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Honorable Christopher M. Alston
Chapter 11
Location: Seattle, Courtroom 7206
Hearing Date: June 22, 2016

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

11 In re:
12 NORTHWEST TERRITORIAL MINT, LLC,

Case No. 16-11767-CMA
CORRECTED TRUSTEE'S TRIAL BRIEF
FOR EVIDENTIARY HEARING
SCHEDULED FOR JUNE 22, 2016

13 **I. INTRODUCTION**

14 Mark Calvert, Chapter 11 Trustee (the "Trustee") for the Northwest Territorial Mint, LLC
15 ("NWTM"), in the above-captioned proceeding, by and through his attorneys, K&L Gates, LLP,
16 respectfully submits this prehearing brief related to the legal standard to be applied at the June 22,
17 2016 evidentiary hearing and the evidence that the Trustee will present.

18 **II. STATEMENT OF FACTS**

19 A. Northwest Territorial Mint

20 NWTM billed itself as the largest private mint in the United States. NWTM's business
21 operations included custom minting of medals and commemorative coins as well as on-line and
22 walk-in sales of precious metals and coins (the "Bullion Business"). All facets of its operations were
23 exclusively controlled by Ross Hansen, its 100% owner. Ross Hansen oversaw every aspect of
24 NWTM's operations, and notwithstanding organization charts showing different levels of
25 management, every employee effectively reported directly to Ross Hansen.
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CORRECTED TRUSTEE'S TRIAL BRIEF FOR
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1 In 2010 NWTM leased a building in Federal Way, Washington (the “Federal Way
2 Building”). As well as serving as NWTM’s corporate headquarters, the Federal Way Building is the
3 site at which the majority of the Bullion Business was conducted. The Federal Way Building
4 contains a vault room (the “Vault”), with several safes containing bullion, coins, and cash. Walk-in
5 sales of bullion to customers of NWTM were also offered at the Federal Way Building.

6 B. Diane Erdmann’s Background and Responsibilities at the NWTM

7 Diane Erdmann has held one paying job since graduating from high school. From 1992 until
8 1993 she held a job checking-in specimens at a medical laboratory. In 1993 her husband passed
9 away in 1993, and on May 13, 1993, Ms. Erdmann received a check for \$133,900 (the “Life
10 Insurance Proceeds”) from Servicemen’s Group Life Insurance.

11 Diane Erdmann and Ross Hansen met in 1997, ostensibly when Ms. Erdmann purchased gold
12 and silver coins from NWTM. Prior to meeting Ross Hansen, Ms. Erdmann lived with her mother,
13 and had been unemployed since 1993. Ms. Erdmann began living with Ross Hansen in 2000, and
14 started working at NWTM in the same year. Despite working for NWTM, Ms. Erdmann has never
15 been an employee of NWTM, and she received no salary for the services she provided to NWTM.
16 Mr. Hansen also received no salary from NWTM. Instead, when either Diane Erdmann or Ross
17 Hansen needed money, they would take cash from the Vault as an “owner’s draw.” Other than these
18 “owner draws” Ms. Erdmann has had no source of income since 1993.

19 When she started working at NWTM, Ms. Erdmann was given the responsibility and job title
20 of “shipping manager.” In the context of that position, Ms. Erdmann was responsible for packaging
21 and filling bullion order received from customers. In 2005, she was given the responsibility of
22 “watching the vault [located at the Auburn facility] and tracking the metals throughout the
23 company.” In 2010, when NWTM moved into the Federal Way Building, Ms. Erdmann was put in
24 charge of the Vault at that location. Ms. Erdmann was the only “employee” of NWTM, exclusive of
25 Ross Hansen, with access to the gold stored in the Vault. In addition to precious metals, significant
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1 amounts of cash, as much as a million dollars at one point, were also kept in the Vault.

2 Astoundingly, despite being the Vault Manager, Ms. Erdmann maintained almost no records
3 related to the precious metals and cash stored in the Vault. In her words, maintaining records, such
4 as an inventory, “would have been far too time-consuming.” NWTM “found it better to put one
5 person [Diane Erdmann] in the [Vault] to be a kind of gatekeeper.” The sole computer records kept
6 related to the potentially millions of dollars worth of NWTM-owned bullion and cash stored in the
7 Vault were two spreadsheets, both maintained by Diane Erdmann. The first, called a stock sheet
8 (“Stock Sheet”) was nothing more than a spreadsheet with a list of a few of the more common forms
9 of bullion sold by NWTM (such as Gold Maple Leaf coins), on which Ms. Erdmann would notate
10 the quantity of each held in the Vault. Not only was the Stock Sheet file not an inventory by any
11 stretch of the imagination, it was overwritten daily so that it could not even be used as a running
12 inventory of the few items that it tracked. At best, the Stock Sheet was a way for sale personnel to
13 see if NWTM might have an item on hand that could be sold. The second record maintained by Ms.
14 Erdmann was a running spreadsheet of cash kept in the Vault (the “Vault Cash Log”). The Vault
15 Cash Log was nothing more than a running tally of money deposited or removed from the Vault,
16 with a notation as to the source or use of the cash.

17 Ms. Erdmann was truly, as she stated, the “gatekeeper” of the bullion and cash. When a
18 salesperson needed bullion to fill an order, or a sample to show a customer, they would have to get
19 the bullion from Ms. Erdmann. She was the only person with authority to remove bullion (other
20 than silver) from the Vault and the only person with the combination to the safes in which gold,
21 platinum and palladium were kept. The fact that only she had access to the bullion was NWTM’s
22 sole theft-prevention measure with respect to gold, platinum, and palladium.

23 C. The Cohen Judgment

24 In August, 2012, Bradley Stephen Cohen and Cohen Asset Management Inc. (collectively,
25 the “Cohen Parties”) commenced a lawsuit in the United States District Court for the District of
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1 Nevada, under case no. 12-01401 (the “Cohen Lawsuit”). The defendants in the Cohen Lawsuit
2 included, amongst others, Ross Hansen and NWTM. The allegations in the Cohen Lawsuit were that
3 Ross Hansen and others defamed the Cohen Parties by creating vindictive websites accusing Bradley
4 Stephen Cohen, an investment manager, of running a Ponzi scheme. On February 17, 2016, the jury
5 empaneled in the Cohen Lawsuit returned a verdict finding Ross Hansen, NWTM, and the other
6 defendants liable for damages. On March 1, 2016, a judgment was entered in the Cohen Lawsuit.
7 Judgment was entered in the amount of \$12,500,000 as to NWTM, and judgment was entered
8 against Ross Hansen in the amount of \$25,500,000 (the “Judgment”).

9 D. Diane Erdmann’s and Ross Hansen’s Actions Prior to NWTM’s Bankruptcy

10 1. Diane Erdmann ceases maintaining records

11 As set-forth above, Ms. Erdmann was in charge of maintaining the meager business records
12 which NWTM maintained with respect to the cash and bullion stored in the Vault. Specifically, she
13 maintained the Stock Sheet and Vault Cash Log. Although she maintained these Excel
14 Spreadsheets, they were stored on a shared drive, where other NWTM employees could access them.
15 Significantly, on February 17, 2016, the very day that the jury in the Cohen Lawsuit returned a
16 verdict against NWTM and Ross Hansen, Ms. Erdmann ceased maintaining the Vault Cash Log.
17 From that point forward, the only records of cash flowing into and out of the Vault were daily
18 handwritten “vault logs” (the “Till Sheets”). A Till Sheet is a simple printed form with five columns
19 - Amount, In, Out, Notes, and Initials. Every Day a fresh Till Sheet would be taped to the top of the
20 cash till kept in the Vault, and over the course of the day cash additions and withdrawals would be
21 logged onto the Till Sheet by hand. Although Ms. Erdmann ceased maintaining the Vault Cash Log,
22 Annette Trunkett, an accounting employee, did her best to update the Vault Cash Log using the daily
23 Till Sheets. Although the practice had been to start a fresh Till Sheet every day, on March 24, 2016,
24 Ms. Erdmann forbade Ms. Trunkett from reviewing the Till Sheet or removing it from the till box so
25 that the Vault Cash Log could be updated. During the period following March 24, 2016, until
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1 Ms. Erdmann ceased working at NWTM, April 12, 2016, cash deposits and withdrawals were noted
2 on a single Till Sheet (the “Final Till Sheet”), maintained by Ms. Erdmann. The transactions
3 recorded on the Final Till Sheet contain no date, so it is impossible to tell when Ms. Erdmann ceased
4 maintaining it. The last entry on the Final Till Sheet, a disbursement of \$500 would have left
5 \$189,367.76 in the Vault. On April 12, 2016, when Ms. Erdman ceased working at NWTM, the cash
6 balance in the Vault was \$1,672.34.

7 In addition to ceasing maintenance of the Vault Cash Log, in March, 2016, Ms. Erdmann
8 appears to have stopped keeping the Stock Sheet on the shared drive. The last version on the shared
9 drive was accessed last in March, 2016, and saved without information filled-in. Accordingly, there
10 was no shared record of whether any of the items tracked on the Stock Sheet were in the Vault in
11 later March, 2016, or any time thereafter.

12 2. Diane Erdmann opens new safety deposit boxes

13 Prior to late 2015, Ms. Erdmann maintained a single safety deposit box at Wells Fargo Bank.
14 In October, 2015, she opened a new “small” safety deposit box, and on March 8, 2016, Diane
15 Erdmann opened three new medium safety deposit boxes.

16 3. Increased coming and going

17 On a typical workday, Diane Erdmann would arrive at the Federal Way Building at
18 approximately 9:30 a.m., and she would work until 6 or 7 p.m. It was uncommon for Ms. Erdman to
19 leave the facility during the work day for lunch (other than to pick up lunch and bring it immediately
20 back) or otherwise. Accordingly, Ms. Erdmann’s frequent coming and goings from the facility,
21 commencing in March, 2016, were noticed by other employees. Rather than sitting at her work
22 station all day, as was her practice, other employees noticed that she starting leaving and returning at
23 irregular times during the day, sometimes with Ross Hansen and sometimes alone.

24 4. Diane Erdmann and Ross Hansen remove items from the Vault

25 On Saturday, March 26, 2016, and again on Easter Sunday, March 27, 2016, the security
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1 cameras in the Vault and Federal Way Building recorded Diane Erdmann and Ross Hansen
2 removing boxes from the Vault after business hours. On March 26, 2016, at approximately 8:10
3 p.m., Diane Erdman and Ross Hansen arrived at the Federal Way Building and shortly thereafter
4 were captured on video in the Vault. In the video, Ms. Erdmann can be seen opening the safe in
5 which gold and other high value bullion was kept, and removing two medium-sized, and one large
6 box from the safe while Ross Hansen watches. Security footage shows that Ross Hansen carried the
7 boxes out of the Federal Way Building at approximately 8:18 p.m.

8 The following night, Easter Sunday, Ms. Erdmann and Ross Hansen were captured on
9 security video arriving at the Federal Way Building at approximately 8:16 p.m. Ms. Erdmann and
10 Mr. Hansen were filmed entering the Vault at 8:22 p.m., and filling a box with items taken from a
11 safe and other locations in the Vault. They left the Vault with the box at approximately 8:27 p.m.
12 and were filmed leaving the Federal Way Building, with the box.

13 E. Funding of the Retainer and Events of March 31, 2016

14 1. The \$50,000 wire

15 On March 31, 2016, the Retainer Funds were paid to TTLG. \$50,000 of the Retainer Funds
16 were paid via a wire transfer from Ms. Erdmann's bank account at Wells Fargo Bank (the "Retainer
17 Wire Portion"). In a declaration filed on May 2, 2016 Ms. Erdman describes the transaction as
18 follows: "I transferred \$50,000 from my individual checking account by wire transfer." What
19 Ms. Erdmann failed to state in her declaration is that on the same day, March 31, 2016, she deposited
20 \$50,000 in cash into her checking account and immediately wired it out. Just two weeks earlier, on
21 March 17, 2016, Ms. Erdmann paid another retainer, to a law firm in North Carolina, by depositing
22 \$25,000 in cash into her back account and wiring it out the same day.

23 2. The coin sale

24 On the morning of March 31, 2016, Ms. Erdmann arrived for work at approximately 8:40
25 a.m. carrying a medium-sized black zip-up bag (the "Black Bag"). Ms. Erdmann placed the Black
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1 Bag under her work station. Later in the day, on March 31, 2016, David Huffman, NWTM's head of
2 security was called into Ross Hansen's office. Ross Hansen instructed Mr. Huffman to go the Vault
3 and pick up the Black Bag from Ms. Erdmann, which he indicated was full of gold bullion, and to
4 take it to a refinery in Mount Vernon. Once there, he was to allow the manager of the refinery to
5 "pick through" the bag, and take whatever he wanted. Ross Hansen informed Mr. Huffman that the
6 manager was to then create a check in Diane Erdmann's name. As instructed, Mr. Huffman went to
7 the Vault, where Ms. Erdmann handed the Black Bag to him. Mr. Huffman left the Federal Way
8 Building and began driving to Mount Vernon. About half-way to Mount Vernon, Mr. Huffman
9 received a phone call from Ross Hansen, instructing him to turn around, and to take the Black Bag to
10 the Seattle Coin Shop in Wedgewood. There, John Drummey, the owner, would pick through the
11 bag for items he wanted to purchase, and would issue a check to Diane Erdmann.

12 Per Ms. Erdmann, the Black Bag contained approximately 200 ounces of gold bullion in the
13 form of coins and small bars. At the Seattle Coin Shop, Mr. Drummey "picked through" the bag and
14 took eighty (80) 1 oz. gold coins. Mr. Drummey and Mr. Huffman, who was carrying the Black Bag
15 with the remaining 120 ounces of bullion, walked to a nearby branch of Key Bank, where a cashier's
16 check in the amount of \$99,460 (the "Check") was issued, made out to Diane Erdman. Mr. Huffman
17 drove back to the Federal Way Building with the check and Black Bag. Once there, he returned the
18 Black Bag to Ross Hansen in his office, who instructed him to drive to TTLG's office and deliver
19 the Check. Ms. Erdmann, who was also in Ross Hansen's office, endorsed the Check to TTLG and
20 handed it to Mr. Huffman. As instructed, Mr. Huffman drove the Check to Seattle and delivered it to
21 Todd Tracy.

22 III. STATEMENT OF TRIAL ISSUES

- 23 1) Does the NWTM bankruptcy estate have an interest in the Retainer Funds?
24 2) What is the nature of the estate's interest in the (Funds) Retainer?
25 3) Whether any of Ms. Erdmann's actions constitute violations of the automatic stay of
26 11 U.S.C. 362?

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1 amounts of cash and bullion she held immediately prior to March 31, 2016. Ms. Erdmann's
2 explanation is simply not credible. The Trustee will establish, at trial, that Ms. Erdmann purchased
3 no more than \$10,000 to \$15,000 of bullion from NWTM, net, in 1997. It is undisputed that she had
4 no source of income between 1993 and 2000, and has received no salary since that date. Somehow,
5 this \$130,000 payout in 1993 has not only covered twenty-three years of living expenses (even if one
6 assumes such expenses were only \$4,000 a year, such expenses would total \$92,000), but she was
7 able to transform it into \$175,000 in cash and gold used to pay attorney retainers in March, 2016,
8 approximately \$150,000 in gold and silver which she claims to own, currently held by the King
9 County Sherriff, and an undisclosed amount of bullion held on her behalf by friends.

10 Notwithstanding Ms. Erdmann's contention that she owned hundreds of thousands of dollars of
11 precious metals and large amounts of cash, she has absolutely no records that would substantiate her
12 claim. She has no records related to bullion purchases or the alleged trades which somehow
13 multiplied her bullion from tens of ounces to hundreds. There are no insurance policies,
14 photographs, inventories, or even first-hand accounts from uninterested parties as to Ms. Erdmann's
15 cash and bullion collection. Simply put, other than the word of Ross Hansen and Diane Erdmann,
16 there is not a scintilla of evidence to support her story.

17 The far more rational explanation as to the source of the Retainer Funds is that Ms. Erdmann
18 and Mr. Hansen helped themselves to NWTM's assets on the eve of bankruptcy. NWTM was a
19 sinking ship in the weeks prior to its bankruptcy filing, and Ross Hansen was clearly a desperate
20 man. Not only was Ross Hansen personally subject to an insurmountable debt of \$25 million as a
21 result of Cohen Lawsuit, but his and Ms. Erdmann's sole source of money, NWTM, was also subject
22 to a judgment that was sure to drive it out of business. The fact that he and Ms. Erdmann had
23 exclusive access to NWTM's cash and bullion assets, which were largely untraceable due to
24 NWTM's poor records, was certainly a temptation that could not be ignored.

1 B. Even if the Life Insurance Proceeds were the Source of Retainer Funds, the Estate
2 Maintains an Interest

3 The parties are in agreement regarding the nature of the retainer paid to TTLG - it was an
4 advance fee retainer. Accordingly, upon the filing of NWTM's bankruptcy proceeding, the Retainer
5 Funds became property of the bankruptcy estate. *In re Radulovic*, 2006 WL 6810999 at *3 (9th Cir.
6 BAP 2006) ("we conclude that the retainer fee was an advance fee deposit that became property of
7 the estate within the meaning of §541"). There can be no dispute that the Retainer Funds were paid
8 to TTLG to satisfy NWTM's obligation under its agreement to TTLG. On March 31, 2016, NWTM
9 signed an engagement agreement (the "Engagement Agreement") with TTLG. Under the terms of
10 the Engagement Agreement, TTLG required a security retainer of \$150,000 as a condition to filing
11 NWTM's bankruptcy proceeding. The only agreement regarding the retainer is between TTLG and
12 NWTM. There is no agreement between TTLG and Diane Erdmann. In fact, Todd Tracy and Ms.
13 Erdmann have never spoken at all.

14 Assuming, for the sake of argument, that the Retainer Funds really were paid from the
15 Insurance Proceeds, they were clearly paid for NWTM's benefit and to satisfy its obligations under
16 the Engagement Letter. Property of the estate includes property in which the debtor holds a
17 beneficial interest. *In re Brown*, 2006 WL 6810938 at *9 (9th Cir. BAP 2006) (quoting legislative
18 history at 124 Cong. Rec. H11096 (daily ed. Sept. 28, 1978). In a case with similar fact patterns, a
19 girlfriend writing a check to pay a retainer to her boyfriend's divorce attorney, the United States
20 Bankruptcy Court for the District of Pennsylvania, in addressing whether such funds were property
21 of the boyfriend's bankruptcy estate asked "[t]he question is whether the form the transfer took
22 should determine the outcome here." *In re Datesman*, 1999 WL 608856 at *3 (Bankr. E.D. Pa.
23 1999). It found that the "source of the payment . . . does not preclude Debtor's interest in it from
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1 being property of his estate.” *Id.* at *4. As in *Datesman*, the fact that Diane Erdmann paid the
2 Retainer Funds (a fact which the Trustee disputed) does not preclude the estate from holding an
3 interest.

4 C. Ms. Erdmann’s and Mr. Hansen’s Actions Violate 11 U.S.C. §362

5 The automatic stay protects the estate from any act to obtain possession of property of the
6 estate or of property from the estate or to exercise control over property of the estate. 11 U.S.C.
7 §362. Because the Retainer Funds are estate property, Ms. Erdmann and Mr. Hansen’s actions to
8 obtain the Retainer Funds from TTLG violate the stay. Almost immediately after appointment of the
9 Chapter 11 Trustee, Ross Hansen contacted Mr. Tracy and demanded that he release the Retainer
10 Funds to Diane Erdmann. When Mr. Tracy indicated that he could not return the Retainer Funds
11 given that the Trustee was investigating the source of the Retainer Funds, Mr. Hansen informed
12 Todd Tracy that he (Ross) had spoken with the Trustee, and the Trustee authorized the release of the
13 Retainer Funds. Mr. Tracy called the Trustee’s attorney who refuted Mr. Hansen’s story. Following
14 this exchange, Mr. Tracy informed Ross Hansen that he would not release the Retainer Funds
15 without written authorization from the Trustee. Later that day, Todd Tracy returned to the office to
16 find Ross Hansen personally waiting for him. Mr. Hansen again attempted to convince Todd Tracy
17 to release the Retainer Funds. When Mr. Tracy refused, Mr. Hansen verbally threatened him, stating
18 that that he would “make [Mr. Tracy’s] life a living hell.”

19 On the same day that the exchanges detailed above occurred, April 14, 2016, Ms. Erdmann
20 filed a complaint against Todd Tracy with the Washington State Bar Association (the “Bar
21 Complaint), raising the possibility that TTLG had misappropriated the Retainer Funds. On the
22 following day, April 15, 2016, Ms. Erdmann filed a complaint against TTLG with the Office of the
23 Washington Attorney General (the “AG Complaint”). The AG Complaint was clearly retaliatory
24 and designed to exert pressure on TTLG to release the Retainer Funds. Despite this Court’s ruling
25 on May 9, 2016, that TTLG continue to hold the Retainer Funds, Ms. Erdmann has not withdrawn
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1 the AG Complaint or the Bar Complaint. In fact, she has doubled-down, filling a supplement to the
2 Bar Complaint, dated June 1, 2016, further accusing Mr. Tracy of ethical violations and committing
3 malpractice.

4 Ms. Erdmann and Mr. Hansen have clearly violated the automatic stay through their efforts
5 to pressure Mr. Tracy to release the Retainer Funds.

6 D. Amount of Sanctions

7 The Court has inherent authority under its Section 105(a) contempt powers to award
8 sanctions to the Trustee for Ms. Erdmann's and Mr. Hansen's violations of the automatic stay. *In re*
9 *Dyer*, 322 F.3d 1178, 1190 (9th Cir. 2003); *In re Del Mission Ltd.*, 98 F.3d 1147, 1150 (9th Cir.
10 1996). The standard for imposition of sanctions under 11 U.S.C. §105(a) is that the violation be
11 willful. *Dyer*, 322 F.3d 1191. "Willful" does not require intent to violate the stay, rather the Court
12 need only find that Ms. Erdmann and Mr. Hansen knew of the automatic stay and that the actions
13 which violated the stay were intentional. *Id.* Ms. Erdmann and Mr. Hansen's actions are both
14 willful and ongoing. On May 6, 2016, this Court warned Ms. Erdmann and Mr. Hansen of the fact
15 that their actions may have violated the automatic stay. Instead of taking the Court's warning, and
16 remedying such violations,² Ms. Erdmann filed a supplement to her bar complaint against Todd
17 Tracy. Given the willful and egregious conduct of Ms. Erdmann and Mr. Hansen, the Court should
18 award the estate sanctions in the amount of fees and costs it has expended in an effort to recover the
19 Retainer Funds.

20 **V. CONCLUSION**

21 The only evidence that Ms. Erdmann will be able to present regarding the source of the
22 Retainer Funds is her self-serving testimony. What is credible, and what the evidence will show, is
23 that Diane Erdmann and Ross Hansen looted assets from NWTM prior to the bankruptcy, and that
24 such assets were the ultimate source of the Retainer Funds.

25 ² A party that has violated the stay has an affirmative obligation to remedy such violation. *In re*
26 *Abrams*, 127 B.R. 239, 244 (9th Cir BAP 1991).

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DATED this 15th day of June, 2016.

K&L GATES LLP

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