northwest Territorial Mint, LLC on Plaintiff Cohen Asset Management, Inc.'s  
19 defamation *per se* claim in the amount of \$5,000,000.00 in compensatory damages  
20 and \$500,000.00 in punitive damages. The above finding of liability for damages  
21 was based upon conduct of the aforementioned Defendant amounting to fraud,  
22 oppression and malice.

23 In favor of Plaintiff Cohen Asset Management, Inc. and against Defendant  
24 Steven Earl Firebaugh on Plaintiff Cohen Asset Management, Inc.'s defamation *per*  
25 *se* claim in the amount of \$100,000.00 in compensatory damages and \$0.00 in  
26 punitive damages. The above finding of liability for damages was based upon  
27 conduct of the aforementioned Defendant amounting to fraud, oppression and  
28 malice.

1 In favor of Plaintiff Bradley S. Cohen and against Defendant Ross B. Hansen  
2 on Plaintiff Bradley S. Cohen's false light invasion of privacy claim in the amount  
3 of \$7,000,000.00 in compensatory damages and \$500,000.00 in punitive damages.  
4 The above finding of liability for damages was based upon conduct of the  
5 aforementioned Defendant amounting to fraud, oppression and malice.

6 In favor of Plaintiff Bradley S. Cohen and against Defendant Northwest  
7 Territorial Mint, LLC on Plaintiff Bradley S. Cohen's false light invasion of privacy  
8 claim in the amount of \$3,000,000.00 in compensatory damages and \$500,000.00 in  
9 punitive damages. The above finding of liability for damages was based upon  
10 conduct of the aforementioned Defendant amounting to fraud, oppression and  
11 malice.

12 In favor of Plaintiff Bradley S. Cohen and against Defendant Steven Earl  
13 Firebaugh in the amount of \$100,000.00 in compensatory damages and \$0.00 in  
14 punitive damages. The above finding of liability for damages was based upon  
15 conduct of the aforementioned Defendant amounting to fraud, oppression and  
16 malice.

17 Pursuant to 28 U.S.C. § 1961, the aforementioned awards of compensatory  
18 and punitive damages shall each draw interest from the time of the entry of this  
19 Judgment on Jury Verdict until satisfied in full at the rate equal to the weekly  
20 average 1-year constant maturity Treasury yield, as published by the Board of  
21 Governors of the Federal Reserve System, for the calendar week preceding the date  
22 of the Judgment on Jury Verdict (0.56%), with interest computed daily to the date of  
23 payment except as provided in 31 U.S.C. § 1304(b), and compounded annually.

24 DATED March 1, 2016.

25  
I hereby attest and certify on 3/4/2016  
26 that the foregoing document is a full, true  
and correct copy of the original on file in my  
27 legal custody.



James C. Mahan  
Honorable James C. Mahan  
United States District Judge

CLERK OF DISTRICT COURT  
DISTRICT OF NEVADA  
By Deputy Clerk Deputy Clerk

UNITED STATES DISTRICT COURT

District of

Nevada

EXEMPLIFICATION CERTIFICATE

I, Lance S. Wilson, Clerk of this United States District Court, keeper of the records and seal, certify that the attached documents:

2:12-cv-1401 JCM PAL
Bradley Stephen Cohen, et al v. Ross B. Hansen, et al
Judgment on Jury Verdict, Docket No. 331, Entered and Filed on 3/1/2016

are true copies of records of this Court.

In testimony whereof I sign my name and affix the seal of this Court, in this District, at Las Vegas on 3/4/2016

Lance S. Wilson
Clerk

Deputy Clerk
Date

I, Judge James C. Mahan, a Judicial Officer of this Court, certify that Lance S. Wilson, named above, is and was on the date noted, Clerk of this Court, duly appointed and sworn, and keeper of the records and seal, and that this certificate, and the attestation of the record, are in accordance with the laws of the United States.

March 9, 2016
Date

James C. Mahan
Signature of Judge
Honorable Judge James C. Mahan
Title

I, Lance S. Wilson, Clerk of this United States District Court, keeper of the seal, certify that the Honorable Judge James C. Mahan, Judge

named above, is and was on the date noted a Judicial Officer of this Court, duly appointed, sworn and qualified, and that I am well acquainted with the Judge's official signature and know and certify the above signature to be that of the Judge.

In testimony whereof I sign my name, and affix the seal of this Court at Las Vegas in this State, on 3/9/2016

Lance S. Wilson
Clerk

Deputy Clerk
Date