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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 6, 2016

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

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A P P E A R A N C E S

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SEATTLE, WASHINGTON; MAY 6, 2016

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THE COURT: Is anyone here on any other matter, besides Northwest Territorial Mint?

(No audible response.)

THE COURT: All right, then. Let's take that matter.

All right. Good morning.

MR. TRACY: Good morning, Your Honor.

THE COURT: Good morning, Mr. Tracy.

We have a number of people here. Why don't we just take appearances for the record. I'll start on my left with Mr. Bugbee.

MR. BUGBEE: Your Honor, Dan Bugbee on behalf of interested party Diane Erdmann. Ms. Erdmann joins me in the courtroom today.

THE COURT: All right. Good morning.

MR. TRACY: Good morning, Your Honor. Todd Tracy, attempting to withdraw as attorney on behalf of the debtor, Northwest Territorial Mint.

THE COURT: All right. Thank you.

MR. GEARIN: Good morning, Your Honor. Michael Gearin, K&L Gates, on behalf of the Chapter 11 trustee.

MR. NORTHRUP: Good morning, Judge. Mark Northrup, Miller Nash Graham & Dunn, counsel for the unsecured

1 creditors' committee.

2 THE COURT: Good morning, everyone.

3 Mr. Tracy, actually, I was going to take the  
4 other matter first --

5 MR. TRACY: Perfect.

6 THE COURT: -- because I don't think there's any  
7 controversy. This is on the case management motion, so --

8 MR. TRACY: That's fine with me.

9 THE COURT: So I'll hear from Mr. Gearin on  
10 that.

11 And, Mr. Gearin, I don't believe there were any  
12 objections to it. The committee filed a short -- I'm sure you  
13 would have caught it -- getting the addresses, and I noted  
14 that, too. I just have a few other changes to the proposed  
15 order, and I am going to grant the motion.

16 You have in the motion that with respect to all  
17 matters, blah, blah, blah, "... the parties entitled to notice  
18 herein at least five days prior to service made pursuant to  
19 this order." I have a concern with that language.

20 Are you seeking prospective shortening of time  
21 on all motions? It wasn't expressly called out in the motion  
22 itself.

23 MR. GEARIN: Right, Your Honor. No, I don't  
24 think we intended that; and I don't think it was included in  
25 the order. So, no, I do not think we intended, prospectively,

1 to have shortened time on every motion.

2 THE COURT: Okay. Let me just pull up the order  
3 I have. It's way back in the docket already.

4 MR. GEARIN: It's at Docket 98, I believe, Your  
5 Honor.

6 THE COURT: Right. So Docket 98, at the top of  
7 page 2, it has the line: "... at least five days prior to  
8 service ... ." I think that needs to come out because it  
9 strikes me as it's arguably prospective shortening time; that  
10 if you give at least five days' notice, you've given  
11 sufficient notice. That is likely not going to be the case,  
12 so let's take that out.

13 MR. GEARIN: I'm sorry, Your Honor. I'm not  
14 finding it on the --

15 THE COURT: This is Docket 98-1.

16 MR. NORTHRUP: It's in the proposed order.

17 THE COURT: It's in the proposed order you've  
18 attached. Maybe you've since modified it.

19 MR. GEARIN: I see it. I do have it.

20 THE COURT: So let's take out the "at least five  
21 days prior to service."

22 Then you're going to add your firm. You're  
23 going to add, I assume, Mr. Calvert to the notice list. Let's  
24 leave the debtor in there, Northwest Territorial Mint, LLC. I  
25 think the debtor should get notice.

1           MR. GEARIN: Your Honor, we have done that. And  
2 what we've done is modified the address. If you look at the  
3 corporate -- the secretary of state filings, the registered  
4 agent is actually Mr. Hansen, and there's two addresses in  
5 those records. One is at the Mint's offices, their corporate  
6 offices. And the second is a P.O. box, P.O. Box 2148, Auburn,  
7 Washington 98071. So we propose to serve the debtor at that  
8 address, at that P.O. box, care of Mr. Hansen, member, who is  
9 the sole member of the LLC, at that P.O. box in Auburn.

10           THE COURT: All right. I think that makes  
11 sense. I guess I'll be ruling in a moment as to whether or  
12 not Mr. Tracy is in or out. If he's out, obviously he's going  
13 to come out of the notice. If some other lawyer comes in,  
14 you'll add them later.

15           Let's see. Then, of course, replace -- do you  
16 want to serve the committee or just counsel for the committee?

17           MR. GEARIN: I think we intended to serve the  
18 committee, Your Honor -- excuse me, counsel for the committee.  
19 And I think we -- we've talked to Mr. Northrup, and we would  
20 serve both Mr. Northrup and Mr. Groshong at Miller Nash.

21           THE COURT: What about members of the committee  
22 itself? Is it necessary for everyone to serve -- because  
23 there's seven members on the committee, right?

24           MR. NORTHRUP: There's seven members, two of  
25 whom have not expressed an interest, I think, in participating

1 actively. We're still waiting to resolve their interests, but  
2 it's fine. Service on counsel for the committee is adequate.

3 THE COURT: I think that's sufficient. So  
4 service on the committee. Do you need to serve the 20 largest  
5 as well? My thought would be no. Anyone that really wants to  
6 have notice will put in a request for notice.

7 MR. GEARIN: That's fine by me, Your Honor.

8 THE COURT: I'm trying to keep it limited.  
9 Again, we have experienced committee counsel representing the  
10 interests of the unsecureds.

11 MR. GEARIN: We appreciate the cost savings.

12 THE COURT: Right. So I think those are the  
13 only changes I have.

14 MR. GEARIN: We can upload an order this  
15 afternoon -- or later this morning reflecting all those  
16 changes.

17 THE COURT: All right. Thank you.

18 MR. GEARIN: I guess, depending on what you say  
19 about Mr. Tracy, he would be in or out, depending on your  
20 ruling today, as to whether we're serving him.

21 THE COURT: Correct.

22 All right. So that takes care of that motion.

23 The next matter I have is the motion to withdraw  
24 filed by Mr. Tracy.

25 Before you start, Mr. Tracy, I want to let

1 Mr. Gearin know that I'm not considering the filings made  
2 yesterday by the trustee. The deadline for responses was  
3 May 2. I've got to hold the parties to the rules. The  
4 trustee filed three responses to this motion. I'll consider  
5 the second one. But in reality, you should only file one  
6 response. I know you wanted to put into the record the  
7 evidence you had found, but I'm not going to consider it in  
8 connection with this motion. And I want you to know that so  
9 you can tailor your argument knowing that.

10 So I'll hear from Mr. Tracy. I'll hear then  
11 from Mr. Gearin. I'll hear from Mr. Northrup. Then I'll hear  
12 from Mr. Bugbee. And then Mr. Tracy, if he would like to say  
13 anything in rebuttal, I'll give him that opportunity as well.

14 So please go ahead.

15 MR. TRACY: Your Honor, thank you. Todd Tracy  
16 of the Tracy Law Group.

17 We're here trying -- at this point, our firm is  
18 in this very unusual position where our firm and Mr. Hansen,  
19 following a very heated discussion in my office on April 13th,  
20 terminated each other. And now we are trying to follow the  
21 rules to withdraw from the case, recognizing the terms of the  
22 district court order, recognizing this Court needs to approve  
23 any kind of withdrawal, and frankly being stuck right in the  
24 middle, really, without a client to deal with. I have had no  
25 conversations. I have not heard boo from Mr. Hansen since

1 April 13th.

2 We served our motion at the office. I used the  
3 office provided in Ms. Erdmann's bar complaint against me,  
4 which was the same address in the complaint that she filed  
5 with the Washington Attorney General Consumer Protection  
6 Division against me. So I am honestly stuck in the middle.

7 I don't know -- I mean, I understand  
8 Mr. Northrup's comments regarding appearances of LLCs in  
9 federal court. I'm not sure that the debtor intends to appear  
10 and try to argue anything. The case was filed. I would agree  
11 that if they wanted -- if the debtor wanted to come in and  
12 make some kind of argument, they would need to do that through  
13 counsel. That's not going to be me. You know, I don't  
14 believe that I, at this point, have any kind of client  
15 relationship where I could take any kind of instruction from  
16 Mr. Hansen to proceed going forward in the case.

17 The issue surrounding the funds in the trust  
18 account, I think the rules of professional conduct tell us  
19 exactly what we have to do. I have got multiple parties  
20 claiming an interest in those funds. Ms. Erdmann says it's  
21 hers. Mr. Gearin argues that it's property of the bankruptcy  
22 estate. I think the RPCs tell us specifically what happens in  
23 that situation. That's RPC 1.15A(g). And that says I have to  
24 protect the money, which is exactly what I'm trying to do.

25 The funds have been in my trust account. They

1 remain in my trust account. I am happy to do with them  
2 whatever this Court requires. Frankly, I'd like them out of  
3 my trust account. I'd love them in the court's registry. I  
4 think that puts them sort of out of the reach of everybody.  
5 And, frankly, when you look at what the RPC says, that's sort  
6 of what it insinuates might be the appropriate response.

7           We have, obviously, a lot of disputes about who  
8 that money belongs to, and there's a lot of claims going back  
9 and forth. I think it's simplest to just -- I will put the  
10 money wherever anybody wants it. I am happy to keep it in my  
11 trust. We'll set up a separate segregated one, obviously.  
12 What I propose is there can be no money distributed from it  
13 without a Court order. I think that protects everybody. I'm  
14 certainly unwilling to risk my bar license over  
15 contributing -- or disbursing money out of a trust account  
16 without a Court order. I'm not that stupid. And I think that  
17 probably is how we should move forward.

18           Again, you know, our firm is just in this very  
19 unusual spot. The RPC says I have to continue with my ethical  
20 obligations, but I don't have a client. My client has,  
21 frankly, terminated us. I don't have anybody I can take  
22 instruction from. I don't know how I fulfill those ethical  
23 obligations moving forward. We are truly in no man's land and  
24 would like to get out.

25           THE COURT: Understood. All right. Thank you,

1 Mr. Tracy.

2 Mr. Gearin? Oh, wait. I'm sorry.

3 Mr. Tracy, you can answer from the microphone  
4 there. Have you seen this grievance that was filed by  
5 Ms. Erdmann? Have you seen a copy of it?

6 MR. TRACY: Yes.

7 THE COURT: Did she file it on her own, pro se,  
8 or with counsel?

9 MR. TRACY: The grievance at the state bar?

10 THE COURT: Yes.

11 MR. TRACY: It appears to have been filed pro  
12 se.

13 THE COURT: Okay. What about -- you said a  
14 complaint was filed with the Washington attorney general?

15 MR. TRACY: Yes.

16 THE COURT: Have you seen that?

17 MR. TRACY: I have.

18 THE COURT: What's asserted in that complaint?

19 MR. TRACY: The same that was in the bar  
20 complaint.

21 THE COURT: And, essentially, what was --

22 MR. TRACY: That I won't give the money back.

23 THE COURT: All right. Do you know if that  
24 complaint filed with the attorney general was done pro se?

25 MR. TRACY: It would appear to be so. You know,

1 I can't tell. What I got is an email from the attorney  
2 general's office, attaching a copy of it. And I have 20 days  
3 to respond to that. That was filed about two and a half, two  
4 weeks ago. And the bar complaint had a 30-day response  
5 period. And that was filed, I believe, on the 20th or the  
6 21st of April.

7 THE COURT: All right.

8 MR. TRACY: Actually, no. It would've been  
9 filed -- because I filed a declaration on the shortening of  
10 time on the day that the bar complaint came through. I don't  
11 recall what that date is right off the top of my head.

12 THE COURT: Well, let's see. You filed your  
13 motion to withdraw on April 18, and I think you filed a  
14 supplemental declaration shortly thereafter --

15 MR. TRACY: Correct.

16 THE COURT: -- notifying the Court that  
17 Ms. Erdmann had filed a bar complaint.

18 MR. TRACY: Correct.

19 THE COURT: All right. Thank you.

20 MR. TRACY: Thank you.

21 THE COURT: All right. Mr. Gearin?

22 MR. GEARIN: Thank you, Your Honor. Michael  
23 Gearin for Mark Calvert, the Chapter 11 trustee.

24 Your Honor, the trustee was appointed on April  
25 11th, 2016. And as we reported to you last week at the show

1 cause hearing, he is fully engaged and securing collectible  
2 coins and precious metals and, you know, things that could  
3 move, and preserving assets for the distribution to creditors  
4 immediately upon his appointment.

5 In the course of that, he's conducted a detailed  
6 inventory of all of the precious metals that are there  
7 on-site. And he reported to you last week that there are  
8 millions of dollars of missing precious metals. He's  
9 determined that there are, you know, many millions of dollars  
10 of missing metals. There are also about -- more than tens of  
11 millions of dollars of creditors who have ordered product from  
12 the debtor and paid for it, but the product has not been  
13 delivered to them.

14 At this point, looking at the court registry and  
15 the claims registry, there's more than 1,600 claims that have  
16 been filed in this case. And we're expecting another couple  
17 thousand claims to be filed.

18 THE COURT: It's over 2,100, I believe.

19 MR. GEARIN: Well, I looked at it yesterday, and  
20 the number I had was 1,640. But it could be more than that  
21 by the -- after I looked at it.

22 THE COURT: It's a lot.

23 MR. GEARIN: Right.

24 What we're talking about this morning, Your  
25 Honor, is really the issue of whether the Tracy Law Group

1 should be allowed to withdraw. I spoke to Mr. Tracy many  
2 times during the week of April 11, the first week that the  
3 trustee was appointed and we were engaged in our  
4 investigation.

5           On the morning of April 13th Mr. Tracy called me  
6 and told me that he really had developed a conflict with his  
7 client and he would need to withdraw. A couple of hours  
8 later, he called me back and told me that he wanted the  
9 retainer monies turned over -- that Mr. Hansen had called and  
10 had told him that the trustee had consented to the release of  
11 these retainer monies, that they should be paid over to  
12 Ms. Erdmann, and the trustee had consented to that.

13           I called Mr. Calvert, and I asked him whether  
14 the trustee had, in fact, consented. And he told me no. He  
15 never had given any such consent, and he had never seen any  
16 evidence that the funds actually belonged to Ms. Erdmann.

17           Mr. Tracy then filed his motion to withdraw on  
18 April 18th, as you've noted. We filled a couple of materials,  
19 Your Honor. We filed our initial pleading. We thought this  
20 was going to be heard back in the first or second -- the  
21 second week, I think, of the administration of the -- the  
22 trustee's administration. We filed a very quick pleading in  
23 response to that. We thought it was coming on on shortened  
24 time. And I think what we said in that pleading was that we  
25 don't object to Mr. Tracy withdrawing, and we still don't. We

1 think that under the circumstances, it's inappropriate to keep  
2 him involved in this case when he doesn't have a client  
3 relationship and cannot be paid for his services, et cetera.

4           The committee raises this issue about whether  
5 this raises some risk that the case could be dismissed.  
6 Frankly, I don't see any argument that that could be the case.  
7 I think that it would be -- it's a matter of first impression,  
8 for you, I suppose, because we don't find any cases on either  
9 side of it. It's one of those legal concepts that you wonder  
10 why there's no precedent for it, and it may be because it's so  
11 obvious.

12           I think in a circumstance where a case is filed  
13 properly with counsel -- you know, a corporate case, an LLC  
14 case -- where the party voluntarily brought itself into the  
15 bankruptcy court and was represented in compliance with the  
16 rules, and then a Chapter 11 trustee is appointed, the Chapter  
17 11 trustee becomes the representative of the estate. The  
18 Chapter 11 trustee is the party then that is responsible  
19 for -- has the capacity to sue and be sued on behalf of the  
20 bankruptcy estate.

21           This is a collective proceeding. This involves  
22 the rights of a number of parties: creditors, the debtor,  
23 other parties in interest to the case. And it would be  
24 improper to dismiss the case because the debtor or one of  
25 those parties lacked representation. So it just makes no

1 sense to me, at all, that a -- that if a debtor in a Chapter  
2 11 case, where there is a trustee involved, if the debtor's  
3 counsel becomes incapacitated, that the case should be  
4 dismissed. And we would request that you actually so rule.

5 I think you have a -- it's a legal issue. And I  
6 think that it makes complete sense, and it really should be  
7 the law -- I think that is the law, and I think that should be  
8 the law. And I think the Court should make that ruling.

9 I guess I'd also think about, in a circumstance  
10 where an involuntary case was filed and the debtor never  
11 appeared, and that case was filed as a Chapter 11 case or  
12 filed as a Chapter 7 and a trustee is appointed, that would  
13 mean that involuntary creditors could not ever get the  
14 debtor -- get a case -- an order for relief and have the case  
15 proceed, unless the debtor, you know, engaged counsel. So it  
16 really makes no sense, as a matter of law. And we would like  
17 to have you make that ruling.

18 If you think there's any doubt about it, and if  
19 you think you're not comfortable with making such a ruling,  
20 then we certainly don't want to risk a dismissal of the case.  
21 We think that would be prejudicial to the rights of the  
22 creditors in this case. We think it's really important to  
23 have a trustee administer this case and move the matters  
24 forward to try to collect whatever assets there are there for  
25 the benefit of creditors.

1                   Turning to the retainer issues, Your Honor, I  
2                   guess I'll start off with, procedurally, where we are is that  
3                   Mr. Tracy has filed the motion, and he's asked for certain  
4                   relief. And what he has asked for is for you to give him  
5                   guidance as to whether the retainer monies ought to be  
6                   impounded into the court or held in his trust account.

7                   Ms. Erdmann now has filed a response. And if  
8                   you're going to consider that response -- I think Ms. Erdmann  
9                   is asking for relief. And, effectively, she's filed a motion  
10                  in front of this Court asking for relief in the form of a  
11                  turnover of those retainer funds.

12                  If you're going to consider that motion, if  
13                  you're going to consider that request for relief, I think you  
14                  should consider our reply. I do think it's in compliance with  
15                  the rules. I think that those materials were filed in strict  
16                  reply to Ms. Erdmann's materials.

17                  So, Your Honor, I can go through the issues  
18                  about why there is a factual dispute as to who owns this  
19                  retainer. But part of that would be referring to these -- you  
20                  know, Ms. Erdmann's declaration. If you're going to consider  
21                  that, I think we should be allowed to consider Mr. Huffman's  
22                  declaration in response.

23                  What I will tell you is, I think there is a  
24                  factual issue about who owns that retainer and whether it's  
25                  property of the bankruptcy estate or whether it is

1 Ms. Erdmann's property or Mr. Hansen's property or some other  
2 individual's property -- one of the customer's property, for  
3 that matter. One of the things we have found is, there's  
4 stored property. One of the things the debtor did in this  
5 case was to store precious metals for customers. Those  
6 materials really belong to the customers, and we have found  
7 examples -- we have found some of that stored property  
8 on-site. And we intend to bring a motion in front of you to  
9 return those properties to the customers that actually stored  
10 them on-site. So it's conceivable that some of these coins  
11 that generated the retainer were actually property of the  
12 customers and not the estate or Ms. Erdmann or anybody else.

13 I think we need to get to the bottom of that. I  
14 think we need time to do that. I think that we have filed a  
15 motion -- a 2004 motion, and you've granted that order. We've  
16 served that on Ms. Erdmann through her counsel, Mr. Bugbee. I  
17 think we're going to get -- I hope we're going to get  
18 compliance with that. I hope we're going to get discovery and  
19 that there will be cooperation from Ms. Erdmann and from  
20 Mr. Hansen and from the other parties that we've sought  
21 discovery from with respect to these issues.

22 If we do get cooperation and we do get documents  
23 and we do get testimony, I think we can bring these matters  
24 back in front of the Court in a matter of, say, 90 days. And  
25 we can get to the bottom of who owns the retainer funds and

1 get to the bottom of other issues regarding the claims that  
2 the estate has against Ms. Erdmann and other parties in this  
3 case.

4           So we would ask you for that. We would ask you  
5 for -- and I think it doesn't -- frankly, it doesn't matter to  
6 me whether the funds are held in Mr. Tracy's trust account.  
7 He's a trustworthy, respected practitioner in this court. I  
8 see no reason why he couldn't hold the funds, other than we do  
9 have an issue about interest. As little as that may be, it  
10 would seem better to hold the monies in an interest-bearing  
11 account. And the trustee could do that in a segregated  
12 account and secure it in a fashion where he's not going to  
13 release those funds to anybody absent an order from the Court.  
14 I don't see any reason why the trustee couldn't be empowered  
15 to do that.

16           So we would ask you to secure the funds and give  
17 us an opportunity to conduct the discovery that's necessary to  
18 get to the bottom of the issues about who owns them.

19           I will briefly say, I think the issue -- the  
20 legal issue that's been raised by Ms. Erdmann is that -- that  
21 there should be some fraudulent transfer action from the  
22 trustee to recover these monies from Ms. Erdmann after they're  
23 released to her. And I think that gets the cart way in front  
24 of the horse. I think that assumes that Ms. Erdmann is  
25 correct, that she owns -- that she owned those assets that

1 were liquidated and transferred to Mr. Tracy. I think that's  
2 really the heart of the issue. Did she own them or didn't  
3 she? I think that's what you have to get to first, before  
4 anybody has the benefit of the funds that are being held by  
5 Mr. Tracy.

6 Then, lastly, the issue about the RPCs, I think  
7 we pointed out in our response, I think we are complying with  
8 the RPCs by impounding these funds into the court registry or  
9 keeping them in Mr. Tracy's trust account or holding them in  
10 an account that the trustee may hold, subject to the Court's  
11 further order. The RPC does envision that if there is a  
12 dispute about ownership, that's exactly what's going to  
13 happen.

14 So thank you, Your Honor, unless you have  
15 questions.

16 THE COURT: About the 2004 exam, do you have the  
17 examination date yet, or are you going to work that out?

18 MR. GEARIN: We haven't set a deposition date  
19 yet. We have a deadline in the order of the 15th for  
20 production of documents, so --

21 THE COURT: May 15?

22 MR. GEARIN: May 15th. The documents are  
23 supposed to be produced, and we have actually discussed --

24 THE COURT: Sunday, huh?

25 MR. GEARIN: I guess that's right. So probably

1 May 16th.

2 THE COURT: It will probably flow over to  
3 Monday. All right.

4 MR. GEARIN: I think we'll give Ms. Erdmann  
5 until -- we'd be happy to give Ms. Erdmann until Monday, the  
6 16th. And we have -- we need to work with Mr. Bugbee on  
7 acceptable dates, but our intention would be to do the  
8 deposition of Ms. Erdmann before the end of the month.

9 THE COURT: Okay. Thank you.

10 Mr. Northrup?

11 MR. NORTHRUP: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. NORTHRUP: Mark Northrup for the committee.

14 The committee is certainly not here to get in a  
15 fight with either the trustee or Mr. Tracy, with whom we share  
16 some sympathy. But the fact is that at the commencement of  
17 this case, Mr. Tracy did formally appear as counsel for the  
18 debtor. Now he wants to withdraw. As you can tell by the  
19 committee's response, Your Honor, the committee simply wants  
20 some comfort from the Court that if Mr. Tracy is allowed to  
21 withdraw without a prior requirement of substitution of new  
22 counsel for the debtor, that that will not generate a legal  
23 argument that can be made by any party in interest that the  
24 absence of counsel for the debtor is somehow grounds for  
25 dismissal of the case, based on the authority I cited, the

1 local civil rule from the district court and case law that  
2 requires that a business -- nonindividual business entity  
3 always be represented by counsel.

4           If there's any doubt about this, the committee  
5 wants the Court to -- if the Court is inclined to allow  
6 Mr. Tracy to withdraw, at least condition that withdrawal on  
7 the appointment of new counsel for the debtor. The estate  
8 simply shouldn't be forced into a position to bear the risk of  
9 dismissal, particularly in this case, when there is a powerful  
10 creditor constituency out there, not on the committee, that is  
11 sophisticated, well-lawyered, and deep-pocketed, and that  
12 would find it in its best interest that this bankruptcy case  
13 be dismissed because it has prepetition judgments against the  
14 debtor already, it doesn't like some of the priority claim  
15 issues that this case presents, and would be happy if this  
16 bankruptcy went away. That's just a risk that the creditors,  
17 the trustee, none of the parties in interest should be  
18 compelled to endure.

19           In my response, I did point out to the Court  
20 that as a matter of case law -- first of all, the appointment  
21 of a Chapter 11 trustee doesn't abrogate the requirement that  
22 the debtor continue to be represented by counsel. When a  
23 Chapter 11 trustee is appointed, it's true that the Chapter 11  
24 trustee assumes the legal authority to administer the assets  
25 and liabilities of the bankruptcy estate. But the debtor

1 doesn't evaporate. The debtor still exists as a party in  
2 interest. And its counsel continues to have legal, ethical  
3 obligations to represent the debtor, even though the debtor is  
4 no longer a debtor in possession.

5           There's no case law -- simply no case law  
6 authorizing withdrawal of counsel based on the appointment of  
7 a trustee. And, actually, I'll note that Mr. Tracy didn't  
8 argue that. But that seems to be the direction the trustee is  
9 going in the case. I leave that to you, Your Honor.

10           With respect to the retainer, the committee is  
11 steadfast standing with the trustee. Whatever happens, that  
12 money shouldn't go anywhere. It should remain in a safe place  
13 until the parties have had the ability to adjudicate to whom  
14 it belongs, whether that's in Mr. Tracy's trust account, the  
15 Chapter 11 trustee's account, the registry of the court. It  
16 needs to stay in a safe place.

17           THE COURT: All right. Thank you, Mr. Northrup.  
18           Mr. Bugbee?

19           MR. BUGBEE: Thank you, Your Honor. Dan Bugbee  
20 on behalf of Diane Erdmann.

21           First of all, this isn't our motion. We aren't  
22 asking for relief from this Court. We're asking for this  
23 Court to deny relief to the moving party on one discrete  
24 issue: Ms. Erdmann's funds that are being held by an  
25 attorney.

1                   This is absolutely a property-of-the-estate  
2 question before this Court. If it is property of the estate,  
3 this Court has jurisdiction to adjudicate whether it goes into  
4 the court registry, to the trustee, or to any party. If it's  
5 not property of the estate, the Court lacks jurisdiction.

6                   What we have is undisputed. The only facts in  
7 this record are two declarations that absolutely align. There  
8 are two sources for this retainer. One is a negotiable  
9 instrument, an item of personal property, as recognized  
10 through all sorts of law and the uniform commercial code as  
11 adopted in Washington, a negotiable instrument that was  
12 payable to Ms. Erdmann. That's its title. That's who owns  
13 it. It was endorsed over to Mr. Tracy. No one disputes that.  
14 That was her property.

15                   The second source of that retainer was a  
16 checking account, again governed by the uniform commercial  
17 code, again titled to Ms. Erdmann, again that was transferred  
18 into Mr. Tracy's trust account. No dispute, whatsoever.

19                   Instead, the parties come to this Court, and  
20 they say, Give us the funds because we want time to  
21 investigate.

22                   What do they want to investigate? It said in  
23 the trustee's response: the ultimate source of those funds.

24                   We believe that we'll be able to show that the  
25 ultimate source of those funds was always Ms. Erdmann's

1 separate property. But regardless, when we talk about the  
2 ultimate source of those funds, Your Honor, they're talking  
3 about a fraudulent conveyance cause of action or a preference  
4 cause of action. They're talking about some mechanism  
5 whereby, because of the source of those funds, they're going  
6 to be able to claw it back.

7 But that's not before this Court. There's no  
8 adversary complaint filed. There's no turnover motion  
9 brought. This is simply a matter of adjudicating whether  
10 these sources were property of the estate under 11 USC 541.

11 THE COURT: Mr. Bugbee, your client has  
12 testified: I transferred \$50,000 from my individual checking  
13 account by wire transfer.

14 MR. BUGBEE: Yes, Your Honor.

15 THE COURT: Why isn't that an issue for the  
16 Court to examine? Am I just supposed to accept that without  
17 any -- I don't have any documents to that effect.

18 MR. BUGBEE: Well, a wire transfer I'm not sure  
19 has documentation. But I believe Mr. Tracy also testified to  
20 that. And I believe the trustee has also investigated that  
21 and has not disputed that it was a wire transfer from her  
22 individual account to Mr. Tracy's account.

23 THE COURT: The next line says: I liquidated my  
24 own personal property for the remaining \$99,460.

25 She's saying that that personal property, which

1 she doesn't describe, was acquired from the proceeds of a life  
2 insurance policy, proceeds which were paid 23 years ago.

3 MR. BUGBEE: Yes, Your Honor.

4 THE COURT: What property did she liquidate?

5 MR. BUGBEE: She invested that property into  
6 gold and silver back in the '90s and has held it. She's an  
7 investor in coins, and that's how she met Mr. Hansen. That  
8 was her shared interest with Mr. Hansen that brought them into  
9 a romantic relationship. And, again, Your Honor, I believe  
10 we'll be able to show that, and I'm sure we'll have to.  
11 There's no doubt we're going to have to.

12 What we have right now, though, is a question of  
13 what -- not the ultimate source. That's not before the Court  
14 today. And I understand we all want to jump forward there,  
15 and there's feelings. That's why we have things like  
16 fraudulent conveyance law and preference law for bringing  
17 things back into the estate. But we also have the rights of  
18 somebody and their own personal property, if that's not true,  
19 to have returned to them so they can mount a defense against  
20 everybody that's going after Ms. Erdmann, including, in state  
21 court, Mr. Cohen going after her, including the trustee and  
22 all these document requests. And what she's asking is to get  
23 her property, that is her property, back so that she can  
24 defend against those.

25 THE COURT: Let me just be blunt, Mr. Bugbee.

1 Your argument that if I somehow rule that this is property of  
2 the estate, that I'm aiding and abetting Mr. Tracy's violation  
3 of the RPCs doesn't fly very far. That's how I read your  
4 response. Did I misread that?

5 MR. BUGBEE: Yes, Your Honor. We're not  
6 implying that. I recognize that if there's a dispute as to  
7 who owns the property that's being held, he may pay it into  
8 the registry of the court. But I don't -- again, I'm reading  
9 the trustee's response: The trustee has reason to believe  
10 that the source of the retainer was property of the debtor.

11 Now, what I was citing those RPCs for, is  
12 that -- there's Ninth Circuit case law that says, If the  
13 retainer was paid by a third party, it gets returned to --  
14 it's governed by state law. And I was citing the RPCs for the  
15 state law ownership, which says that it's returned to the  
16 person who gave it to you.

17 THE COURT: I read your response to say, It is  
18 her property; and, therefore, if I rule any other way, the  
19 Court would be forcing Mr. Tracy to violate the RPCs.

20 I mean, that's what I'm reading from your brief.

21 MR. BUGBEE: Well, in the end of it, I'm asking  
22 this Court to not rule that it's property of the estate so he  
23 can comply with his state law obligations. I understand. And  
24 I believe, Your Honor, that if you deny this and say it's not  
25 property of the estate, Mr. Tracy could then go to state

1 court, if he believed there was a dispute over it, and pay it  
2 into the registry of the court in state court.

3 THE COURT: But if I do rule that it's property  
4 of the estate, then -- I mean, your client has filed a bar  
5 complaint and a complaint with the Washington attorney  
6 general, I found out this morning. I find that extremely  
7 distressing, extremely distressing. Because there can be a  
8 legitimate dispute over who owns it, and I'm going to be the  
9 one that decides whether it's property of the estate. But to  
10 ruin a man's career, particularly when there's now  
11 allegations -- and while I'm not considering it, I read what  
12 Mr. Gearin filed last night. If your client is filing bar  
13 complaints to demand money back, that she took from the debtor  
14 on the eve of bankruptcy, there's going to be a world of  
15 problems for your client.

16 MR. BUGBEE: I understand, Your Honor.

17 THE COURT: Okay. So I am not going to rule in  
18 your favor today. I read your brief to say, There is no doubt  
19 that it's her money; and, therefore, I have no option but to  
20 release the funds to her.

21 That's what I read in your brief. I'm hearing  
22 you argue something different, and I'm glad. But there's  
23 clearly a question as to whether or not the debtor has any  
24 interest in the funds.

25 Now, it may be that at the end of the day, the

1 monies may be returned to her, if they're her monies. But the  
2 question is: Under 541, does the debtor have any interest in  
3 the retainer? We're calling it a retainer, but --

4 MR. BUGBEE: It's an advance -- advance costs.

5 THE COURT: And in that McDonald case that you  
6 cite, Judge Wedoff goes through whether it's a true retainer,  
7 a security retainer, or something else. And that's a matter  
8 of fact. I don't have all the facts before me. But putting  
9 that aside, doesn't the debtor have some interest in the  
10 retainer when the case was filed?

11 MR. BUGBEE: Well, Your Honor, I don't believe  
12 so. And, again, the RPCs say that you're holding it in trust  
13 for a third party. And I cited an ethics opinion that  
14 discussed that as well.

15 THE COURT: Well, the ethics opinion said --  
16 there was a factual issue. And it said, There's no evidence  
17 that this was a gift.

18 I don't have anything in Ms. Erdmann's  
19 declaration about the nature of the transfer. Was it a gift?  
20 Was it a loan? Was it an investment? What was it? I don't  
21 know. And that opinion, in part, turned on that fact. So I'm  
22 not sure that opinion applies.

23 You have the RPCs, but we're in bankruptcy  
24 court. There's that overlay of 541. Property interests are  
25 very, very broad. And if Mr. Tracy remained in the case,

1 wouldn't the debtor be looking to those funds to pay Mr. Tracy  
2 allowed compensation and reimbursement of costs?

3 MR. BUGBEE: Again, this is my understanding  
4 because, unfortunately, the engagement letter does not  
5 describe a payment from a third party.

6 THE COURT: Right.

7 MR. BUGBEE: But Mr. Tracy, in his declaration,  
8 says, I accepted a payment from a third party.

9 And those are the types of things that he would  
10 be required to talk about with that third party, in order to  
11 arrange what happens if there's a termination of  
12 representation, what happens to the unrefunded portion.  
13 Regrettably, we don't have that. We also don't have the  
14 declarations filed in the early stages of the case, as you  
15 normally do.

16 But this is the point I was trying to make in my  
17 response, and maybe it wasn't as artful --

18 THE COURT: I apologize if I interrupted you,  
19 but go on.

20 MR. BUGBEE: I was retained just days before the  
21 deadline to file the response. I put together what I believe  
22 is the legal issue, which is the source -- not the ultimate  
23 source, but the last source of those transfers. It was an  
24 individual checking account. I believe that is undisputed by  
25 every party here today. It was a negotiable instrument, a

1 cashier's check, that was payable to Diane Erdmann. I believe  
2 there's no dispute about that today. Because those were --  
3 again, interest, I don't think -- I think that McDonald case  
4 stands for the proposition that a theory of fraudulent  
5 conveyance that a trustee or a debtor might have for being  
6 able to obtain that property at the end of the day is not  
7 enough to rule that it's property of the estate.

8 THE COURT: I agree with you there. I agree  
9 that the fact that the estate might have a fraudulent transfer  
10 claim doesn't make the property at issue -- under 541, almost  
11 by definition, if it was fraudulently transferred out, it's  
12 not part of the estate.

13 MR. BUGBEE: Right.

14 THE COURT: So I agree with you, and I agree  
15 with the McDonald case in that regard.

16 MR. BUGBEE: Okay. So I think that's really the  
17 only issue before this Court. And, again, to clarify the  
18 relief that we're asking, we're not asking -- we're just  
19 saying, the Court, right now, shouldn't make a ruling on -- I  
20 mean, it should make a ruling on whether this is property of  
21 the estate. I think that should be a finding that this Court  
22 should make today.

23 But beyond that, to order Mr. Tracy to pay it  
24 into this court or to the trustee, which would -- you know, I  
25 think there might be some issues with what happens once the

1 trustee comes into possession of this property, if it truly  
2 was Ms. Erdmann's and now it's in the estate, and what efforts  
3 she has to undergo. I mean, I understand if it's paid into  
4 the registry of the court. But if there's a court that it  
5 should be paid into, it should be the state court, and that's  
6 it. Otherwise, it should be returned to Ms. Erdmann.

7 I do not read anybody saying that there's a  
8 dispute over the ownership. They're just saying there's  
9 concerns about the ultimate source.

10 And, again, we look forward to the opportunity  
11 to explain it to this Court. And that's why this Court is not  
12 considering that reply brief and that declaration. Because I  
13 saw it, too. I had concerns, and I immediately went and  
14 talked to my client. I believe there is an explanation that  
15 can be put forward. But if this Court doesn't allow  
16 Ms. Erdmann to get those monies back, she's going to be trying  
17 to do this without resources. She's going to be trying to  
18 fight everybody coming after her without resources. And she's  
19 not the one who has a judgment against her. She's not the one  
20 that filed this entity into bankruptcy.

21 THE COURT: Okay. Well, she helped the entity  
22 file into bankruptcy by agreeing to put up \$150,000. And if  
23 Mr. Tracy wasn't withdrawing, she wouldn't be entitled to get  
24 the money back, would she, for her legal defense on these  
25 other fronts?

1 MR. BUGBEE: I don't know. Again, without  
2 having the agreement between the third party and the  
3 attorney -- I believe there was nothing in writing between  
4 them.

5 THE COURT: Are you saying that she had an  
6 absolute right to yank those funds back at any time?

7 MR. BUGBEE: Without an agreement otherwise,  
8 yes. Mr. Tracy was holding property of a third party. And he  
9 has to release it upon demand, which is how I read those RPCs.

10 THE COURT: Well, that's not how I read the  
11 RPCs. If a third party puts up the retainer, and it's for the  
12 benefit of the client, the client gets to use it. If there's  
13 legal services provided, money is deducted from that retainer.  
14 If the legal services are stopped before the retainer is eaten  
15 up, the remainder would go back.

16 I don't read the RPCs or that opinion to say  
17 that the third party putting up the money has the right to  
18 take it back at any time. I mean, I just don't read it that  
19 way. Is that the position your client is taking?

20 MR. BUGBEE: Well, I mean, to be clear, Your  
21 Honor, as the services are done, then you get -- the attorney  
22 gets it up to that amount.

23 THE COURT: Right. But until the engagement is  
24 over, does the -- is it your position that the third party can  
25 take the money at any time?

1                   MR. BUGBEE: Except for the services that have  
2 already been rendered, which the attorney then gets a lien to  
3 get back against the --

4                   THE COURT: So if I understand it, then, if this  
5 case was filed on April 1, and on April 30 Ms. Erdmann wanted  
6 her money back, if Mr. Tracy was employed, the case was  
7 humming along as expected, you're saying that Ms. Erdmann  
8 could say, I want the \$100,000 back?

9                   MR. BUGBEE: Unfortunately, without an agreement  
10 to the contrary, yes, Your Honor.

11                   THE COURT: All right. Thank you, Mr. Bugbee.  
12 Mr. Tracy, anything that you'd like to add?

13                   MR. TRACY: Your Honor, I guess just -- I think  
14 this is exactly what the language in 1.15A speaks to. If a  
15 lawyer possesses property in which two or more persons claim  
16 interests -- which is not -- claim interests, the lawyer must  
17 maintain the property in trust until the dispute is resolved.  
18 The lawyer must take reasonable action to resolve the dispute,  
19 including, when appropriate, interpleading the disputed funds.

20                   That's all I'm trying to do. Obviously, there  
21 are lots of people who are claiming interest. Your Honor is  
22 correct. I mean, I may ultimately be filing a fee application  
23 for a short period of time. We would be claiming an interest  
24 in those funds to get those paid. The trustee is claiming an  
25 interest. Ms. Erdmann is claiming an interest. I think 1.15A

1 tells us exactly what we have to do.

2 I will do whatever it is that that is. I have  
3 no problem. I agree with Mr. Gearin. I'm happy -- if the  
4 Court wants me to, I will set up a separate interest-bearing  
5 trust account. That can be done in about ten minutes at my  
6 bank. I'm happy to move the money over there. Obviously,  
7 Your Honor would require a Court order before any monies are  
8 released out of that. That is fine with me.

9 I think -- and I may be being as technical as  
10 Your Honor is. I think that's actually -- it either stays  
11 there, or it goes into the registry. And that's how you've  
12 got the compliance with the rule that we are to maintain the  
13 funds or it goes into the registry. I have no problem, one  
14 way or the other. I'm happy to do it.

15 THE COURT: All right. Thank you, Mr. Tracy.

16 All right. The Court is ready to rule on this  
17 matter.

18 I'm going to grant the motion to withdraw. I'm  
19 not going to give any additional findings or conclusions, in  
20 part because I think Mr. Gearin said it correctly. There  
21 aren't any written authorities or cases out there because I  
22 think it's kind of obvious. The example of the involuntary  
23 petition against a corporation is a good one. The fact that a  
24 corporate debtor is unrepresented in a properly filed case  
25 can't mean that the case gets dismissed.

1 I've informally ruled on this in other contexts,  
2 in the Chapter 7 context. And the way I look at it is as  
3 follows. If the corporation files pro se, then the petition  
4 itself is not valid. We routinely will issue show cause  
5 orders when a corporate debtor files a case. And if the  
6 corporation does not have counsel, the case will be dismissed.

7 Another example: We had a Chapter 11 debtor in  
8 possession. Lawyers had to withdraw because I required them  
9 to withdraw. I gave the corporation two weeks to find new  
10 counsel, or I would dismiss the case. They found new counsel.

11 But in a case like this, where the case was  
12 filed by a corporation with counsel, the petition is valid.  
13 The trustee has now been appointed. We don't need to have the  
14 corporation represented going forward. If the corporation  
15 wants to appear in the case to respond to anything, it will  
16 need to do so through an attorney.

17 I've said it all on the record, but I'm not  
18 going to put any of that in the order because I don't want to  
19 make law today.

20 I'll also say, I'm not going to enter a show  
21 cause order to dismiss this case. So I think everyone is on  
22 pretty good footing that I just don't see the basis for anyone  
23 seeking to dismiss this case. And I'm certainly not going to  
24 initiate any show cause to do so.

25 Second, I'm going to include the language that

1 Mr. Tracy has requested, to make it clear that he shall  
2 continue to hold the sum in his IOLTA trust account, pursuant  
3 to RPC 1.15A(g), pending further order of the Court. We'll  
4 just have him keep it there. The interest rate he could get  
5 is not enough to warrant moving it around.

6 We are going to have a further hearing. And I  
7 want to do it faster than 90 days, Mr. Gearin.

8 Before we get to the details of what I would  
9 like to see at an evidentiary hearing, let me first address  
10 the one case -- or one of the cases cited by Ms. Erdmann. And  
11 that's the BOH Ristorante case. That case is not applicable.  
12 That involved postpetition payments by the former spouse of  
13 the debtor to debtor's counsel. There was no retainer or fund  
14 existing at the time that the case was filed. So it's not  
15 applicable here.

16 I did find a case that does provide guidance.  
17 That is In re Datesman, 1999 WL 608856. That's from the  
18 Bankruptcy Court, Eastern District of Pennsylvania, 1999. I  
19 want to go through some of the facts there.

20 In that case, prior to the bankruptcy filing,  
21 the girlfriend of the debtor paid a retainer to the debtor's  
22 divorce lawyer. The debtor then filed bankruptcy under  
23 Chapter 13 about a month later. The divorce lawyer  
24 subsequently paid himself from the retainer for postpetition  
25 services. The debtor later sought sanctions for violations of

1 the automatic stay.

2 The decision covers a number of issues, and it's  
3 quite lengthy. But the Bankruptcy Court found and concluded  
4 among the following:

5 First, the retainer, under Pennsylvania law, was  
6 not a true retainer, but was a security retainer. So the  
7 monies received were not entirely earned upon payment, which  
8 is what the divorce lawyer was arguing. Rather, the attorney  
9 held the funds to secure payment of services provided in the  
10 future.

11 Second, the Court noted that the scope of  
12 Section 541 of the Bankruptcy Code, which defines property of  
13 the estate, is very broad. And the Court held that the  
14 prepetition retainer provided by the non-debtor constituted  
15 property of the estate. The Court expressly found: "The  
16 source of the payment to the attorney; i.e., the debtor's  
17 girlfriend, does not preclude the debtor's interest in it from  
18 being property of the estate."

19 Mr. Bugbee, you've asked me to rule today. And  
20 if I were to rule today, I would be ruling against your  
21 client. But I am not, because I think there are serious legal  
22 and factual issues that warrant further briefing and an  
23 evidentiary hearing.

24 The issues that are to be resolved at this  
25 evidentiary hearing are as follows:

1                   First, does the bankruptcy estate have any  
2 interest in the funds?

3                   I do find that it is relevant whether  
4 Ms. Erdmann, in fact, used her own funds or funded the  
5 retainer with proceeds from the sale of the debtor's property.  
6 It's also relevant as to the nature of the transfer from  
7 Ms. Erdmann. Again, was it a loan? Was it a gift? Was it an  
8 investment? Was it something else?

9                   That advisory opinion that was attached to  
10 Ms. Erdmann's response indicated that that is a fact that is  
11 necessary to understand the nature of the retainer and the  
12 parties' respective rights to it.

13                   The second issue is: What is the nature and  
14 extent of the estate's interest in the funds, if the estate  
15 does have an interest?

16                   Third: Whether any of Ms. Erdmann's actions,  
17 including the filing of the grievance and the filing of the  
18 action with the state attorney general, constitute violations  
19 of the automatic stay. Because if the funds are an asset of  
20 the estate, it seems that what she's been doing is trying to  
21 gain control of that, which would be violating Section 362.

22                   Fourth: If her actions constitute violations of  
23 the automatic stay, whether Ms. Erdmann or anyone acting with  
24 or assisting her should be sanctioned for the violations. And  
25 if so, what is the appropriate amount?

1           The parties to this proceeding will be the  
2 trustee and Ms. Erdmann. I'm not looking for briefs from  
3 anybody else. I want, a week from today -- I'm sorry, but I'm  
4 not going to wait until the 15th. We're not delaying this.  
5 Okay? Ms. Erdmann thinks she wants the money right away. I  
6 want to get this resolved right away. So each side shall  
7 produce, without a request to the other side, all documents  
8 that relate, refer, mention, or have anything to do with the  
9 retention of the Tracy Law Group by the debtor and the payment  
10 of the retainer.

11           That means if there are any emails between  
12 Ms. Erdmann and Mr. Hansen, I expect them to be produced  
13 without a request. I don't want any documents being withheld.  
14 The trustee owns the privilege now, so the trustee gets  
15 Mr. Tracy's documents. No one is going to assert privilege  
16 with respect to communications between the debtor and  
17 Mr. Tracy. The only one who can assert that now is the  
18 trustee.

19           Mr. Bugbee, do you have a question?

20           MR. BUGBEE: Just procedurally. I believe the  
21 trustee has all the emails. The accounts were locked for  
22 Mr. Hansen and Ms. Erdmann.

23           THE COURT: That would be corporate emails.  
24 Those are emails from the corporate headquarters. If there  
25 are emails between Ms. Erdmann from a personal -- private

1 emails --

2 MR. BUGBEE: Understood.

3 THE COURT: I want those produced, and I will be  
4 unhappy if they are not.

5 If there are discovery issues, you can call me,  
6 and I'll resolve them on the phone immediately. I kind of  
7 want to make that, in general, my practice. I don't want  
8 people getting bogged down with motions to compel. I just  
9 want to get them resolved and move on.

10 So we are going to pick a hearing date, and I  
11 want to do this in the first half of June.

12 MR. BUGBEE: Your Honor?

13 THE COURT: You're on vacation?

14 MR. BUGBEE: Military reserve duty from June 4th  
15 through the 18th.

16 THE COURTROOM DEPUTY CLERK: We can do June 1st.

17 THE COURT: June 1st?

18 THE COURTROOM DEPUTY CLERK: Or May 31st.

19 THE COURT: May 31st or June 1st. That might be  
20 a little fast.

21 THE COURTROOM DEPUTY CLERK: June 21st?

22 THE COURT: Let me ask the parties. Again, I  
23 want this resolved. I've already kind of hinted that I'm  
24 pretty close to finding that the estate has an interest, just  
25 based upon that Datesman case. And I think what's, to me,

1 pretty obvious is that the funds were put up for the benefit  
2 of the debtor paying Mr. Tracy's fees. So at the time the  
3 case was filed, at a minimum, the debtor had a beneficial  
4 interest in the retainer. So you kind of know where I'm  
5 going. You're going to have to convince me that that's wrong.  
6 That, to me, is more or less a legal issue. So I don't know  
7 that we need to push this out really far. I'm giving you a  
8 chance to file some more briefing on this because I don't  
9 think anyone really addressed the 541 aspects of this.

10 MR. BUGBEE: Your Honor, should we, then, just  
11 as a suggestion, to save costs -- if that's the legal issue,  
12 should we just do supplemental briefing before we push  
13 forward? Because you asked for some factual issues as well.  
14 But maybe to save cost and expense, we could do a supplemental  
15 briefing first. The Court makes a ruling as to whether,  
16 regardless of the source and everything, it is property of the  
17 estate. And then if you deny that, then we go forward with  
18 the evidentiary hearing on the factual issues.

19 THE COURT: No. I want Ms. Erdmann to take the  
20 stand, so we're going to have a hearing.

21 MR. GEARIN: Your Honor, on the discovery  
22 issues, I want to make clear that we -- we've got a 2004 out  
23 there, and what we're expecting is that we're going to get  
24 bank records. The bank records are really important here.  
25 Ms. Erdmann is putting at issue that the source of these

1 monies was her 1993 life insurance proceeds. And I think we  
2 need to test that out. I think we should be able to go back,  
3 and we should figure out what happened to those proceeds and  
4 are they, in fact, the source of the monies that were paid  
5 over to the trustee?

6 Mr. Bugbee has stated here that we're not really  
7 having a dispute about the ownership of those funds. That's  
8 not true. I think I -- I don't think I could have been any  
9 more clear --

10 THE COURT: I think it's very clear that there's  
11 a dispute over the ownership.

12 MR. GEARIN: Right.

13 THE COURT: It's very clear.

14 MR. GEARIN: I think that even if your issue  
15 about whether the estate got an interest when the funds were  
16 pledged -- I understand that issue, and I think that could be  
17 dispositive as to whether the estate has an interest. Whether  
18 the funds could come in and be unrestricted and the estate  
19 could use them, we need to get to the bottom of that issue.  
20 And our point is that these -- this property was actually  
21 property of the estate. It was money that belonged to the  
22 debtor. It was moved somehow, or it could have belonged to a  
23 customer. We need to get to the bottom of those issues. That  
24 means we need bank statements. We need all of her bank  
25 records. We've asked for those.

1                   And what I've seen -- the reason I'm raising  
2 this is, I've already seen, in the state court action,  
3 Mr. Bugbee objecting to the production of her personal  
4 financial records. So I don't want to have a -- I don't want  
5 to have to deal with that issue going forward. I would like  
6 to have an understanding that we're going to get access to  
7 those bank records.

8                   THE COURT: You absolutely are going to get  
9 access to those records. There's not going to be a lot of  
10 discovery disputes that are going to make me happy. I expect  
11 full and complete discovery. That means when I say, "relating  
12 to this transfer" -- she has put into issue the source of  
13 these funds by claiming that money she got 23 years ago was  
14 put into property, and it was that specific property. So we  
15 have a tracing issue. She needs to prove her claims. So a  
16 week from today, she needs to provide the evidence to prove  
17 that. Is that clear?

18                   MR. BUGBEE: Yes, Your Honor.

19                   THE COURT: It's not going to be the burden --  
20 it's not going to be on the trustee to try to ferret it out.  
21 It's her claim. She needs to prove it.

22                   I want to have this resolved sooner rather than  
23 later because Mr. Tracy has bar complaints filed against him.  
24 You already know my opinion on that. I want it resolved  
25 sooner rather than later. And you've got another person in

1 your office who may be able to handle this, but I'm not going  
2 to put this off. Sorry.

3 So when do the parties want to do this?

4 Mr. Gearin?

5 MR. GEARIN: I think we can pick a date in June,  
6 Your Honor. I'm sensitive to Mr. Bugbee's military  
7 obligations. They should be respected. So immediately after  
8 that or immediately before that.

9 THE COURT: Well, immediately before would be  
10 May 31 or June 1. Immediately after would be June 21 or 22.  
11 I'm looking to you primarily because you're the one who is  
12 likely going to have to do discovery. To the extent you have  
13 emails, also, that the trustee has acquired, I expect you to  
14 turn those over to Mr. Bugbee as well. It's going both ways.

15 MR. GEARIN: I understand it's a two-way street.  
16 I understand that, Your Honor. We're happy to do that. I  
17 just -- maybe out of an -- I think we should go to the June 21  
18 date because of the burden the trustee has. There's other  
19 financial issues that he's dealing with. There's a forensic  
20 aspect to this. He's going to have to go dive into these  
21 financial records and provide some kind of an analysis. I  
22 would anticipate we may have the trustee testify with respect  
23 to those issues. So in order to be able to prepare, I guess  
24 we should kick it to the third week in June.

25 THE COURT: All right. So we'll do this on the

1 21st or the 22nd.

2 Which dates work for you, Mr. Bugbee? You can  
3 check.

4 I assume Mr. Tracy might have to appear and is  
5 likely going to be a witness. Are you available those two  
6 dates?

7 MR. TRACY: As far as I know, Your Honor.

8 MR. BUGBEE: What about depositions, Your Honor?

9 THE COURT: I just hope the parties can work it  
10 out.

11 MR. BUGBEE: Okay.

12 THE COURT: Just cooperate. You guys can work  
13 that out. I'd like to get them done. So the 21st or the  
14 22nd, does anyone have a preference between those two dates?

15 MR. GEARIN: I don't, Your Honor.

16 THE COURT: Mr. Bugbee?

17 MR. BUGBEE: The 21st would probably work better  
18 for me.

19 THE COURT: Tuesday, June 21, then?

20 MR. BUGBEE: I'm sorry. You said the 21st or  
21 the 22nd?

22 THE COURT: Yes.

23 MR. BUGBEE: The 22nd.

24 THE COURT: So Wednesday, the 22nd of June, at  
25 9:30. I'll put this all in an order. But just so you know

1 what I'm looking for, if the hearing is on -- when are you  
2 back, Mr. Bugbee?

3 MR. BUGBEE: I come back on Father's Day, the  
4 18th -- or the 19th.

5 THE COURT: Well, I want to give the parties an  
6 opportunity to file briefs a week before and exchange evidence  
7 and the like. So that may not work if you're not back.

8 MR. BUGBEE: We can -- we'll accommodate, Your  
9 Honor.

10 THE COURT: Okay, if you can. Because what I  
11 would like to do is, a week before the hearing, the parties  
12 file and serve exhibits and witness lists and trial briefs,  
13 not to exceed 12 pages. And on that date, the parties can  
14 also exchange exhibits. Three court days before -- so that  
15 would be the 17th -- the parties will serve chambers with  
16 copies of the trial exhibits, two sets of exhibits.

17 THE COURTROOM DEPUTY CLERK: Three.

18 THE COURT: Sorry. Three sets.

19 Ms. Erdmann will be "P" for plaintiff, and the  
20 trustee will be "T" for trustee. So mark your exhibits in  
21 that fashion: T1, T2, T3, et cetera. Any reply briefs can be  
22 filed by close of business on the 20th of June, not to exceed  
23 six pages.

24 All right. Are there any questions on this  
25 matter?

1 (No audible response.)

2 THE COURT: All right. So I can either modify  
3 Mr. Tracy's order -- I mean, I'm going to enter the order that  
4 Mr. Tracy proposed as written. We'll do our own separate  
5 order with that information. We'll try to get that today.  
6 But you guys all know what the deadlines are and can work  
7 back. If we don't get it uploaded before the end of today, it  
8 might be next week. But everybody knows what we're working  
9 from.

10 All right. Is there anything further on this  
11 motion to withdraw?

12 (No audible response.)

13 THE COURT: Mr. Tracy, if you could submit, as a  
14 received unsigned order, your order --

15 MR. TRACY: I will, Your Honor. Thank you.

16 THE COURT: Is there any other matter to be  
17 heard in this case?

18 MR. GEARIN: I don't think so, Your Honor.

19 THE COURT: All right. Thank you, everyone.  
20 We'll be in recess.

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 4th day of October, 2016.

14  
15  
16 by /s/ Shari L. Wheeler

17 SHARI L. WHEELER, CCR NO. 2396  
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