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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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IN RE: )  
NORTHWEST TERRITORIAL MINT, LLC, )  
Debtor. ) 16-11767-CMA

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TRANSCRIPT OF THE DIGITALLY RECORDED PROCEEDINGS  
BEFORE THE HONORABLE CHRISTOPHER M. ALSTON  
MAY 20, 2016

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PREPARED BY: SHARI L. WHEELER, CCR NO. 2396

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APPEARANCES

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JEFFREY MCMEEL, Pro se

ALSO PRESENT:

GEORGE HUMPHREY  
TODD HOWARD

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SEATTLE, WASHINGTON; MAY 20, 2016

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THE COURT: We have a number of matters in Northwest Territorial Mint, and I'm going to take them in the following order:

I'm going to first take the motion to compel compliance with the lease, then the motion for interim payment procedures, the motion to establish a proof of claim deadline, the application to employ Cascade Capital, and then the two show cause orders directed to Jeffrey McMeel.

So let's first start with the motion to compel.

Ms. Heston, good morning.

MS. HESTON: Good morning.

THE COURT: Mr. Gearin, good morning.

MR. GEARIN: Good morning, Your Honor.

THE COURT: It's your motion, Ms. Heston.

MS. HESTON: For the record, Mary Jo Heston representing Gatewood-California, LLC, the landlord and the moving party.

The documents that we filed, Your Honor, including the reply that we filed, I think, detail what the current situation is and also the inaccuracies in the response concerning the timing of the payment of the rent. Where we

1 currently sit at this time is that we have -- subsequent to  
2 the motion filing, we did receive the April rent and the May  
3 rent. The outstanding issues -- and we submitted an amended  
4 order. I don't know if Your Honor saw it.

5 THE COURT: Yes. I did review all your papers.  
6 And thank you for providing the notebook; it's very much  
7 appreciated and required by the rules, so I appreciate that.

8 MS. HESTON: Yeah. We weren't sure if you  
9 wanted hard copy, but --

10 THE COURT: Anything over 25 pages, I definitely  
11 would like. So this is greatly appreciated.

12 MS. HESTON: So the largest issue, I think, that  
13 we have, and one that didn't appear it was going to get  
14 resolved, regardless of what happened with the rent, is the  
15 insurance issue, Your Honor.

16 As set forth in the record, unbeknownst to my  
17 client, the debtor had amended the insurance -- or the  
18 insurance company had amended the insurance to reflect that  
19 there is currently no insurance for environmental problems on  
20 the property. So one of the things that my client, early on,  
21 discussed with the trustee was the need to get that insurance  
22 to protect, not only my client, but the estate from discharge  
23 or problems at the facility.

24 It appears that the insurance company was the  
25 same insurance company that was involved in the judgment that

1 refused to cover the facility that was subject to the  
2 judgment. And so we believe, based on both the principles of  
3 adequate assurance of future performance, but also of adequate  
4 protection, and particularly in light of the fact that here  
5 you have an underlying mortgage that my client and my client's  
6 principal, Mr. Humphrey, is responsible for, that that  
7 insurance is necessary, in this particular case, to protect  
8 those interests against a problem, particularly if the lease  
9 is ultimately rejected.

10           The lease is a favorable lease to the estate.  
11 The market -- the rent is below market. There hasn't been an  
12 increase in rent since 2007. And so if there is sufficient  
13 funds, then I would presume that the trustee will assume, but  
14 there's no assurance of that.

15           And the things that cause my client concern --  
16 prior to the bankruptcy, regardless of other issues that  
17 parties may have with the then-debtor, the debtor was current  
18 and always paid his rent pretty much on time, maybe within a  
19 day or two. And my client was always very prompt in asking  
20 about the rent. And the things that cause my client concern,  
21 and though we don't we -- we have sympathy for the trustee's  
22 situation at the start of a case and the lack of financial  
23 resources that he may have had available are the same things  
24 that cause great risk to my client and its principal and  
25 require him to come out of pocket.

1           The think the other issues are pretty clear  
2 under the lease. One is the issue -- in addition to the  
3 insurance, is the late fee, the attorney's fees, and also the  
4 requirement to pay the taxes when the landlord pays them and  
5 the insurance when the landlord pays them. And though  
6 historically my client has, you know, granted what I would  
7 call credit to the lessee, upon the filing of the bankruptcy  
8 and pursuant to the terms of the lease, he's not obligated to  
9 do that. And we're not asking for prepayment. These are all  
10 out-of-pocket costs that my client has incurred.

11           And one of the other things that I just wanted  
12 to point out -- I mean, I guess another way to handle it would  
13 be some form of escrow. We took that out of the amended  
14 order. But, you know, it's certainly another way to handle  
15 it. We haven't required escrows in this circumstance. But  
16 certainly the language of the lease supports paying taxes that  
17 create a lien on my client's underlying property when due and  
18 paying the insurance when due.

19           THE COURT: All right. Thank you, Ms. Heston.

20           I do have questions, but I'm going to hear from  
21 Mr. Gearin first. Then I'll ask you --

22           MS. HESTON: I do have my client in the  
23 courtroom, if you have specific questions on the property.

24           THE COURT: I thank you for that. I'll hear  
25 from Mr. Gearin. Then I'll ask you both some questions.

1 MR. GEARIN: Good morning, Your Honor. Thank  
2 you.

3 THE COURT: Good morning.

4 MR. GEARIN: Michael Gearin for Mark Calvert,  
5 the Chapter 11 trustee. And I believe Mr. Calvert is on the  
6 telephone. He was out of the country this week.

7 THE COURT: Are you there, Mr. Calvert?

8 (No audible response.)

9 MR. GEARIN: He may not have been able to dial  
10 in. He's out of the country, so he may not have been able  
11 to --

12 THE COURT: Understood.

13 MR. GEARIN: So he may dial in at some point  
14 during the proceedings.

15 THE COURT: All right.

16 MR. GEARIN: As an initial matter, Your Honor, I  
17 would like to move to strike the reply declaration of  
18 Mr. Humphrey. It's not signed under penalty of perjury. I  
19 think that's required under the rules. And Mr. Northrup  
20 actually gave me a citation, which I'm not quite sure is  
21 accurate, but 28 USC 1746. I just observed that it's not  
22 signed under penalty of perjury. I think that's required in  
23 order to be considered, and I think it should be stricken.

24 With that said, I would like to take a step  
25 back, Your Honor. This Chapter 11 case is, as you know, and

1 as you've seen with the prior proceedings, complex. It  
2 involves a business with seven locations. It has more than  
3 200 employees. It has thousands of creditors and tens of  
4 millions of dollars' worth of debt.

5           It's an operating business. The trustee was  
6 appointed under some very severe circumstances. He stepped  
7 into responsibilities for preserving the assets of the debtor  
8 under circumstances where there were no financial statements.  
9 There were very limited amounts of cash when he first stepped  
10 in. He had employee issues to deal with. He had thousands of  
11 creditors calling him, alarmed about the disposition of  
12 precious metals and orders that had been pending for quite  
13 some time for the debtor.

14           He could not rely on the principal of the debtor  
15 for any support, when he stepped into the circumstance,  
16 because the principal of the debtor had created an atmosphere  
17 of fear and chaos among the employees. The principal of the  
18 debtor resigned from employment with the debtor immediately  
19 after the trustee's appointment. So he was in a triage mode  
20 when he first started, in the beginning of this case. And he  
21 was trying to just simply gain an understanding of the  
22 business and the control of the cash resources and these  
23 precious metals that he knew he had to gain immediate control  
24 over.

25           While he was addressing these urgent business



1 matters, he reached out to all kinds of constituents in the  
2 case: creditors, landlords, employees. A very extensive  
3 effort to go out and communicate with people. And by far, the  
4 large majority of creditors have been understanding, have  
5 worked with the trustee, have compromised, have extended  
6 deadlines.

7                   This landlord is an exception. And from our  
8 perspective, this landlord has been litigious, has been  
9 aggressive, and has actually tried to do things to enhance his  
10 rights under the lease, not enforce his rights under the  
11 lease. The landlord here wants to accelerate obligations to  
12 pay taxes and insurance, in contravention with the written  
13 terms of the lease.

14                   The landlord wants to insist on some kind of a  
15 gold-plated environmental insurance policy when that's not  
16 called for under the lease. He raises the specter of an  
17 environmental contamination claim. In his initial pleadings,  
18 he suggested that the business that was being conducted there,  
19 on the Auburn premises, was similar to what had been conducted  
20 in a prior location, when that's not true and he knew that not  
21 to be true.

22                   He's not entitled to accelerate these  
23 obligations under the lease. The lease doesn't require the  
24 taxes and insurance to be paid annually, or even on terms at  
25 the discretion of the landlord. The lease actually says -- at

1 paragraph 7.34 of the lease, the lease calls for, quote,  
2 "monthly adjustments of the rent based on anticipated  
3 expenses." And the practice, going back for nearly ten years  
4 in this lease, was that the landlord would give an estimated  
5 projected annual cost. And he would divide that up by 12, and  
6 that would be paid on a monthly basis. That's what the  
7 agreement of the parties was with respect to the lease. The  
8 lease terms do provide for that. It is not consistent with  
9 the terms of the lease for the landlord to come in and  
10 arbitrarily modify those terms and insist on advance payment  
11 of taxes and insurance.

12 He's not entitled to an environmental insurance  
13 policy. Under the terms of the lease, at paragraph 7.2.2, it  
14 provides that the tenant will provide a general commercial  
15 liability policy. Nothing in the lease says there's supposed  
16 to be anything that expressly covers environmental liability  
17 or contamination issues.

18 There is a general commercial liability policy  
19 in the amounts that are dictated under the lease that has been  
20 provided to the landlord. There's nothing that's changed  
21 there. In the ten years since this landlord has known what  
22 operations were there, nothing has changed in terms of the  
23 operations that are going on there.

24 There's no minting, pressing, or burnishing  
25 operations in the Auburn facility. There's no basis to

1 conclude that there's any contamination. There's no evidence  
2 here, and the landlord hasn't suggested that there is any  
3 contamination, because there's not.

4 The fact that there are environmental  
5 contamination claims and disputes regarding the Mint in a  
6 different location from 2009, seven years ago, is completely  
7 irrelevant. And I think it has nothing to do with, really,  
8 the -- that the landlord here is entitled to adequate  
9 protection.

10 I think we should talk about Section 365(d)(3),  
11 which is the premise for the landlord's arguments that he's  
12 got a right to seek adequate protection.

13 A couple of points: One, and most importantly,  
14 I think, 365(d)(3) requires the trustee to perform obligations  
15 arising from and after the order for relief, so postpetition  
16 obligations.

17 Here, the trustee is performing the postpetition  
18 obligations. Here, the trustee has paid the current rent for  
19 the first two months of the case. The trustee is only a  
20 little more than a month into his assignment at this point.  
21 But within a matter of ten days after his appointment, he  
22 brought current the April rent. And then before the deadline  
23 for payment of the May rent, he paid the May rent.

24 The dispute here is about whether there are --  
25 in terms of payment obligations, the dispute is whether these

1 taxes that are owed in the future should be accelerated and  
2 should be paid early, and whether there's a late charge  
3 calculated based upon these accelerated taxes and insurance  
4 costs. That's the issue. And as I've said, the lease doesn't  
5 call for those.

6           But for those issues, we may have a quibble  
7 about a couple hundred dollars' worth of late charges. I  
8 actually think there's an issue about whether the taxes and  
9 insurance have been overpaid for the first three or four  
10 months of the lease. Based upon the assessment that the  
11 landlord put into the record in his reply, it's actually less  
12 than the basis -- the taxes -- the taxes had been paid in the  
13 earlier periods.

14           Another interesting aspect of 365(d)(3), Your  
15 Honor, is the trustee could have come in and asked you for  
16 permission to defer the performance of these obligations on  
17 this lease for 60 days. He hasn't done that. He's actually  
18 paid the obligation. So if there was going to be an issue of  
19 us not paying the rent for a period of time, we could have  
20 come before this Court. And 365(d)(3) says you may extend for  
21 cause the time for performance of any such obligation that  
22 arises within 60 days after the date of the order for relief.  
23 We didn't do that. We actually paid the rent.

24           There's a suggestion that this landlord is  
25 entitled to relief under Section 507(b). I can't see any

1 basis for that. There is some dicta in the MS Freight  
2 Distribution case, Judge Overstreet's case, that talks about  
3 507(b). I don't know what the facts were in MS Freight  
4 Distribution. Maybe the landlord there had a lien. But  
5 507(b) is a provision that provides superpriority to parties  
6 who hold a lien. So it's intended to be a lender  
7 protection -- the lienholder protective provision. It doesn't  
8 apply to a landlord. And there's really no legal basis for  
9 the landlord here to be asking for superpriority treatment of  
10 its administrative claims.

11           The two cases that are relied on here by the  
12 landlord -- the Ernst and the MS Distribution cases -- the MS  
13 Freight Distribution cases, interestingly, in neither of those  
14 cases did the Court allow adequate protection.

15           The Ernst case is actually very interesting  
16 because it does talk about the tax issue. And one of the  
17 specific things it talks about is that tax obligations cannot  
18 be accelerated. In the Ernst case, the landlords there were  
19 arguing that taxes should be paid on a monthly basis, rather  
20 than as expressly called for in the lease, on a quarterly  
21 basis. And the Court there said, You cannot accelerate the  
22 obligations that are due under the lease to pay the taxes.

23           In short, Your Honor, I think where we are is,  
24 this landlord has been litigious and aggressive over, frankly,  
25 a couple hundred dollars' worth of late charges or trying to

1 accelerate payments that are really not due yet under the  
2 lease. I think that if we were to allow parties to do this  
3 and come into the Court with these kinds of issues, we're  
4 going to foster a litigious atmosphere in this case, which is  
5 not going to be productive.

6 I would request the Court to deny the motion.  
7 And we reserve issues on whether the trustee should be awarded  
8 fees and costs.

9 Thank you.

10 THE COURT: All right. Thank you, Mr. Gearin.  
11 Ms. Heston, anything in reply?

12 Then I'll have my questions for the both of you.

13 MS. HESTON: I do have a few replies.

14 THE COURT: All right.

15 MS. HESTON: So in terms of the declaration, I  
16 apologize if it wasn't presented under penalty of perjury. I  
17 would like to make an offer of proof. I have Mr. Humphrey in  
18 the courtroom. It was primarily presented to show that the  
19 statement in the response was inaccurate, that the check had  
20 been paid on the 21st.

21 In fact, if you look at the record, the check  
22 was not paid until after we filed the motion and after  
23 repeated requests and promises by parties to pay the rent. So  
24 we're not --

25 THE COURT: I'll accept the offer of proof. I

1 will not strike the declaration on that basis. I assume that  
2 was just an oversight.

3 MS. HESTON: Yes. And we'll make sure it  
4 doesn't happen again.

5 And then in terms of the statement with regard  
6 to the property taxes, what the language in 7.3.2 says is:  
7 The tenant shall pay tenant's proportionate share of all real  
8 property taxes and general and special assessments levied and  
9 assessed against the building.

10 On April 30th, which was due on May 2nd, the  
11 second -- or the first half of the 2016 taxes were assessed.  
12 It created a lien on the property. The fact that,  
13 historically, the landlord has allowed the debtor credit -- we  
14 all know how the landscape changes when a bankruptcy occurs.  
15 And so if the landlord had not paid that, it would have  
16 created a potential default under his mortgage. He's actually  
17 come out of pocket for that. And so there's nothing improper  
18 or unauthorized in terms of the lease.

19 Same thing with the insurance provision under  
20 7.3.C. It says: The tenant shall reimburse landlord for  
21 tenant's proportionate share of all premiums paid by the  
22 landlord. So the landlord paid the insurance. And, again,  
23 though historically, prebankruptcy, he had allowed the tenant  
24 credit, there's no obligation to do that.

25 The other thing I should point out is, though

1 the declaration submitted in the response spent a great deal  
2 of time trying to claim that, you know, we're being -- that my  
3 client is being unreasonable -- and I will point out that we  
4 all know that if you don't ask for adequate protection or  
5 adequate assurances, you don't get it, and particularly in the  
6 circumstance where the rent was at least a month late. But  
7 the declaration spent a great deal of time doing that. They  
8 don't really tell us, you know, what the situation is, in  
9 terms of the financial ability of this debtor to perform.

10 So back to the insurance, Your Honor. This  
11 estate is exposed, and Mr. Gearin is wrong. The one thing  
12 that did change is, there was a commercial liability policy  
13 that my client had that did not have an environmental  
14 exclusion that was changed --

15 MR. GEARIN: I'll object to that, Your Honor.  
16 That's not in the record. That's not in the record.

17 THE COURT: All right. Well --

18 MS. HESTON: The declaration of insurance is in  
19 the record, and the exclusion is in the record, and --

20 THE COURT: I'm going to overrule the objection.  
21 That's their argument. I understand. What's in the record is  
22 in the record. I'm not going to rule on anything that's not  
23 in the record.

24 MS. HESTON: And, you know, the concept of  
25 adequate protection, I think -- you know, the one thing that



1 is clear and the one case that they cite was decided before  
2 the addition of 363(e) to the Bankruptcy Code. And though in  
3 Ernst, the judge found that adequate protection wasn't  
4 necessary, we believe that it is necessary here. So with  
5 that, I'll let you ask your questions.

6 THE COURT: All right. Thank you. You can  
7 either stand or sit. As long as you talk into a microphone,  
8 that's all I ask.

9 I'm reading this 7.2.2(a), and I don't see where  
10 it requires environmental coverage. Is it somewhere else in  
11 the lease, or am I not reading it properly?

12 MS. HESTON: Well, I think oftentimes the  
13 commercial liability policy has protection for environmental  
14 matters.

15 THE COURT: But there's no requirement in the  
16 lease, that I can see, beyond the commercial general liability  
17 policy.

18 MS. HESTON: So, Your Honor, there is a  
19 provision in the lease that also states that the landlord may  
20 increase or decrease the prior limit, as it deems necessary,  
21 based on periodic insurance reviews.

22 THE COURT: Right.

23 MS. HESTON: And particularly where you have --  
24 and this goes to the concept of adequate protection,  
25 particularly where you have an environmental judgment that is

1 out there, it creates increased risk to my client that there  
2 are activities going on. And what's to protect a landlord  
3 where you have a party that might do an environmental dump and  
4 then the estate rejects the lease?

5 There's underlying property interests here that  
6 require protection. It's not -- like I say, it's not uncommon  
7 for commercial liability to have that kind of protection. It  
8 doesn't always call out environmental protection as part of  
9 their commercial general liability insurance obligation.

10 THE COURT: Okay. The lease called for a  
11 security deposit. I assume your client is holding on to a  
12 security deposit?

13 MS. HESTON: I'll have to defer to my client.

14 THE COURT: You can ask your client.

15 MS. HESTON: This is Mr. Humphrey, Your Honor.

16 THE COURT: Good morning, Mr. Humphrey. The  
17 lease required a security deposit of -- wait a minute -- two  
18 security deposits. No. I'm sorry. One security deposit in  
19 the amount of \$8,670.60. Was that provided?

20 MR. HUMPHREY: Yes, there is, Your Honor. And,  
21 also, let me add one other thing, too. The lease also  
22 requires that the property be kept hazard free.

23 THE COURT: Okay. So just answer my questions.  
24 If you want to speak, speak through your attorney. I just  
25 wanted to confirm that you're holding on to a security deposit

1 of \$8,600.

2 MR. HUMPHREY: Yes, sir. That's correct.

3 THE COURT: All right. Thank you.

4 Attached to the declaration submitted by the  
5 trustee, the declaration of Annette Trunkett, are two  
6 statements: one for March and one for May.

7 Ms. Heston, can you confirm that those were the  
8 statements that were delivered to the trustee? Exhibits A and  
9 B to Ms. Trunkett's declaration.

10 MR. HUMPHREY: I've seen a lot. Which one are  
11 we talking about?

12 MS. HESTON: There's March, and there's May.

13 MR. HUMPHREY: Okay. The March is prepetition.

14 THE COURT: Well, my question is -- well, I've  
15 got a declaration saying that these were provided to the  
16 trustee. Is there any dispute as to that allegation?

17 MR. HUMPHREY: I don't have any dispute. It was  
18 provided by my staff. I assume it's correct.

19 THE COURT: All right. The April statement,  
20 which is attached, I believe, to your declaration,  
21 Mr. Humphrey -- your first declaration -- apparently, that was  
22 not provided to the trustee, according to the trustee's  
23 declarant.

24 MR. HUMPHREY: That's incorrect.

25 THE COURT: Okay. When was that provided?

1 MR. HUMPHREY: It would've been done the --  
2 these were done the date of the -- so the March -- the date of  
3 the statements are the dates that they're sent out.

4 THE COURT: Well --

5 MR. HUMPHREY: So it would've been provided  
6 April -- it would've been provided April 1st.

7 THE COURT: Well, why I'm having trouble with  
8 that is, you've got -- Ms. Trunkett's Exhibit B, which shows  
9 triple net expenses for May 1 of 2016, doesn't square with  
10 what you're asserting in your April statement that you  
11 attached to your declaration. Because in your April  
12 statement, you are asking for all of the insurance payment up  
13 front and all of the real estate taxes up front in April; and  
14 yet your May statement has a prorated amount.

15 MR. HUMPHREY: Yes. Let me explain that, Your  
16 Honor. The -- I'm sorry.

17 MS. HESTON: That's all right.

18 MR. HUMPHREY: In the past, typically, what I've  
19 done is I've offered credit to Northwest Territorial Mint. My  
20 staff automatically generates that. So we do not -- on a  
21 typical triple net -- we own a bunch of other buildings -- we  
22 typically do a budget for the year, and then the tenant pays a  
23 proration. Then we do a reconciliation at the end of the  
24 year.

25 Northwest Territorial Mint is different. We

1 actually only bill them for the actual money that we spend.  
2 It's not based on a budget. It's on actual costs. What we  
3 have extended to Northwest Territorial Mint in the past is  
4 that we've gone ahead and paid bills in advance on their  
5 behalf and gone ahead and -- as an example, the taxes and  
6 insurance -- went ahead and prorated through the course of the  
7 year. In other words, we offered them credit. So my staff  
8 continues to put it out. For this motion, predicated on the  
9 fact that we have issues that are prepetition and  
10 postpetition, we've identified the items that we have actually  
11 paid. And we are no longer willing to extend credit going  
12 forward.

13 Now, we're not charging taxes for the whole  
14 year, only for what we've actually come out of pocket. So  
15 none of these expenses that we put in our motion are items  
16 that we have not already paid for.

17 So what I've done now is stated -- so for the  
18 first six months of the taxes, which were due in April, I'm no  
19 longer willing to extend credit to Northwest Territorial Mint  
20 as a captive creditor. I'm saying, If I have to pay it on  
21 your behalf, you need to reimburse us for that payment.

22 Now, the May statement -- and I was out of  
23 town -- excuse me -- I've been out of town for four -- for  
24 three weeks. The staff automatically puts it out -- my staff  
25 does. And they're not aware of this filing, so they would not

1 have made any changes. Again, we would put it out as we  
2 normally do. We would allow the Court to determine if we have  
3 a basis by which to recover. And in that case, on that  
4 recovery, then we would not charge them for May and for June,  
5 going forward, for those costs. We would then -- again, when  
6 it becomes due --

7 THE COURT: I understand. Thank you.

8 All right. Mr. Gearin, what is the current cash  
9 flow situation, if you know? What I'm getting at is, does the  
10 trustee anticipate having any issues paying the rent going  
11 forward?

12 MR. GEARIN: I don't think so, Your Honor. I  
13 think the trustee's expectation is to pay the rent current on  
14 this facility. You're aware that we have a sale scheduled for  
15 next Thursday. The cash purchase price there is about  
16 \$600,000. I'm hopeful that we'll have some overbids there and  
17 that we may wind up with something better than that. But we  
18 should have a significant influx of cash within the next 25,  
19 30 days, based on that sale. So I have seen the cash flows,  
20 and I don't see any reason that the rent on this facility  
21 can't be paid.

22 THE COURT: Just as an aside, what's the  
23 estimated closing date, should I approve that sale next  
24 Thursday?

25 MR. GEARIN: You know, I don't think we have a

1 specified closing date. But I know that the buyer is intent  
2 on closing immediately.

3 THE COURT: Okay. Again, it's early in the  
4 case, and if you don't have an answer, that's fine. But does  
5 the trustee, at this point, have any idea what he may want to  
6 do with this particular lease?

7 MR. GEARIN: No.

8 THE COURT: Not at this point. Okay.

9 MR. GEARIN: I think what we've told you, Your  
10 Honor, is the intention is to rehabilitate the core operations  
11 of the business. And this facility is part of the packaging  
12 of product. That's really what is principally done there. So  
13 it sort of depends on who wants to come in and buy these  
14 assets and what expressions of interest we might get. But  
15 this would be, I think, part of the package of assets that we  
16 would intend to sell in a later sale in the case.

17 THE COURT: So the intention, at least for the  
18 time being, is to continue to pay. Obviously, 120 days is  
19 going to be coming up in about 60 days, when you'll need to  
20 decide what to do.

21 MR. GEARIN: Right. We understand that.

22 THE COURT: All right. Well, this is a legal  
23 question for each of you, and I guess I'll start with  
24 Ms. Heston.

25 We talked a little bit about 365(d)(3), which

1 says that the trustee needs to timely perform obligations that  
2 arise from and after the order for relief.

3 Well, as I read that, it means if you have a  
4 lease where all payments are due in advance, on April 1, the  
5 obligation arose at midnight on April 1. The order for relief  
6 came after that. As I read it, and the cases I read would say  
7 that the trustee has no obligation to perform after the  
8 obligation became due. It arose prepetition, did it not?

9 MS. HESTON: I'm sorry. Which --

10 THE COURT: The obligation to pay all of the  
11 April obligations arose on April 1. I mean, that's what --  
12 pay in advance.

13 MS. HESTON: Which was the date of filing.

14 THE COURT: The date of filing. So I guess the  
15 question is: Which came first?

16 MS. HESTON: Well, I mean --

17 THE COURT: That's an important question.

18 MS. HESTON: First of all, I mean, my  
19 recollection is that if you have the obligation to pay on  
20 April 1st and you're occupying the property on April 2nd, you  
21 have an obligation to pay rent.

22 THE COURT: No. That's an unanswered question  
23 in the Ninth Circuit. There are two issues, and I'm not going  
24 to resolve the second one today. But that would be whether or  
25 not the landlord can make an administrative claim for the stub



1 rent, but the --

2 MS. HESTON: To be candid, I have never looked  
3 at the issue of when you have it on the date of filing. I've  
4 always considered it, if the date -- if you file earlier in  
5 the day, and it was due on that day --

6 THE COURT: Well, that's the interesting  
7 question. This case was filed at 12:07 a.m. So it was the  
8 same day and shortly after the day began. That being said,  
9 the rent became due on April 1. And the Oreck Corporation  
10 case, out of Tennessee, talks about this at great length. And  
11 I agree with -- the first question is -- 365(d)(3) says that  
12 the trustee is required to perform obligations that arose from  
13 and after the order for relief, which is when the petition was  
14 filed.

15 So if the obligation arose first, the trustee no  
16 longer has the duty to perform the April rent. Yes, May 1,  
17 but that obligation occurred first. Now, whether or not the  
18 entire month of April is now a prepetition claim, that's  
19 another issue. That would preclude the trustee from even  
20 seeking stub rent. And in Oreck, the Court said, No, the  
21 trustee doesn't even get an administrative claim for the rest  
22 of the month.

23 I'm not ruling on that today, but that's my  
24 reading of 363(d)(3). If the landlord is demanding payment in  
25 advance, on April 1, that's when the obligation arose. The

1 petition was filed later, albeit seven minutes after midnight.  
2 And that's where it's a closer call.

3 MS. HESTON: And I haven't -- I admit I haven't  
4 read the Orix{sic} case, so I'm at a little bit of a  
5 disadvantage on that point.

6 THE COURT: This is Oreck, O-R-E-C-K.

7 MS. HESTON: Oh, Oreck, not Orix?

8 THE COURT: Right.

9 MS. HESTON: Okay. But there is -- I don't know  
10 how -- like, for example, in this lease, there's a grace  
11 period until the 5th.

12 THE COURT: Right.

13 MS. HESTON: So all of those factors can, I  
14 think, change the analysis, in terms of whether it's pre  
15 versus post.

16 MR. GEARIN: I guess I'd say, Your Honor, I've  
17 looked at this. It's been a long time since I've looked at  
18 the stub rent issue, and we can go back and look at that. I  
19 do think it raises a question about the first half taxes and  
20 whether those are, in their entirety, prepetition obligations.  
21 Because I think they are assessed prior to April 1st under our  
22 state statute. So if they've been assessed prepetition and  
23 the entire six-month period is a prepetition obligation, then  
24 the logic of that would be, under 365(d)(3), you can't enforce  
25 that obligation and force the trustee to pay that obligation.

1                   THE COURT: I think that might be a little bit  
2 different. Because it's a lease obligation, as opposed to the  
3 real estate tax obligation directly to the tenant. The  
4 landlord is paying them, and the tenant has got to pay the  
5 landlord back. So I think that's a little bit different. The  
6 stub rent is a different question from this initial one. It's  
7 whether or not the trustee was obligated to perform the April  
8 obligations at all.

9                   My ruling today is: No. The trustee was not  
10 obligated to perform at all under the April obligations  
11 because the April obligations arose at midnight on April 1.  
12 And, therefore, the trustee was not required to perform.  
13 Consequently, there can be no late fees. There can be no  
14 demand for interest. There can be no attorney's fees for  
15 pursuing amounts due for April.

16                   The stub rent is a separate issue, which I'm not  
17 deciding today. But that would raise the question of whether  
18 or not the landlord was even entitled to an administrative  
19 claim. If it was, it has already been paid. But in any  
20 event, I find that the trustee was not required -- I conclude  
21 that the trustee was not required to perform the April  
22 obligations and has, indeed, performed May going forward.

23                   With respect to hazard insurance, the lease does  
24 not require anything beyond the general liability policy. I  
25 understand the landlord's concern. But I read 7.2.2(a) to

1 allow the landlord to increase or decrease the required limit.  
2 But what the landlord here is asking for is a change in the  
3 nature and extent of the coverage, which I don't believe the  
4 landlord can demand under this policy. So I believe that the  
5 plain terms of the agreement do not allow the landlord to  
6 demand this adjustment.

7           The Court is not inclined to require the trustee  
8 to provide any more coverage than the landlord bargained for  
9 in the lease. I understand the trustee says that he has  
10 provided proof of coverage in accordance with the terms of the  
11 lease. But I will put it in the order that to the extent that  
12 hasn't happened, the trustee will need to do that.

13           With respect to taxes and insurance, the  
14 landlord asserts that the trustee owes and has failed to pay  
15 the full balance owing for insurance and the full amount of  
16 the first half of real estate taxes. But the landlord  
17 provided invoices for March and May to the trustee that shows  
18 prorated amounts owed for insurance and prorating the amounts  
19 for the real estate taxes.

20           The trustee, in fact, has paid the amount  
21 submitted in those invoices. The checks were provided, which  
22 stated for April rent, stated for May rent. The landlord  
23 cashed them without reservation. The landlord's claim that  
24 the trustee has failed to pay any amount is contradicted by  
25 the invoices and the cashing of the checks. Even if the

1 landlord had the right to demand full payment of certain  
2 amounts, the Court is not going to allow the landlord to now  
3 change the prepetition course of conduct just because the  
4 tenant is now in bankruptcy.

5           With respect to adequate assurance, the landlord  
6 sought adequate assurance under Section 365(b)(1). Since the  
7 lease is not being assumed, this code section is not  
8 applicable. I note, in the reply brief, it's not addressed.  
9 I assume that the landlord is essentially conceding that there  
10 is no basis for adequate assurance under 365(b)(1).

11           With respect to adequate protection, it appears  
12 that for the first 60 days, approximately -- almost 60 days  
13 into this case, the landlord is current. The landlord has a  
14 security deposit to cover another month's rent. The lease is  
15 going to expire in 120 days unless it is assumed or the  
16 assumption deadline is extended. So the reality is that the  
17 landlord does not appear to have significant exposure, given  
18 that it is current at the moment and has one deposit to cover  
19 the third month. And based upon representations of counsel  
20 for the trustee, there's an anticipation that there should be  
21 no problem with paying the landlord.

22           I agree that the landlords should not be forced  
23 to be involuntary postpetition creditors, and I understand the  
24 landlord's position. 365(d)(3) is an interesting code  
25 section, where it requires the trustee to perform, but there's

1 no enforcement mechanism. It really puts the onus on the  
2 landlord to file a motion to compel compliance. So I  
3 understand the landlord's concern here. While perhaps a bit  
4 on the aggressive side, I certainly don't find it was done in  
5 bad faith in any way, shape, or form. And I understand that  
6 if you don't move quickly, a month or two can go by. And if  
7 there is no money, you may not get paid.

8 I have not established yet a practice, but my  
9 predecessor did. And I do think it's a good one: that  
10 landlords, if they're not paid, should be able to come in on  
11 short notice and request relief from the stay. So I will  
12 grant that relief to the landlord. I'll give a little more  
13 detail as to what I'm going to grant, but I will allow the  
14 landlord to do that.

15 That leaves us with attorney's fees. Section  
16 21.14 says that the substantially prevailing party shall be  
17 entitled to its attorney's fees. I'm not going to award  
18 attorney's fees to either party.

19 Again, you could make the argument that the  
20 trustee is the substantially prevailing party, but I  
21 understand the reason behind the motion. Despite my ruling  
22 this morning, I believe the landlord did believe it had a  
23 right to collect the April rent and sought payment on that in  
24 good faith. Therefore, I'm not going to award attorney's fees  
25 to either side.

1                   So the order I will be willing to enter is  
2 that -- and, Mr. Gearin, you get to prepare this -- the  
3 trustee shall provide proof of insurance policies in  
4 compliance with Section 7.2.2 of the lease.

5                   MR. GEARIN: Can I interrupt, Your Honor? I'm  
6 sorry. I think it's already here. I think it's already part  
7 of Mr. Humphrey's declaration.

8                   THE COURT: That's in the proposed order.

9                   MR. GEARIN: I think it's already in -- the  
10 proof is already here. It's in Mr. Humphrey's declaration.

11                   THE COURT: Mr. Humphrey's declaration?

12                   MR. GEARIN: Right. At Exhibit E, I want to  
13 say -- Exhibit E to Mr. Humphrey's declaration.

14                   THE COURT: Is that what's currently in place?

15                   MR. GEARIN: Yes, it is. I think this was  
16 provided --

17                   THE COURT: All right. I'm not going to order  
18 the trustee to provide any additional insurance, beyond what's  
19 required by the lease. I'm willing to put this in the record,  
20 nonetheless. So if the trustee has not already, the trustee  
21 shall provide proof of insurance policies in compliance with  
22 Section 7.2.2 of the lease by no later than 14 days after the  
23 entry of this order.

24                   Second, the landlord shall be permitted to seek  
25 relief from stay on seven days' notice -- and I chose seven

1 because we're trying to get away from five and ten, so we  
2 don't have issues with holidays and weekends -- seven days'  
3 notice to the trustee upon any future defaults under the lease  
4 agreement, with a hearing to be set on the Court's next  
5 regularly scheduled Chapter 11 calendar.

6 Does that make sense to everyone? In other  
7 words, it has to be at least seven days' notice, but it's not  
8 going to be on the seventh day. It's going to be whenever I  
9 next have a commercial calendar, which is every other week.  
10 Even if that's approximately two weeks out, you're still never  
11 going to be within -- you know, if there's a default you can  
12 get in here pretty quickly before the month goes by.

13 All other relief sought by the landlord in the  
14 motion is denied. I don't think I need to say anything  
15 further about attorney's fees. The record will reflect that  
16 I'm not awarding them.

17 Mr. Gearin, can you prepare that order?

18 MR. GEARIN: Yes, I can, Your Honor.

19 THE COURT: All right. Thank you both.

20 Thanks for coming in, sir.

21 All right. That's the first motion. The next  
22 motion I said I was going to take is the motion for interim  
23 payment procedures.

24 Mr. Gearin? And we don't need a whole lot of  
25 back-and-forth on this. Let me just say that -- well, let me



1 ask. You've already said that you're hopeful that you're  
2 going to have money to pay the landlord going forward. I'm  
3 assuming you're hopeful you're going to have money to pay  
4 professionals going forward as well. But my concern is, at  
5 this stage, given the precarious situation of the case --  
6 hopefully, there will be a big chunk of cash coming in; but  
7 it's not certain. My concern about approving interim payment  
8 to professionals without, certainly, this case is even  
9 administratively solvent -- that's my concern. I don't have  
10 concern with the concept. And I agree that the professionals  
11 have and will, for the foreseeable future, be spending a  
12 significant amount of time on this case. I have no problems  
13 with the concept. I just want to make sure there's money  
14 there.

15 I don't want to have people disgorge. K&L has  
16 the ability to do it, but I don't want to do it. Your  
17 managing partner wouldn't want you to do it.

18 MR. GEARIN: Right.

19 THE COURT: So that's where the Court is having  
20 some hesitation.

21 MR. GEARIN: I follow you, Your Honor. And I'll  
22 represent to you that it's not going to happen. You know, I  
23 think Mr. Northrup and I have been involved in a number of  
24 Chapter 11 cases. I think my principal concern is Cascade and  
25 the -- Cascade, that they can get paid. I think they have

1 more cash flow issues than my firm does, for example. I think  
2 there is sufficient cash. I think we will not -- my firm, I  
3 will state for the record, my firm will not make a request to  
4 be paid on a monthly basis unless we are very comfortable  
5 there's sufficient cash in the estate to cover those expenses.  
6 And we will defer if we think there are cash flow needs of the  
7 estate that are of more urgent concern.

8 THE COURT: All right.

9 MR. GEARIN: So I don't think we're ever going  
10 to put this estate in a position where we are jeopardizing the  
11 business operations or the ability to have a successful  
12 reorganization case. And we certainly are not going to put  
13 anyone in the circumstance where we think there's going to be  
14 an administrative shortfall or there's going to be an  
15 administratively insolvent case.

16 THE COURT: All right. And you're speaking on  
17 behalf of K&L.

18 I don't know, Mr. Northrup, if you would like to  
19 say anything on behalf of the committee and your firm. Your  
20 firm would be included in this.

21 MR. NORTHRUP: Yes. I understand that, and  
22 that's --

23 THE COURT: Why don't you come up and get by a  
24 microphone.

25 MR. NORTHRUP: Mark Northrup for the unsecured

1 creditors committee. I'm here out of an abundance of caution,  
2 since the order that you declined to enter says, Counsel shall  
3 appear. I wasn't sure who "counsel" covered, but I thought I  
4 should appear, and I'm happy to do that.

5 I agree with Mr. Gearin. My law firm is  
6 certainly capable of backstopping any overpayments. I don't  
7 think that will happen. But if the Court is concerned that  
8 neither of our firms request payment until we are sure that  
9 money exists in the estate, I'm certainly comfortable doing  
10 that and making that representation.

11 THE COURT: All right. Thank you.

12 What I'm going to do, Mr. Gearin, is I'm going  
13 to continue this until after the case management conference,  
14 which is June -- isn't it June 9?

15 MR. GEARIN: I don't have it with me, Your  
16 Honor.

17 THE COURT: Ms. Brannon, do you recall?

18 MR. GEARIN: It's early June. You're right.

19 MR. NORTHRUP: It's the 2nd or the 3rd, I think.

20 THE COURT: Oh, is it the afternoon of the 3rd?

21 THE COURTROOM DEPUTY CLERK: I have to take a  
22 look.

23 THE COURT: Yes, we'll take a look here.

24 Actually, I can continue it to that afternoon.  
25 I know it's an afternoon.

1 MR. GEARIN: Your Honor, if what you're looking  
2 for is some -- we do have a hearing next Thursday, if that's  
3 helpful.

4 THE COURT: Well, I want to continue it to  
5 either at or after the case management conference, for a  
6 couple of reasons.

7 One, while the sale motion is next Thursday, who  
8 knows what will happen? So let's let all the dust settle from  
9 that hearing. We'll have more information. Hopefully, the  
10 trustee will have more information. That will be an  
11 opportunity to discuss it further, and Mr. Calvert will be  
12 there.

13 When is it?

14 THE COURTROOM DEPUTY CLERK: June 3rd at 1:30.

15 THE COURT: It is June 3rd at 1:30. So I'd like  
16 to continue this motion to June 3rd at 1:30.

17 MR. GEARIN: Understood.

18 THE COURT: The same thing on the proof of claim  
19 deadline request. I have just a couple of concerns, which  
20 you'll be free to address.

21 And, Mr. Northrup, you're free to stand and  
22 answer, if you would like, as well.

23 At this point, there's no indication of any  
24 certainty that there's going to be money for general unsecured  
25 creditors. We just don't know. It's hard to know.

1                   MR. GEARIN: I think that's fair to say, Your  
2 Honor. I think that's true.

3                   THE COURT: So I have two concerns.

4                   One, soliciting proofs of claims from general  
5 unsecured creditors may raise expectations, force them or  
6 require them to exert resources to prepare a proof of claim --  
7 some of them may hire a lawyer to do so -- raise their  
8 expectations and then they may not get paid.

9                   Second, I'm not sure that there's any hurry to  
10 do it right now. I know that the proposal is to set a  
11 September bar date. Again, if we talk about this at the case  
12 management conference and you still want to stick with the  
13 September bar date, there still will be time to get notice  
14 out, even if it's in June.

15                   In addition to that general concern about  
16 soliciting claims that may never be paid, I want to make sure  
17 that this is being done in the most efficient way. Let's talk  
18 about, at that status conference, whether it's a good idea to  
19 have a third-party claims agent to it, whether there's a  
20 reason, perhaps, maybe to do a tailored proof of claim form.

21                   I had some experience with this in the Wade Cook  
22 case, where we had 11,000 on the matrix. We had 67,000  
23 customer deposit creditors that we had to notice. And we did  
24 some things there that may be useful. The trustee may decide  
25 it doesn't work. But at least I would like to think about

1 that.

2 Mr. Northrup, you were going to say something?

3 MR. NORTHRUP: We'd concur with that. I  
4 remember the Wade Cook case. And a claims agent is something  
5 that we've discussed already.

6 THE COURT: Right. And setting the order today  
7 doesn't prevent the trustee from doing that. But there was a  
8 form proof of claim that was attached that you were seeking  
9 authorization for approval. Again, that may be ultimately the  
10 way to go, but let's slow down. Because until there is some  
11 prospect of paying general unsecured claims and, frankly,  
12 paying even customer deposit claims -- let's wait. In Wade  
13 Cook, I think it was a year and a half before we sent out a  
14 claims bar date. And we never got past the customer deposit  
15 (a)(6) priority claims.

16 So I'm going to continue that, as well, to June  
17 3rd at 1:30.

18 MR. GEARIN: Thank you. Understood.

19 THE COURT: All right. That takes us to the  
20 application to employ Cascade Capital. No one objected to  
21 that, Mr. Gearin, obviously. You know that. I'm not telling  
22 you something you don't know, but I do have concerns.

23 We all know that we have to determine whether or  
24 not a professional is disinterested; and, clearly, Cascade  
25 Capital is not. Yet Code Section 327(d) allows the Court to

1 authorize the trustee to act as attorney or accountant for the  
2 estate if such authorization is in the best interest of the  
3 estate.

4           Now, you didn't receive any objections, but the  
5 application itself just cited the code section without any  
6 further explanation. I took a look at that, and there's not a  
7 lot of case law out there.

8           I found zero cases that address the employment  
9 of an accountant. But the cases dealing with the employment  
10 of the trustee as an attorney generally say that there's a  
11 pretty high bar. There's nothing binding on me, of course.  
12 There's no Ninth Circuit authority that tells me precisely  
13 what to do. But there's a case out of the Central District of  
14 California, by Judge Bufford, called In re Butler Industries,  
15 Inc., 101 B.R. 194 (Bankr. C.D. Cal. 1989). That was affirmed  
16 by the District Court at 114 B.R. 695.

17           Long story short: The Court says that you need  
18 to show cause why the trustee wants to hire his or her own  
19 firm. Notably, Judge Bufford didn't receive any objections in  
20 that case either, but he denied the employment of the  
21 trustee's law firm; and on reconsideration, denied it again  
22 and said -- it's best that I just read to you what I have  
23 here: While the trustee generally has wide latitude in  
24 choosing his or her own attorney, subject to the appointment  
25 by the Court, the trustee must meet a higher standard when the

1 trustee seeks to appoint himself or his or her own law firm as  
2 attorney.

3           The legislative history of Section 328(b), which  
4 prohibits double payment to a trustee acting as his or her own  
5 counsel states: The purpose of permitting the trustee to  
6 serve as his own counsel is to reduce costs. It is not  
7 included to provide the trustee with a bonus by permitting him  
8 to receive two fees for the same service or to avoid the  
9 maxima for trustees' fees fixed by Section 326.

10           Judge Bufford went on to note that there is good  
11 reason to require a bankruptcy trustee to employ unrelated  
12 counsel, absent unusual circumstances. One of the  
13 responsibilities of a trustee is to monitor all legal fees in  
14 the bankruptcy case, including those of the trustee's own  
15 legal counsel. However, where the trustee's own law firm is  
16 appointed as his legal counsel, he is interested in obtaining  
17 the largest fee recovery on behalf of his firm. This presents  
18 an actual conflict of interest for the trustee.

19           The Court concluded, and was affirmed on appeal,  
20 that the trustee must show cause to justify the appointment of  
21 the trustee's own law firm as counsel under Section 327(d).

22           In the Butler Industries case, the Court noted  
23 four examples of situations where there might be cause.

24           One: Where the estate's assets consist  
25 principally in causes of action, such as for preferences or



1 fraudulent conveyances, and legal counsel would have to look  
2 to the recovery for payment of fees.

3 The second example is where there is relatively  
4 little legal work to perform, which does not merit the effort  
5 and expense of hiring an outside law firm.

6 The third example is where substantial legal  
7 action must be taken immediately, and the trustee cannot wait  
8 for the completion of the appointment process for outside  
9 counsel.

10 And fourth, where the trustee can demonstrate  
11 that such appointment will result in a substantial reduction  
12 of costs to the estate.

13 Subsequent to that case was the *In re*  
14 *Interamericas, Ltd.*, decision, 321 B.R. 830 (Bankr. S.D. Tex.  
15 2005). In that case, the Bankruptcy Court noted that even  
16 with individuals of the highest integrity, a separate showing  
17 of best interests must be made in every case in which a  
18 trustee seeks to hire his own firm.

19 The Court then went on to list nine specific  
20 factors, which I won't go into. You can read the case. The  
21 bottom line is: Again, you did not anticipate any objection,  
22 and none was raised. But I do need to have the trustee make  
23 some sort of showing under 327(d).

24 If the committee wants to stand up and say, We  
25 want Cascade Capital, that will go a long way. The committee

1 is represented by counsel, has not objected, but has not  
2 affirmed either. So I don't know how to interpret the  
3 silence.

4 The U.S. Trustee has not weighed in but, of  
5 course, has appointed the trustee. So I could see why the  
6 U.S. Trustee might have some reservations about objecting to  
7 Mr. Calvert employing his accounting firm.

8 I realize that Mr. Calvert's accounting firm has  
9 done some work. You moved promptly to seek employment. So  
10 there's no question that there's been a delay, but I did not  
11 approve the interim. At this point, I'm not ready to approve  
12 Cascade Capital on a final basis, absent some further showing.

13 So that's my current state of thinking,  
14 Mr. Gearin.

15 MR. GEARIN: Okay. Thank you, Your Honor. And  
16 I guess -- I'm not sure. I may have misinterpreted. But I  
17 think you said, in your initial comments, that you thought  
18 there was some question as to whether or not Cascade was  
19 disinterested. And I think they are disinterested. So that's  
20 one issue that we could talk about.

21 THE COURT: Well, it's the conflict of interest  
22 of being -- well, having to approve his own accounting firm's  
23 fees creates the conflict of interest. That's why 327(d) is  
24 kind of set out separately. It's an exception to the general  
25 rule that you wouldn't be able to hire yourself.

1 MR. GEARIN: Right.

2 THE COURT: So I'm not finding that -- let me  
3 walk that back just a tiny bit. He needs to fit within  
4 327(d). Let's leave it at that.

5 MR. GEARIN: Okay. I follow you. We'll work on  
6 that pigeonhole. I think that the cases you just talked  
7 about, for me, are really not applicable, when you're talking  
8 about lawyers versus accountants. I think there's a big  
9 distinction here. And I think that's clear in this case and  
10 in other cases that Mr. Calvert has been appointed in as a  
11 trustee in this district where he has also been employed and  
12 his firm has been employed as the accountants for the estate  
13 in at least two other cases that I know of, one of which I  
14 think you worked in.

15 THE COURT: I am familiar that that has been  
16 done. I know of one of those where the committee was actively  
17 supporting his employment. So if the committee is actively  
18 supporting his employment, it's ultimately the creditors'  
19 money. I am the final gatekeeper, and I still get to decide,  
20 even if the committee is enthusiastically in favor of Cascade  
21 Capital. But it is a conflict of interest. And I'm  
22 particularly concerned about Mr. Calvert saying, For the first  
23 four hours of today, I'm the CEO of the company and I'm going  
24 to be compensated in accordance with 326, which limits his  
25 compensation to a percentage of what he distributes; and then

1 say, But from noon to four today, I was acting as an  
2 accountant, and I'm going to submit a bill for \$400 an hour.

3 I'm very concerned about that. It has nothing  
4 to do with any belief, at all, that he lacks integrity. Let  
5 me be clear.

6 MR. GEARIN: I appreciate that, Your Honor.  
7 We've dealt with those issues before. And Mr. Calvert, I  
8 think, is scrupulous about keeping records when he's working  
9 on the accounting side of it. He has an accounting staff at  
10 Cascade that really is doing the core of the accounting work.  
11 He does step in, and he works on some of the forensic matters,  
12 but he keeps very careful records. And in all of the prior  
13 fee applications that Cascade has done, those issues have  
14 been -- we walk through the U.S. Trustee's office with those  
15 things. We walk through committees with those kinds of  
16 issues. And those are all examined. So there are -- there  
17 certainly are checks and balances here.

18 And what I would also tell you is that I vetted  
19 these issues with the U.S. Trustee's office before we sought  
20 Cascade's appointment and before Mr. Calvert agreed to take  
21 the representation as the trustee. So that was part of -- you  
22 know, our expectation was that we would be able to use Cascade  
23 as the accountants for the estate.

24 We've also discussed it extensively with the  
25 committee. And I think the committee should have an

1 opportunity, and I would ask -- we will ask them to provide  
2 some supporting references for Cascade whenever you ask us to  
3 do that.

4 I would also go back to some of the factors that  
5 you point to, as to why it's appropriate, under 327(d), to  
6 have the trustee engage his own firm. Here, the urgency  
7 issue -- I think the one factor that you did point to, and I  
8 did not --

9 THE COURT: Right. It was the urgency. The  
10 firm needed to do work before it could be employed. But that  
11 only goes so far. At some point, you move to employ. And you  
12 did it promptly. So that could be a basis for allowing  
13 perhaps compensation for work done up to this date. But going  
14 forward -- again, let me be clear. There is no belief,  
15 whatsoever, that there's any issues of integrity with respect  
16 to Mr. Calvert and Cascade Capital. My concern here is, given  
17 the nature of this case, the litigious nature of various  
18 parties, given the creditor body, at a minimum, we need to  
19 make the record in support of 327(d). That needs to be made  
20 to me so I can employ Cascade Capital with the appropriate  
21 record being made.

22 MR. GEARIN: Understood, Your Honor. So what I  
23 think you're telling me is -- we'll put together a declaration  
24 from the trustee, I think is what you're looking for, that --

25 THE COURT: If any one of those examples --

1 there are nine factors that the Interamericas, Ltd., case  
2 identifies. Tell me why those work. What the committee says  
3 will have some weight.

4 MR. GEARIN: I understand.

5 THE COURT: You understand.

6 MR. GEARIN: I do, and we'll take care of it. I  
7 do want to say --

8 THE COURT: So I will continue this to June 3rd  
9 at 1:30.

10 MR. GEARIN: Okay.

11 THE COURT: If you would like to file anything  
12 further -- I assume that's enough time --

13 MR. GEARIN: Yes.

14 THE COURT: -- to file anything further. So  
15 just file anything by May 31. No one objected before, so I'm  
16 not expecting and I'm not willing to consider any further  
17 objections.

18 MR. GEARIN: Okay. Thank you, Your Honor. I  
19 understand. I do want to say this: I think that Cascade is  
20 important in this case -- extremely important. And the  
21 urgency issue is paramount in this case. Because what really  
22 had to happen was, there needed to be a forensic inquiry  
23 conducted immediately when this case was commenced by the  
24 trustee. Cascade has been able to do that and has moved that  
25 issue forward. And there are significant benefits that

1 Cascade has brought to the case, and if they were to be -- if  
2 we were to have to go change horses with Cascade right now, it  
3 would be a significant disruption in the case.

4 THE COURT: I understand that, but there are  
5 other accounting firms that can do the forensic work. And the  
6 argument that we're too far down the line, if that's the  
7 winning argument, then I'm always hamstrung by someone jumping  
8 in and doing a whole bunch of work. I'm not saying that was  
9 the intention, and I understand your point. Maybe, again,  
10 that third example in the Butler Industries case may be the  
11 one that you fit under, but you need to make the record.

12 MR. GEARIN: Understood.

13 THE COURT: All right. Thank you.

14 That takes care of those three matters.

15 MR. GEARIN: Your Honor, I understand the McMeel  
16 thing. May I be excused, and Mr. Northrup? Do you need us  
17 for that portion?

18 THE COURT: You do not need to be here for that.

19 MR. GEARIN: Thank you.

20 THE COURT: All right. Thank you both.

21 All right. One moment, please. I need to pull  
22 up my notes on my computer. Done.

23 All right. The next and last matter we have --  
24 I'm going to take both the show cause orders against  
25 Mr. McMeel. So if the parties can please approach.

1 MR. SMITH: Thank you, Your Honor. Martin Smith  
2 for the United States Trustee.

3 THE COURT: Good morning, Mr. Smith.  
4 And who do we have approaching the table?  
5 Please speak into the microphone, if you would.

6 MR. MCMEEL: Jeffrey McMeel.

7 THE COURT: All right. And who is with you,  
8 Mr. McMeel?

9 MR. MCMEEL: Todd Howard. He's my next friend  
10 who appeared.

11 THE COURT: All right. So you can have a seat  
12 behind Mr. -- is it Friend? What was your last name?

13 MR. MCMEEL: I filed a --

14 THE COURT: What was your friend's name?

15 MR. MCMEEL: Todd Howard.

16 THE COURT: Mr. Howard, if you could have a seat  
17 behind him.

18 MR. MCMEEL: I need him to read things into the  
19 record.

20 THE COURT: No. Is he your attorney?

21 MR. MCMEEL: Did you not get the notice of  
22 appearance?

23 THE COURT: Is he an attorney?

24 MR. MCMEEL: No.

25 THE COURT: Okay. Then he cannot appear for you



1 to practice law.

2 MR. MCMEEL: He's not practicing law.

3 THE COURT: Are you unable to read?

4 MR. MCMEEL: It says here --

5 THE COURTROOM DEPUTY CLERK: It's fine if you  
6 just speak from the {inaudible} --

7 MR. MCMEEL: Okay. It says here, in  
8 Asperger's{sic} versus Hamlin, Sheriff, 407 U.S. 425:  
9 Litigants may be assisted by unlicensed laymen during judicial  
10 proceedings.

11 THE COURT: In my courtroom, only lawyers can  
12 speak for other people. So I'm not sure what Mr. Howard wants  
13 to say. Apparently, you can read, so you can read whatever  
14 you want to read into the record.

15 Mr. Howard, please have a seat.

16 All right. So we have here an ex parte motion  
17 by the United States Trustee for an order to show cause, re  
18 civil contempt, on the issue of the order to show cause and an  
19 amended ex parte order to show cause. And the Court issued  
20 its own show cause order. I will hear first from Mr. Smith.  
21 Then I will hear from Mr. McMeel.

22 So go ahead, Mr. Smith.

23 MR. MCMEEL: Can I object?

24 THE COURT: To what?

25 MR. MCMEEL: To the show cause motion.

1 THE COURT: Your objection is overruled.

2 Go ahead, Mr. Smith.

3 MR. SMITH: Thank you, Your Honor. Mr. McMeel  
4 has filed a bunch of documents with the Court. And I think I  
5 originally read them a little differently than I did on the  
6 second reading. Originally, I thought the pleadings he was  
7 filing were saying that he was a special agent for the Office  
8 of the United States Trustee and all the various other  
9 entities that he filed these appearances for. But I think  
10 it's the opposite of that, and that he's actually saying, for  
11 example, that the United States Trustee is his special agent.  
12 But in any case, he's filed these documents. And if you look  
13 at the one that was filed with respect to the United States  
14 Trustee, it purports to have been filed on behalf of the  
15 United States Trustee. The signature page says, Jeffrey Mark  
16 McMeel, the United States Trustee, ex rel.

17 And his pleadings say: Comes now the United  
18 States Trustee, special agent -- so he's not authorized to  
19 file things on behalf of the United States Trustee. He's  
20 misrepresenting the facts. He's confusing the court file and  
21 anybody who reads these documents as to what his role is, what  
22 our role is, and where and how they should file documents.

23 So what we've requested, when we filed our  
24 motion, was two things: One was to prohibit Mr. McMeel from  
25 filing anything in this court that is not directly related to

1 any claim he personally has in the case. And, secondly, that  
2 there be some sort of ECF restriction or limitation on the  
3 ability to call up what we believe are the fraudulent and  
4 misleading pleadings.

5 THE COURT: All right.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Smith.

8 Mr. McMeel?

9 MR. MCMEEL: I have some questions, first, to  
10 understand, because I'm not a lawyer. Is this a core or a  
11 noncore proceeding?

12 THE COURT: One thing about me being the judge  
13 is that I get to ask the questions. So I'm not going to  
14 answer your questions, sir. You just make your presentation.

15 MR. MCMEEL: Well, first, I have a -- I'd like  
16 to give you a foundational document from the United States  
17 Government.

18 THE COURT: If it's not in the record, I'm not  
19 going to consider it, sir. You needed to get --

20 MR. MCMEEL: Yeah. It's in the record. It's in  
21 the record.

22 THE COURT: Oh, then you can tell me what  
23 document was filed.

24 MR. MCMEEL: I would like the marshal to  
25 serve -- to give it to you.

1 THE COURT: No. You said it's been filed. So  
2 you just tell me what document it is. I've got them all up  
3 here on my computer. Everything that's been filed, I can see.  
4 So what is it?

5 MR. MCMEEL: It's the National Bankruptcy Act of  
6 1898.

7 THE COURT: Yes, I'm familiar with the act. And  
8 that was replaced by the Bankruptcy Code in 1978. I'm not  
9 sure if you are aware of that. A lot of your pleadings are  
10 based upon the bankruptcy act that doesn't exist anymore.

11 MR. MCMEEL: Will you allow me to read into the  
12 record my previous filings that would explain the situation,  
13 why we're here today?

14 THE COURT: Well, you want to read into the  
15 record all of the filings?

16 MR. MCMEEL: No, just some.

17 THE COURT: Well, I have them, so they're in the  
18 record. You don't need to read them into the record, sir. I  
19 don't want to be here all day having you read your pleadings  
20 because they are in the record. So you don't have to worry  
21 about that.

22 MR. MCMEEL: Okay. It's a hearing, so that's  
23 why I wanted to --

24 THE COURT: Well, the hearing is for argument.  
25 The Court has read what has been filed by you and by

1 Mr. Smith, and we don't need you to read into the record  
2 what's already in the record.

3 MR. MCMEEL: Well, I'm objecting to this whole  
4 proceeding because there's no foundation for the charge, which  
5 has not been given under oath. So there's no -- there's no  
6 oath. There's no charge. There's no evidence. There's  
7 nothing. So if the United States Trustee would like to go  
8 under oath and make the charge, then I can proceed.

9 THE COURT: Okay. Well, to the extent that's an  
10 objection, I'm overruling your objection.

11 MR. MCMEEL: Well, who are you?

12 THE COURT: Do you have any further argument,  
13 Mr. McMeel?

14 MR. MCMEEL: Okay. I'll read -- I'll read  
15 the --

16 THE COURT: No. Do you have any further  
17 argument?

18 MR. MCMEEL: Yeah. I have it here. And it's on  
19 your -- you have a copy of it, I think.

20 THE COURT: Okay. What document is that?

21 MR. MCMEEL: It's the Thurston County Record,  
22 4501476.

23 THE COURT: And what case -- briefly describe  
24 what that document is.

25 MR. MCMEEL: Oh, it's the declaration of

1 objection to show cause, appointment affidavits, Form 61, ex  
2 parte order of judgment, and oath of office.

3 THE COURT: Okay. That's what you filed this  
4 morning?

5 MR. MCMEEL: Yes, sir.

6 THE COURT: All right.

7 MR. MCMEEL: That's my argument.

8 THE COURT: All right. And that was just filed,  
9 so I have not had a chance to take a look at it. It's short.  
10 So just briefly, what is this document?

11 MR. MCMEEL: It's the argument where I am  
12 objecting to the show cause hearing.

13 THE COURT: Okay.

14 MR. MCMEEL: And it's a motion. There's a  
15 motion in there afterwards.

16 THE COURT: Let's see. So there's --

17 MR. MCMEEL: Ex parte motion.

18 THE COURT: Okay. There's your declaration.  
19 All right.

20 MR. SMITH: I would just let the Court know, for  
21 the record, that I have not seen this document.

22 THE COURT: It was filed this morning at 11:20,  
23 so --

24 THE COURTROOM DEPUTY CLERK: The file stamp --  
25 sorry, excuse me -- the file stamp on the document is 8:56,

1 but it was added to the court docket at 11:00.

2 THE COURT: Oh, okay. Thank you.

3 So in any event, the U.S. Trustee has not had an  
4 opportunity to take a look at it. But is it your desire to  
5 read your declaration?

6 MR. MCMEEL: Yes, sir.

7 THE COURT: All right. You may read your  
8 declaration.

9 MR. MCMEEL: Thank you.

10 THE COURT: All right. Go ahead.

11 MR. MCMEEL: Okay. So to the clerk of the  
12 court; to the debtor; to Steven J. Reilly and J. Todd Tracy,  
13 attorneys for debtor; to Michael J. Gearin, David C. Neu, and  
14 Brian T. Peterson; and to Gail Brehm Geiger and her attorney,  
15 Martin L. Smith, now comes Jeffrey Mark McMeel, as a private  
16 noncommercial man, a native of Washington, as a citizen of the  
17 United States, in his private capacity, not legally disabled,  
18 and files this Thurston County Record 4501476, Declaration  
19 Objection to Show Cause, Appointment Affidavits Form 61, Ex  
20 Parte Order of Judgment, Oath of Office, dated this 20th day  
21 of May 2016.

22 THE COURT: Let me just stop you there. The  
23 next document that follows appears to be a miscellaneous  
24 document that was filed in the records of Thurston County, so  
25 I'm not going to have you read that. Then what follows is a

1 declaration of objection to orders to show cause re civil  
2 contempt of Jeffrey Mark McMeel. That is a three-page  
3 document. If you would like to read that, you are free to do  
4 so.

5 MR. MCMEEL: I object to your denying me reading  
6 the Thurston County Record.

7 THE COURT: Your objection is overruled.

8 MR. MCMEEL: Now comes Jeffrey Mark McMeel, with  
9 a special interest as a private noncommercial man, a native of  
10 Washington, as a citizen of the United States, in his private  
11 capacity, not legally disabled, and files this declaration  
12 objection in reference to the order to show cause and amended  
13 ex parte order to show cause regarding civil contempt of  
14 Jeffrey Mark McMeel.

15 Affiant is with this conviction that -- how is  
16 it possible for government attorneys/lawyers to bring any  
17 charge on McMeel in this court with no probable cause given on  
18 oath? No oath given eliminates any foundation in equity or  
19 assumed foundation for standing charges, examinations,  
20 probable cause, testimony, et cetera. And this affiant sees  
21 no evidence to the contrary. And affiant is with this  
22 conviction that no such evidence exists.

23 Affiant is with this conviction that government  
24 employees acting in disguise assault their subscribed and  
25 sworn or affirmed appointment affidavit Form 61 when said



1 disguised employees evade freely giving their oath in court  
2 and show the whole world unclean hands. And this affiant sees  
3 no evidence to the contrary. And affiant is with this  
4 conviction that no such evidence exists.

5 Affiant is with this conviction that the mixed  
6 war going on within the federal government wastes government  
7 funds and perpetuates fraud and abuse between the rogue  
8 employees in disguise at work or on highways and their  
9 employer as they engage in sit-down strikes, slow-down  
10 strikes, et cetera. Public policy has to be identified first.  
11 And without public policy, no privilege exists.

12 These government employees in disguise thus war  
13 on their own appointment affidavit, their employer, and  
14 affiant in this bankruptcy case. And this affiant sees no  
15 evidence to the contrary. And affiant is with this conviction  
16 that no such evidence exists.

17 However, affiant is with this conviction that  
18 both federal and Washington state government employees, their  
19 offices, and their government employer, the United States and  
20 Washington State, are, in fact, bound to a fiduciary duty to  
21 this affiant. And no further assaults or warrant are  
22 permitted by any government employee or employer in or out of  
23 disguise at their office or on the highways or in court on  
24 this affiant. See In re our undisputed public agreement and  
25 the power of attorney. And this affiant sees no evidence to

1 the contrary, and affiant is with this conviction that no such  
2 evidence exists.

3 Further affiant saith not. Dated this 20th day  
4 of May 2016.

5 THE COURT: All right. Thank you, Mr. McMeel.

6 Is there any other argument you would like to  
7 present in support of your position?

8 MR. MCMEEL: No, sir. Would I be allowed to  
9 read the ex parte order of judgment later?

10 THE COURT: That's your proposed order, right?

11 MR. MCMEEL: Yes.

12 THE COURT: So no. I don't let people read  
13 proposed orders. That's not part of the argument. So  
14 anything further you would like to add for argument in support  
15 of your position?

16 MR. MCMEEL: No. I'm done.

17 THE COURT: I'm sorry?

18 MR. MCMEEL: I'm done.

19 THE COURT: You're done. All right. The Court  
20 is ready to rule.

21 These two matters came before the Court on the  
22 ex parte motion by the United States Trustee for order to show  
23 cause re civil contempt at Docket Number 189, the order to  
24 show cause at Docket Number 196, and the amended ex parte  
25 order to show cause at Docket 13, proof of service of which,

1 at Docket 18, showing that it was mailed to Mr. McMeel on May  
2 10, 2016; and, second, this Court's order to show cause at  
3 Docket 214, which was mailed by the clerk of the court to  
4 Mr. McMeel on May 9.

5 The Court considered the records in the files in  
6 this case, including the U.S. Trustee's ex parte motion, the  
7 various filings by Mr. McMeel that will be described in more  
8 detail below, and the joinder of the U.S. Trustee's show cause  
9 motion filed by the Washington state tax agencies. The Court  
10 has heard argument from Mr. McMeel and from Martin Smith on  
11 behalf of the U.S. Trustee's Office.

12 Based on the above, the Court finds and  
13 concludes as follows:

14 1. This Court has jurisdiction over the motion  
15 and the show cause orders pursuant to 28 USC Sections 157 and  
16 1334. This is a core proceeding under 28 USC Section  
17 157(b)(2), and venue is proper pursuant to 28 USC Section 1408  
18 and 1409.

19 2. On April 25, Mr. McMeel filed a document in  
20 this Court titled, "By restricted appearance statutory power  
21 of attorney by the authority of the DC Code Section 21-210."  
22 That's at Docket Number 121, to which is attached a power of  
23 attorney that appears to be recorded in the Thurston County  
24 records on April 12, 2016.

25 Under this power of attorney, the grantors are

1 Jeffrey McMeel and Martha McMeel; and the grantees are as  
2 follows: The United States; the Office of the United States  
3 Bankruptcy Court, Western District of Washington; the United  
4 States Government Accountability Office; the Office of the  
5 United States Trustee, Program Region 18; Office of the  
6 Secretary of the Treasury; Washington State; Office of the  
7 Washington Supreme Court; Office of King County Probate Court;  
8 and Mark Calvert, trustee.

9           Then what follows on this power of attorney are  
10 four pages of -- all I can say is -- words that are  
11 essentially nonsense. But it appears that Mr. McMeel is  
12 demanding that all of these entities work in concert to turn  
13 over property to him and to preserve and to protect all of his  
14 rights.

15           In addition to this statutory power of attorney,  
16 Mr. McMeel filed a, "Restricted Appearance Letter to the  
17 Court," that poses a number of nonsensical questions. But it  
18 essentially appears that he is questioning the legitimacy of  
19 the debtor's bankruptcy filing because it supposedly does not  
20 satisfy the requirements established by the Bankruptcy Act of  
21 1898.

22           Then he files two separate notices of filing of  
23 that said bankruptcy act, to which he attached certified  
24 copies of the law that apparently he obtained from the  
25 National Archives on November 6, 2014. See docket entry

1 Numbers 122, 123, and 124.

2 3. The special agent filings.

3 Based on this power of attorney at Docket Number  
4 121, on May 3, 2016, Mr. McMeel filed numerous documents,  
5 including what are purported to be notices of appearances as a  
6 "special agent" for various state of Washington and U.S.  
7 officials and agencies identified in that power of attorney at  
8 Docket 121. See ECF Docket Numbers 169 through 178.

9 For example, one of these pleadings, at Docket  
10 Number 173, represents that Mr. McMeel is a special agent for  
11 the United States Trustee. And it states as follows, and I  
12 quote: "Comes now United States Trustee, special agent,  
13 enters here with her appearance undersigned and directs that  
14 all future pleadings or papers in the above-entitled cause,  
15 exclusive of original process, be served upon the said special  
16 agent, the United States Trustee, by leaving a copy with her  
17 attorneys by the authority of her principal, Jeffrey Mark  
18 McMeel, evidenced by his power of attorney granted to the  
19 Office of the U.S. Trustee program Region 18, Docket Number  
20 121, on file with the court clerk and included with this  
21 filing with the court clerk."

22 Mr. McMeel has no evidence that he has been  
23 given any authority to act on behalf of the U.S. Trustee or  
24 any of these entities. Nor does he have any evidence that any  
25 of these entities have agreed to act as his attorney in fact.

1 Mr. McMeel seems to confuse the terms "principal" and "agent."  
2 But there is no confusion that he is filing a paper on behalf  
3 of the United States Trustee and other entities without any  
4 legal basis to do so.

5 4. The additional powers of attorney and  
6 reasserting his demands.

7 In response to the United States Trustee's  
8 motion and show cause order, Mr. McMeel, to use a popular  
9 phrase, decided to double down by filing another series of  
10 papers in which he restates his rights and asserts more  
11 rights.

12 First he filed a declaration of response at  
13 Docket Number 233, in which he states that no one has  
14 responded to the power of attorney he filed. He, therefore,  
15 demands that all parties appear before the Washington State  
16 Bar disciplinary counsel. He gives the Court, the U.S.  
17 Trustee, and the Attorney General's Office three days to  
18 respond to his papers or withdraw as his agent in fact.

19 Mr. McMeel then filed another power of attorney  
20 at Docket 234 that appears to have been recorded in the  
21 Thurston County records on December 12, 2015. The grantor  
22 under this power of attorney is the State of Washington,  
23 Department of Health, Certificate of Life Birth Number XXXX,  
24 which appears to mean Mr. McMeel. And the grantees this time  
25 are Congressman Denny Heck; the United States of America; Jack

1 Lew, the Secretary of the Treasury; Vincent G. Logan, as  
2 Special Trustee for American Indians; Governor Jay Inslee;  
3 Attorney General Bob Ferguson; the Queen or King of England;  
4 Public Policy; and the Washington State Supreme Court.

5           Again, the same nonsensical statements follow,  
6 that appear to require all of these people to act and serve  
7 Mr. McMeel's personal interests.

8           Finally, he filed a document captioned, "An Act  
9 Providing for the Better Organization of the Treasury  
10 Department, May 15, 1820, and Appointment Affidavits-Form 61  
11 and Declaration" at docket 235.

12           In this document, Mr. McMeel accuses the U.S.  
13 government employees of being on strike in regards to him and  
14 his claim, of not providing honest government service to him,  
15 of warring on the U.S. Constitution and, therefore, striking  
16 against the federal government. He then attaches what appears  
17 to be a certified but illegible copy of an old act obtained  
18 from the National Archives and Records Administration on  
19 November 6, 2014, meaning he obtained this document a year and  
20 a half ago.

21           To date, Mr. McMeel, not counting the papers he  
22 filed this morning, has filed 18 documents that consist of  
23 alleged powers of attorney, documents filed on behalf of  
24 various agencies and persons, and documents to which he  
25 attaches various statutes in support of his authority. These

1 will be known as the "special agent pleadings."

2 Notably, Mr. McMeel is not a stranger to the  
3 federal court in this district and has already been sanctioned  
4 for engaging in similar conduct. In McMeel versus United  
5 States, Mr. McMeel commenced an action in the United States  
6 District Court for the Western District of Washington, Case  
7 Number 12-6067. And today this Court takes judicial notice of  
8 the pleadings and papers filed in that proceeding.

9 There, Mr. McMeel filed a complaint against the  
10 IRS, which was eventually dismissed for lack of jurisdiction.  
11 Over a year after the judgment was entered, Mr. McMeel filed a  
12 series of documents contesting the Court's ruling. See  
13 Dockets Number 22 through 24. The District Court noted that  
14 Plaintiff's filings, "contain meritless arguments for  
15 reopening this matter," denied the relief requested in the  
16 filings, and instructed the clerk of the court not to note any  
17 subsequent document on the Court's calendar for the Court's  
18 consideration. See Docket Number 25.

19 Mr. McMeel subsequently filed several more  
20 documents, including a copy of the 1898 Bankruptcy Act -- see  
21 Docket Number 28 -- and two documents called distress  
22 warrants, one against an attorney for the IRS and the other  
23 against an employee of the IRS, purportedly to distrain the  
24 real property of those individuals to satisfy amounts  
25 Mr. McMeel claimed were owed to him. See Docket Numbers 29



1 and 30 in that case.

2           The District Court struck the two documents.  
3 See Docket Number 34. But Mr. McMeel kept on filing motions  
4 and documents. Judge Settle finally entered an order that  
5 noted that since striking the distress warrants, Mr. McMeel,  
6 "had filed numerous frivolous motions seeking appeal or  
7 reconsideration of the Court's order."

8           While the Court had ordered the clerk not to  
9 note any subsequent matters filed by Mr. McMeel on the Court's  
10 calendar, Mr. McMeel was circumventing that order by filing  
11 motions electronically. Judge Settle concluded that  
12 Mr. McMeel was, "abusing his privilege to file electronically,  
13 based on his numerous frivolous motions," revoked Mr. McMeel's  
14 electronic filing rights in that case, and directed the clerk  
15 to disable his ECF registration in that case. See Docket  
16 Number 43.

17           5. The Bankruptcy Court has the power to impose  
18 contempt sanctions.

19           First, the Court's statutory civil contempt  
20 power is based on Bankruptcy Code Section 105(a). See  
21 *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186 (9th Cir.  
22 2011).

23           Specifically, this Court has the statutory power  
24 to deal with civil contempt through the authority to issue any  
25 order, process, or judgment that is necessary and appropriate

1 to carry out the provisions of this title. The Court also has  
2 the inherent sanction authority. In re Lehtinen, 564 F.3d  
3 1052 (9th Cir. 2009).

4 Inherent powers are governed not by rule or  
5 statute, but by the control necessarily vested in Courts to  
6 manage their own affairs, so as to achieve the orderly and  
7 expeditious disposition of cases. See Chambers v. NASCO,  
8 Inc., 501 U.S. 32 (1991).

9 Such inherent authority may be used to address  
10 bad faith or willful misconduct, even in the absence of  
11 expressed statutory authority to do so. That is from the  
12 Lehtinen case, 564 F.3d 1058.

13 Sanctionable acts include those where: one, a  
14 party has acted in bad faith, vexatiously, wantonly, or for  
15 oppressive reasons; two, when a party participates in an abuse  
16 of process or other dilatory conduct; or, three, when the  
17 Court finds that fraud has been practiced upon it or that the  
18 very temple of justice has been defiled. That's from the  
19 Chambers decision, 501 U.S. 46. See also In re Rainbow  
20 Magazine, Inc., 77 F.3d 278 (9th Cir. 1996). See also Fink  
21 v. Gomez, 239 F.3d 989 (9th Cir. 2001), which held sanctions  
22 are available for a variety of types of willful actions,  
23 including recklessness when combined with an additional factor  
24 such as frivolousness, harassment, or an improper purpose.  
25 Chambers held that the Court may sanction bad-faith conduct

1 under its inherent power, even if the person could be  
2 sanctioned under other statutes or rules.

3 6. Rule 9011.

4 In addition to imposing sanctions for contempt,  
5 the Court has the authority, under Federal Rule of Bankruptcy  
6 Procedure 9011, to impose sanctions. Rule 9011(b) states that  
7 by presenting to the Court a petition, pleading, written  
8 motion, or other paper, an attorney or unrepresented party is  
9 certifying that to the best of his knowledge, information, and  
10 belief, formed after a reasonable inquiry under the  
11 circumstances: one, is not being presented for any improper  
12 purpose, such as to harass or to cause unnecessary delay or  
13 needless increase in the cost of litigation; two, the claims  
14 defenses and other legal contentions are warranted by existing  
15 law or by a nonfrivolous argument for the extension,  
16 modification, or reversal of existing law or the establishment  
17 of new law; three, the allegations and other factual  
18 contentions have evidentiary support or are likely to have  
19 evidentiary support after a reasonable opportunity for further  
20 investigation or discovery; and, four, the denials of factual  
21 contentions are warranted on the evidence, or if specifically  
22 so identified, are reasonably based on a lack of information  
23 or belief.

24 Rule 9011(c) provides: If, after notice and a  
25 reasonable opportunity to respond, the Court determines that

1 this rule has been violated, the Court may impose an  
2 appropriate sanction upon the parties that committed or are  
3 responsible for the violation. Subsection (c)(1)(B)  
4 authorizes the Court, on its own initiative, to enter an order  
5 describing the specific conduct that appears to violate  
6 subsection (b) and directing the person to show cause why it  
7 has not violated the rule.

8           The Court here has done that at Docket Number  
9 214, in which the Court specifically stated that Mr. McMeel  
10 filed the special agent notices without any evidence to  
11 support that these agencies consented to his appearance, and  
12 it appeared that he was in violation of Rule 9011(b).

13           9011(c)(2) provides that a sanction imposed for  
14 a violation of this rule shall be limited to what is  
15 sufficient to deter repetition of such conduct or comparable  
16 conduct by others similarly situated. The sanction may  
17 include directives of a nonmonetary nature and an order to pay  
18 a penalty into the court.

19           When determining whether sanctions are warranted  
20 under Rule 9011(b), the Court must consider both frivolousness  
21 and improper purpose on a sliding scale, where the more  
22 compelling the showing as to one element, the less decisive  
23 the need be to showing as to the other. That's from *In re*  
24 *Silberkraus*, 336 F.3d 864 (9th Cir. 2003).

25           7. Examples of sanctions.

1                   The Court may impose sanctions under both Rule  
2 9011 and for contempt. In the Rainbow Magazine case, the  
3 person controlling the debtor was sanctioned \$45,000 for  
4 signing a false statement of financial affairs in violation of  
5 Rule 9011(b). The same person was also sanctioned for  
6 orchestrating the filing of the case, which the Court found  
7 was in bad faith and abused the bankruptcy process. The  
8 amount of that sanction was \$244,389, based on legal fees  
9 incurred by other parties, and was imposed under the Court's  
10 inherent powers to issue sanctions for contemptuous conduct.

11                   In addition to monetary sanctions, this Court  
12 may enjoin a party from filing documents. The U.S. Code  
13 authorizes courts established by acts of Congress to issue all  
14 writs necessary or appropriate in aid of their respective  
15 jurisdictions. See 28 USC Section 1651(a). This section has  
16 been interpreted to mean that courts, including bankruptcy  
17 courts, have the power to enjoin a party from filing pleadings  
18 when and to the extent necessary to protect themselves and  
19 other parties from the chaos and burdens of vexatious,  
20 duplicative, frivolous litigation. *Cook v. Peter Kiewit Sons*  
21 *Co.*, 775 F.2nd 1030 (9th Cir. 1985) cert. denied 476 U.S. 1183  
22 (1986). See also *In re Reilly*, 112 B.R. 1014 (BAP 9th Cir.  
23 1990). And this Court may do both; impose a monetary sanction  
24 and prevent further pleadings until the monetary sanction is  
25 paid.

1                   In *Stelly v. Commissioner*, 804 F.2nd 868, (5th  
2 Cir. 1986), the Fifth Circuit Court of Appeals imposed on the  
3 *Stellys*, who were pursuing a frivolous appeal for the second  
4 time, a monetary sanction of \$2,000 and directed the clerk of  
5 the court to not accept any new filings by the *Stellys* for any  
6 tax-related appeals until the sanctions were paid and until  
7 the parties provided proof they had satisfied all of the prior  
8 tax judgments against them.

9                   10. Sanctions in this case against Mr. McMeel  
10 are warranted.

11                   The Court concludes that the special agent  
12 pleadings are false and misleading. Each and every one of the  
13 special agent pleadings appear to be an intentional and  
14 fraudulent effort to confuse, misdirect, and obfuscate the  
15 proper notice procedures for the agencies involved and to  
16 interfere with the administration of this bankruptcy case.  
17 The constant filings also place a burden on the clerk's  
18 office. These papers are, frankly, nonsense, have no  
19 legitimate purpose, and were submitted in bad faith.

20                   The Court finds that by filing numerous specious  
21 papers, in which he falsely asserts either to be the agent or  
22 the principal of various agencies and persons, Mr. McMeel has:  
23 one, acted in bad faith, vexatiously, and for oppressive  
24 reasons; and, two, has participated in an abuse of process.

25                   To be clear, these are not merely frivolous

1 papers. By falsely asserting both (a) that he can appear on  
2 behalf of various individuals and government agencies, and (b)  
3 that various individuals and government agencies have been  
4 appointed by him to work for him, he is interfering with the  
5 rights of those persons and agencies and interfering with the  
6 administration of justice.

7 Under its inherent authority, the Court finds  
8 the conduct warrants the imposition of sanctions. And under  
9 Bankruptcy Code Section 105(a), the Court finds it necessary  
10 to exercise its statutory civil contempt power to issue an  
11 order to stop these abusive filings and destructive filings so  
12 the Court may administer this case and otherwise carry out the  
13 provisions of this title.

14 Since Mr. McMeel was previously sanctioned  
15 before for similar conduct by another Court in this  
16 jurisdiction, more severe sanctions are now necessary to deter  
17 such behavior in the future.

18 The Court further finds that the special agent  
19 pleadings were filed willfully, are frivolous, were intended  
20 to harass, were for an improper purpose, and were filed in bad  
21 faith, all in violation of Federal Bankruptcy Rule 9011(b).

22 The Court further finds that Mr. McMeel was  
23 afforded an adequate notice and opportunity to respond to the  
24 two show cause orders. Sadly, his response was to restate his  
25 frivolous, abusive, and bad-faith positions. So he squandered

1 his opportunity to demonstrate his understanding and  
2 willingness to comply with the Bankruptcy Code and rules  
3 absent the imposition of sanctions. Mr. McMeel, therefore,  
4 must be sanctioned to coerce his compliance with the rules of  
5 this Court.

6           Based on the above, the Court will grant the  
7 U.S. Trustee's motion and enter an order on that motion and on  
8 the Court's sua sponte show cause order along the following.  
9 And the Court is going to prepare an order and submit it at a  
10 later date. But so everyone knows, when they walk away from  
11 here, what's going to happen:

12           First, Mr. McMeel shall pay to the clerk of the  
13 bankruptcy court \$2,500 in sanctions for contempt and \$2,500  
14 in sanctions for violation of Federal Bankruptcy Rule 9011(b).

15           Second, Mr. McMeel, his agents, and anyone  
16 acting in concert with him shall be prohibited from filing or  
17 causing to be filed any documents and papers in this case  
18 until he pays the two sanctions awards, except he may file the  
19 following prior to paying the sanctions: He may file a motion  
20 for reconsideration of this order. He may file a notice of  
21 appeal of this order. If he files a notice of appeal, he may  
22 then file documents related to and under that appeal. If he  
23 hasn't done so already, he may file a proof of claim and any  
24 amendments to that proof of claim. In the event that there's  
25 an objection filed to his proof of claim, then he may file



1 papers in response to the objection and in support of his  
2 claim. And in the event any person or entity files a motion,  
3 a contested matter, or adversary proceeding against him, then  
4 he may file papers and documents in defense of the claims or  
5 matters asserted against him.

6 Third, if and only if he pays both sanctions  
7 awards, Mr. McMeel may then file papers and pleadings in this  
8 case that comply with Bankruptcy Rule 9011(b), except that  
9 Mr. McMeel shall be permanently barred from filing or causing  
10 to be filed any paper or pleading in this case on behalf of  
11 any other person or entity other than himself.

12 Finally, the special agent pleadings identified  
13 above, and including those that were filed today, on May 20,  
14 shall be stricken and sealed such that only members of this  
15 Court's judicial chambers and the Court's information  
16 technology staff shall have access to the sealed documents.

17 The Court will enter an order.

18 Are there any questions, first, Mr. Smith?

19 MR. SMITH: I don't have any questions. I did  
20 need to, for the record, let the Court know that Mr. McMeel is  
21 also filing frivolous bar grievances against various  
22 individuals, including the United States Trustee and myself,  
23 which have, at least currently, been dismissed and closed. I  
24 don't know if that's -- how wide of a net Mr. McMeel is  
25 throwing, in terms of his outside-this-courtroom behavior.

1 But that's one instance that recently happened.

2 THE COURT: Thank you. The Court is aware of  
3 that.

4 Mr. McMeel, do you have any questions?

5 MR. MCMEEL: Who read that statement?

6 THE COURT: What statement?

7 MR. MCMEEL: Who read that statement that was  
8 read?

9 THE COURT: What statement are you talking  
10 about?

11 MR. MCMEEL: The previous statement, that long  
12 statement that was read into the record. Who read that?

13 THE COURT: I don't understand your question.

14 MR. MCMEEL: You were reading into the record  
15 many items.

16 THE COURT: You just answered your question,  
17 then, didn't you?

18 MR. MCMEEL: I want to hear it, for the record,  
19 who read it.

20 THE COURT: I read it.

21 MR. MCMEEL: Thank you.

22 THE COURT: So you just answered your question.

23 MR. MCMEEL: I object.

24 THE COURT: Mr. McMeel, I hope you understand  
25 the seriousness of what I just read. You are abusing the

1 system. You have a serious misunderstanding of the law. You  
2 are not to be filing any more frivolous pleadings. I expect  
3 that you will heed what I've said today. You have a  
4 misunderstanding of the law. You need to either talk to a  
5 lawyer or stop filing.

6 MR. MCMEEL: Who are you?

7 THE COURT: Do you want to be found in contempt?  
8 Because that is contemptuous behavior. You will treat the  
9 Court with respect. I am a bankruptcy judge, and you will  
10 treat the Court with respect, sir. I suggest that -- unless  
11 you have something to assist your cause, you should not say  
12 anything further. Do you have anything to assist your cause?

13 MR. MCMEEL: I just don't understand the  
14 authority.

15 THE COURT: Well, you should talk to an  
16 attorney. And that's my parting suggestion to you. So unless  
17 there's anything further on this matter, court will be in  
18 recess.

19 Thank you, everyone.

20 MR. SMITH: Thank you, Your Honor.

21

22 (The proceedings in this matter were concluded.)

23

24

25

## 1 CERTIFICATE

2  
3 I, Shari L. Wheeler, court reporter and court-approved  
4 transcriber, certify that the foregoing is a correct  
5 transcript from the official electronic sound recording of the  
6 proceedings in the above-entitled matter. Some editing  
7 changes may have been made at the request of the Court.

8  
9 These pages constitute the original or a copy of the  
10 original transcript of the proceedings, to the best of my  
11 ability.

12  
13 Signed and dated this 9th day of June, 2016.

14  
15  
16 by /s/ Shari L. Wheeler

17 SHARI L. WHEELER, CCR NO. 2396  
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