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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  
NOVEMBER 18, 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

FOR THE CHAPTER 11 TRUSTEE:

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FOR RETT, LP:

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1 SEATTLE, WASHINGTON; NOVEMBER 18, 2016

2 --oOo--

3

4 THE COURT: All right. Let's hear the Northwest  
5 Territorial Mint matter next.

6 Good morning, gentlemen. Mr. Peterson, and  
7 Mr. Pharris, this is the trustee's motion to approve a  
8 settlement. I know there were no objections, but the Court  
9 has a number of questions and some issues.

10 So let me start with you, Mr. Peterson. In  
11 Mr. Calvert's declaration, he says that RETT says -- RETT is  
12 the landlord -- RETT says that the damage to the property  
13 during the removal period is substantial. What does that  
14 mean, if you know? What does "substantial" mean?

15 MR. PETERSON: Well, what I can tell you is, you  
16 know, after this Court held a hearing on the motion -- I  
17 believe it was RETT's motion for allowance of an  
18 administrative claim -- and ordered an evidentiary hearing,  
19 the parties then began to negotiate the terms of a settlement,  
20 in part, to avoid the cost of that evidentiary hearing.  
21 During those discussions, it came to -- and Mr. Pharris'  
22 client raised this issue of damage to the property that had  
23 occurred during the removal period.

24 What does it mean by "substantial," in  
25 Mr. Calvert's declaration? I don't know if I can quantify

1 that with a dollar amount. We were sent photographs and  
2 pictures of the premises. I believe there was an estimate of  
3 the cost. We did not engage an expert of our own to travel to  
4 Tomball and evaluate the amount of that damage. We looked at  
5 the pictures that were provided to us and their estimates of  
6 the cost.

7 THE COURT: Do you know what those estimates  
8 were?

9 MR. PETERSON: Off the top of my head, no.  
10 Mr. Pharris could certainly speak to that.

11 THE COURT: Okay. I'll ask Mr. Pharris.

12 MR. PETERSON: It was -- I guess it was  
13 substantial enough, in relation to the amount of the claim,  
14 that it made, you know, this settlement even more reasonable  
15 than we think.

16 THE COURT: Okay. Looking at the settlement  
17 agreement itself, can I confirm that under the settlement  
18 agreement, RETT is keeping a \$36,000 security deposit?

19 MR. PETERSON: Yes.

20 THE COURT: So in addition to the \$50,000 in  
21 cash that the trustee proposes to give to what I'll call the  
22 Tucker/Cook parties, they're also keeping another \$36,000 in  
23 cash?

24 MR. PETERSON: Correct.

25 THE COURT: So they're getting \$86,000; isn't

1 that fair to say?

2 MR. PETERSON: Yeah. That would be the total  
3 benefit to them.

4 THE COURT: Well, you're also waiving your --

5 MR. PETERSON: In addition to the waiver of some  
6 releases.

7 THE COURT: -- offset claim, which was \$13,000,  
8 right? You asserted an offset claim, at that last hearing, of  
9 \$13,000 for payment of an obligation that the debtor really  
10 was not obligated to pay.

11 MR. PETERSON: Yeah. That's correct.

12 THE COURT: And you're going to give up any  
13 claim for the landlord's obvious and blatant violations of the  
14 stay, right?

15 MR. PETERSON: Correct.

16 THE COURT: Okay. And you won on the motion  
17 for -- I denied the motion for relief from stay and adequate  
18 protection. You had asked for your attorney's fees in  
19 responding to that. You're giving up your claim to that, too,  
20 are you not?

21 MR. PETERSON: Correct.

22 THE COURT: So I guess you can tell where I'm  
23 going. It's far more than \$50,000. It seems to the Court  
24 that the consideration is in excess of \$100,000 that is being  
25 conveyed to the Tucker/Cook group.

1                   So let me then turn to paragraph 4 of the  
2 settlement. That has a requirement that RETT give to the  
3 trustee information regarding the -- I guess fixing the  
4 alleged damages. So what's the purpose behind that  
5 information?

6                   MR. PETERSON: Yeah. So paragraph 3 -- you  
7 know, the intent of paragraph 3 is to confirm -- and part of  
8 the reason why we agreed to this settlement agreement was --  
9 and why we believe it's reasonable, is because of this issue  
10 of environmental damage to the property. They were very  
11 serious in their claims of what they say were spills -- and  
12 Mr. Pharris, again, can speak more to this than I can -- that  
13 took place at the premises and the fact that there may have  
14 been seepage into soil there. We wanted to resolve any claim  
15 that would arise based on that potential environmental  
16 contamination.

17                   We knew we could get a release from RETT, which  
18 is contained in this settlement agreement, right? They  
19 released any and all claims, including any claims arising from  
20 that damage.

21                   The purpose of paragraphs 3 and 4 are to make  
22 sure that with the settlement funds, RETT uses those to  
23 actually clean up the premises. And we want proof of that, in  
24 the way of documentation, as to what they have done to  
25 remediate the damage on the premises, so that the trustee can

1 be assured that no third party, in the future, whether it be a  
2 future owner of the property or a governmental agency, later  
3 comes back and asserts an environmental claim against the  
4 estate, which could be significant if the allegations that the  
5 contamination is actually seeping in the soil -- you know, the  
6 problem could expand to a bigger one than it is presently.

7 THE COURT: And the idea is that if there is any  
8 claim for cleanup damage, it's all going to be on RETT? I  
9 guess if you're saying that there may be some future cleanup  
10 exposure, RETT is going to pay for that?

11 MR. PETERSON: Correct. What they're  
12 representing in this agreement is that the only environmental  
13 contamination that they're aware of is what exists presently,  
14 that they've put us on notice of, and that they're going to  
15 clean that contamination up. And, you know, all the  
16 environmental agencies of Texas aren't parties to this  
17 agreement, right?

18 THE COURT: Right.

19 MR. PETERSON: So we can't get waivers from  
20 them.

21 THE COURT: Right.

22 MR. PETERSON: But we can ensure that they'll  
23 clean it all up. And they've represented and warranted that  
24 this is the only contamination that they're aware of. And so  
25 the focus of this agreement -- one of the important aspects of

1 this agreement, for the trustee and the estate's benefit, is  
2 to ensure that there will be no contribution claims and  
3 potentially no claims from third parties asserted in the  
4 future. And so we've done everything we can to make sure that  
5 that's the case in the agreement.

6 THE COURT: All right. Well, this is helpful,  
7 but I'm reading now paragraph 3. So RETT is representing and  
8 warranting that the only hazardous substances that it is aware  
9 of are: (a) the substances RETT believes were spilled by Ira  
10 Green, and (b) certain potentially hazardous materials  
11 contained in a drum that RETT believes Ira Green failed to  
12 remove.

13 MR. PETERSON: Uh-huh.

14 THE COURT: So the rep and warranty is that  
15 that's all the environmental hazardous substances issues that  
16 RETT is aware of at the moment.

17 MR. PETERSON: Correct.

18 THE COURT: In paragraph 4, it says: Within 15  
19 days of receipt of the settlement payment, RETT is going to  
20 provide this information to the trustee.

21 So it's expected that within 15 days, all the  
22 costs to clean up have been incurred?

23 MR. PETERSON: That's a fair point. You know,  
24 it's our hope that, and I believe -- I mean, Mr. Pharris can  
25 confirm this, too -- but that RETT has already undertaken the



1 efforts to clean up the property, and it's -- you know, it  
2 will be completed by then. I don't know. I mean, he can  
3 speak to that. I can't speak to that.

4 THE COURT: Yeah. Because I actually didn't  
5 understand the purpose, and what you've just told me is  
6 helpful in understanding it. I mean, the way I read that,  
7 potentially, is that the trustee wants this information so it  
8 can then look to Ira Green for contribution. The trustee  
9 isn't going to turn around and sue Ira Green?

10 MR. PETERSON: That's not the trustee's  
11 intention. No.

12 THE COURT: Okay. Well, that's good to hear.

13 I guess I'll ask Mr. Pharris. I want to know if  
14 it's RETT's intention to sue Ira Green. Maybe I'll turn to  
15 Mr. Pharris now. You've been on the hot seat for a while.

16 Mr. Pharris, you've heard some of my questions.  
17 Tell me about the damages, to the extent you can, that your  
18 client alleges Ira Green caused. And let me be clear. It's  
19 just damages during the removal period, right? Is that what  
20 this is limited to, what we're calling the "removal period"?

21 MR. PHARRIS: I believe that's the only period  
22 of time that Ira Green was in possession of the property.

23 THE COURT: Right.

24 MR. PHARRIS: Let me start with this, Your  
25 Honor. If these issues have to be litigated and we have to

1 hire experts, I think both the trustee and RETT see clearly  
2 that we're talking about litigation costs alone that are going  
3 to exceed the amount of this settlement.

4 THE COURT: Well, why would you then spend them?  
5 That wouldn't make a lot of sense, would it? Why would you  
6 spend more in litigation costs than what's at issue?

7 MR. PHARRIS: Well, that's why we're settling  
8 for the amount that's before the Court.

9 THE COURT: Right. That's what I'm trying to  
10 understand. When you say "substantial" or "significant"  
11 property damages, are we talking 5,000? 50,000? 500,000?

12 MR. PHARRIS: Okay. Yeah. Let me -- I'm happy  
13 to address that. We sent a lot of information -- we already  
14 hired a -- RETT hired a remediation service. They went over  
15 the property. We sent pictures to the trustee. They've  
16 identified all the places on the property where there's toxic  
17 waste. We sent pictures of the -- and I'm holding up one of  
18 those right now. I don't know. It looks like there's about a  
19 dozen spots on the property. And then they also sent more  
20 detailed pictures showing where the grass was dead, and all  
21 the vegetable material was dead in those locations.

22 We also provided information as to our  
23 estimates. RETT believes that this could easily exceed -- be  
24 in the six figures. So it easily can exceed a hundred  
25 thousand.

1           Now, we've done a little bit -- they've started  
2 a little bit of the work. But, you know, they're waiting to  
3 get the money -- to finalize the contract with the remediation  
4 service and do the work until we get the money from the  
5 settlement.

6           So the problem was -- and, actually, I advocated  
7 to the trustee, initially, that all this information be  
8 provided to the Court. And the trustee said, Are you kidding?  
9 You want to put evidence in the record that some federal  
10 agency would potentially use to bring a claim against both of  
11 our clients?

12           And so over -- and so I foresaw that the Court  
13 might have problems with this issue, but --

14           THE COURT: You are correct.

15           MR. PHARRIS: But my client had the same concern  
16 that the trustee did about making all these things -- putting  
17 all these things in the record, and so we decided not to do  
18 that.

19           THE COURT: But you're cleaning it up. I mean,  
20 that's what I'm being told, is that it's all going to be  
21 cleaned up. So what's going to be the problem?

22           MR. PHARRIS: That would be -- you know, there's  
23 been plenty of cleanups where people got sued after the fact  
24 and, you know, the cleanup wasn't --

25           THE COURT: So what if your client gets sued

1 after the fact? Are you going to turn around and then sue the  
2 debtor? I mean, are we not done?

3 MR. PHARRIS: We give them a release under this  
4 settlement.

5 THE COURT: So there's not going to be any  
6 claims going forward. And if the environmental agencies  
7 decide to sue the former tenant, you guys are each going to --

8 MR. PHARRIS: Well, we can't control that.

9 THE COURT: Right.

10 MR. PHARRIS: And, you know, we may get sued as  
11 well.

12 THE COURT: Right. Well, as the owner,  
13 presumably, that would be where any environmental agencies  
14 would start.

15 MR. PHARRIS: Right.

16 THE COURT: You said "up to a hundred thousand."  
17 I mean, as you've --

18 MR. PHARRIS: No, no. I think it could be over  
19 a hundred thousand. But, you know, what we'll do is, we'll  
20 get the money. We'll finalize the contract. We'll know  
21 exactly how much is going to be paid. They've already done --  
22 I mean, we've already given estimates. That's why I could  
23 give you, you know, an estimate in a pretty close range. And  
24 then we'll have further documents to provide to the trustee.

25 THE COURT: But it's not hundreds of thousands.

1 It's "could exceed a hundred thousand"?

2 MR. PHARRIS: If it's hundreds of thousands,  
3 RETT has to bear that burden. And it could be hundreds of  
4 thousands. We don't know.

5 THE COURT: Well, that's just it. I don't have  
6 anything in the record. I don't know either. I just have --

7 MR. PHARRIS: Well, I think what you do know is  
8 it's likely to exceed a hundred.

9 THE COURT: I don't have that in the record.

10 MR. PHARRIS: No.

11 THE COURT: I have you telling me that. But the  
12 time to put evidence in the record was with the motion, and  
13 all I got was a "it's substantial." That's not helpful and  
14 not sufficient. And given --

15 MR. PHARRIS: But we do know that the cost of  
16 litigating the issue alone could exceed -- would likely exceed  
17 the settlement amount.

18 THE COURT: If you litigate inefficiently,  
19 that's correct. But I would expect the parties would not  
20 spend more than what's at stake. It would just not make any  
21 sense for the parties to do that.

22 MR. PHARRIS: Well, if they couldn't get a  
23 settlement approved, my client may feel that it doesn't have  
24 any choice. I don't know.

25 THE COURT: Well, it wouldn't make a whole lot

1 of sense for your client to spend \$100,000 litigating to get  
2 \$100,000 back.

3 MR. PHARRIS: Well, that's not all we have on  
4 the table here. We've got the \$25,000 break-up fee. At the  
5 last hearing, the trustee acknowledged that that was agreed  
6 to, and they support that.

7 THE COURT: But the Court does not support it.

8 MR. PHARRIS: All right.

9 THE COURT: And I made that clear at the last  
10 hearing. So the break-up fee, as far as the Court is  
11 concerned, is zero.

12 You're going to need to convince me why there  
13 should be a break-up fee. Because break-up fees are awarded  
14 to parties to keep them into the bidding through auction.  
15 Your client stayed in the bidding through auction without a  
16 break-up fee. The case law is very clear. They don't get  
17 one. So as far as I'm concerned, the break-up fee is likely  
18 zero. So that's your first claim.

19 Now, let's turn to the administrative claim,  
20 which was 34,000. It was 21,000 by the time of the hearing.  
21 I said, at the time of the hearing, that I believe that monies  
22 paid for insurance prepetition were not entitled to  
23 administrative priority. Well, that's half of the 10,000 --

24 MR. PHARRIS: But monies weren't paid  
25 prepetition.

1 THE COURT: That's not what your client said in  
2 his declaration.

3 MR. PHARRIS: Well, they weren't paid  
4 prepetition. That's what I --

5 THE COURT: Okay. That's what the evidentiary  
6 hearing was going to be about. You were going to --

7 MR. PHARRIS: That's right.

8 THE COURT: That's right. That's \$20,000. Then  
9 that leaves --

10 MR. PHARRIS: I had it as 30.

11 THE COURT: Right. But if you read your reply  
12 brief that you filed before the last hearing, you had knocked  
13 it down to 21.

14 MR. PHARRIS: All right.

15 THE COURT: So that then comes back to your  
16 environmental damages claim.

17 MR. PHARRIS: No. There was a couple thousand  
18 of late fees that --

19 THE COURT: Right.

20 MR. PHARRIS: You seemed to support that at the  
21 time, and --

22 THE COURT: And then the \$10,000 on the taxes,  
23 which the trustee had two arguments as to why that should not  
24 be allowed. So there was some significant exposure to the  
25 Tucker/Cook group that that claim would be allowed, maybe, in

1 the 1- to \$2,000 range, not 34. So that takes us back to the  
2 damages. So that's why I'm asking you the number.

3 MR. PHARRIS: Well, the estate is still going to  
4 have to litigate the break-up fee, even though --

5 THE COURT: And so is your client, too.

6 MR. PHARRIS: That's right.

7 THE COURT: So --

8 MR. PHARRIS: That's why we settle these things.

9 THE COURT: The Court is ready to rule. I'm  
10 going to deny the motion. Here are my findings of fact:

11 On May 6, 2016, the trustee filed a motion for  
12 approval of the sale of its assets related to the Graco  
13 business located at the premises. That's at Docket Number  
14 200.

15 The sale motion requested that the Court approve  
16 the sale of the Graco assets to Tom Tucker and Larry Cook,  
17 representing a to-be-formed entity. In the sale motion, the  
18 trustee requested that the Court approve a break-up fee for  
19 Tucker/Cook in the amount of \$25,000. In support of that  
20 motion, the trustee submitted a declaration from Tom Tucker,  
21 in which Mr. Tucker swore under oath: "I believe that the  
22 proposed break-up fee of \$25,000 is reasonable in relation to  
23 the size of this transaction and the amount of fees and costs  
24 the buyer has expended in relation to the investigation of  
25 Graco and the negotiation of the purchase agreement." See



1 Docket Number 202 at paragraph 6.

2 Notably, the purchase and sale agreement  
3 executed by the trustee and Tucker/Cook did not mention any  
4 break-up fee. But the agreement did have an integration  
5 clause which stated that the agreement supersedes all prior  
6 agreements or understandings, written or oral, of the seller  
7 and buyer relating to any form of acquisition of the seller or  
8 the business and incorporates the entire understanding of the  
9 parties with respect thereto.

10 At the hearing on the trustee's sale motion, the  
11 Court approved the sale to another entity, Ira Green, Inc.,  
12 but refused to approve the break-up fee at the time and  
13 continued the request to a later date.

14 On June 2, the trustee noted a hearing for  
15 approval of a break-up fee in the amount of \$25,000 and set  
16 the hearing for June 17. See Docket Number 370.

17 On July 1, Graco Awards filed a memorandum  
18 asserting that Graco was entitled to a break-up fee of  
19 \$52,111, plus costs and attorney's fees not to exceed \$6,000.  
20 That's Docket Number 479.

21 The memorandum relied on the declaration by  
22 Larry Cook, who detailed many expenses that Graco asserted  
23 were related to their transaction costs. See Docket Number  
24 480.

25 The trustee filed a vigorous opposition to this

1 request, stating in the response: "Hell hath no fury like a  
2 bidder scorned." The trustee noted that the prior Tucker  
3 declaration, in which he asserted \$25,000, was the reasonable  
4 figure for the transaction costs.

5 The trustee further asserted that the vast  
6 majority of the over \$52,000 that Tucker/Cook requests is  
7 based on an invoice that Larry Cook generated and submitted to  
8 his business partner, Tom Tucker, for "professional services"  
9 rendered by his public accounting firm.

10 The trustee asserted: "The Tucker/Cook request  
11 is especially absurd given that Tucker/Cook only incurred  
12 out-of-pocket expenses of approximately \$6,000 in connection  
13 with its stalking-horse bid. See Docket Number 488.

14 The Tucker/Cook group was clearly surprised by  
15 the trustee's vociferous opposition. Because in reply, they  
16 supplied several emails from the trustee that include the  
17 following: From Mark Calvert, on June 3rd, 2016, to Tom  
18 Tucker: "I am here to help you and take care of you. It is  
19 okay if it is next week. I am just wanting to cut you a  
20 check. You and Larry are true professionals. I appreciate  
21 you and Larry. Just wanted to make sure we take care of you.  
22 Just let me know. Mark."

23 Then on June 20, 2016, Mark Calvert sent an  
24 email to Mr. Tucker, copying Larry Cook and copying Brian  
25 Peterson of K&L Gates: "Tom, No. Talked with Brian and

1 called Larry and advised. You need to have your attorney file  
2 for the 56k with the affidavit from Larry we discussed. Then  
3 I will follow up with a supporting motion for 30k. The  
4 hearing is scheduled for July 8th. So get it filed, and we  
5 will push forward. Thanks, Mark. P.S. Please pass this to  
6 your attorney to confirm he is going to file the motion.  
7 Thanks." That's from the supplemental Tucker declaration at  
8 Docket 495, Exhibits A and B.

9           The motion in support of the settlement does not  
10 fairly or accurately portray what the trustee is giving up or  
11 what he is getting in return.

12           First, the trustee does not reveal all of the  
13 consideration flowing to the Tucker/Cook group. In addition  
14 to the \$50,000 in cash, RETT is retaining a \$36,000 security  
15 deposit. The trustee is also waiving a claim to recover from  
16 the landlord \$13,177 for the erroneous payment of 2015 real  
17 estate taxes. The trustee is also waiving its claim for  
18 attorney's fees as the prevailing party under the lease on the  
19 relief from stay motion in which the trustee prevailed. The  
20 trustee did request fees as the prevailing party at Docket  
21 Number 49. And the trustee is waiving its claims against the  
22 landlord for two obvious and blatant violations of the  
23 automatic stay that the Court identified at the last hearing.

24           On the other side of the equation, the trustee  
25 overstates the potential recovery by Tucker/Cook. While RETT

1 did initially request an administrative claim of \$31,426, in  
2 its reply brief, it reduced the claim to \$21,606. See Docket  
3 Number 497.

4                   At the last hearing on this matter, the Court  
5 noted that the Tucker/Cook evidence showed that nearly \$9,000  
6 of that amount was spent on insurance prepetition and,  
7 therefore, was not an administrative claim. The trustee also  
8 argued that another 10,000 of that claim was for real estate  
9 taxes that were due prepetition and, therefore, not an  
10 administrative claim. That leaves approximately \$2,000 on the  
11 purported administrative claim.

12                   While the Court did set an evidentiary hearing  
13 on the issues, it was made clear to the parties that RETT  
14 would likely not be allowed the amount sought. I reviewed the  
15 transcript. And I said to counsel for RETT: "I mean, I've  
16 kind of given my preliminary view on several of the requested  
17 administrative expenses. I don't see that there is much of an  
18 administrative expense claim your client might have."

19                   RETT also did initially request \$44,000 for  
20 damages to the premises but reduced that request to \$20,000 at  
21 the time of the hearing. Again, that is in the transcript.  
22 And the trustee argued previously that the entire claim for  
23 damages could be considered a general unsecured claim under  
24 *In re TreeSource Industries, Inc.*, 363 F.3d 994 (9th Cir.  
25 2004). Therefore, on the record before the Court, the

1 potential recovery for an administrative claim for damages is  
2 between zero and \$20,000.

3           With respect to the break-up fee, Graco did file  
4 a request for a break-up fee of \$52,000, plus attorney's fees  
5 of \$6,000. In this current motion, the trustee characterizes  
6 Graco's request as a demand. However, the emails in the  
7 record show that the trustee actively encouraged Graco to  
8 submit an inflated claim and then promised to seek a  
9 compromise of \$30,000.

10           At the last hearing, the Court reviewed the  
11 requested amounts and made clear that the vast majority of the  
12 amounts included in Graco's request were not proper due  
13 diligence expenses and could not be recovered as part of the  
14 break-up fee. The Court also made clear that the fee could be  
15 zero, as Graco would need to convince the Court that it  
16 proceeded in reliance of the break-up fee despite the lack of  
17 any such provision in the purchase and sale agreement and the  
18 presence of the integration clause in the agreement. Thus, on  
19 this record, the potential recovery on the break-up fee is  
20 between zero and 25,000.

21           According to the motion, the proposed settlement  
22 includes \$25,000 for the break-up fee. Meaning the  
23 Tucker/Cook group is not compromising at all but is getting  
24 exactly what the trustee promised he would give them.

25           In support of the current motion, the trustee

1 declares that RETT asserts there has been more damage to the  
2 premises caused by Ira Green's removal of property from the  
3 premises. This is hearsay, and the Court has no evidence of  
4 the amount of alleged damages.

5           The settlement agreement requires the  
6 Tucker/Cook group to provide the trustee with all of its  
7 evidence of damages. I now have clarification that that was  
8 supposed to be proof of payment. I don't read the settlement  
9 agreement to say that. But in any event, it's clear, based  
10 upon that settlement provision, that the trustee does not have  
11 all the evidence to conclude that there is potential  
12 substantial damage to the premises.

13           The trustee asserts that if he litigates the  
14 issue, the estate would be forced to incur significant  
15 discovery and litigation expenses. The Court does not accept  
16 this prediction.

17           The evidentiary issues the Court identified at  
18 the last hearing were very limited: When did RETT pay  
19 insurance? Are there facts that would support an agreement  
20 for a breakup? What did Tucker/Cook spend on due diligence?  
21 And what, if any, damage was caused by the removal?

22           The trustee should be able to conduct discovery  
23 on these limited issues in an efficient manner.

24           As for the alleged damages caused by the move,  
25 again, the Court has no evidence of those alleged damages, so

1 it's not possible to evaluate the trustee's assertion that  
2 massive discovery would be needed.

3 The Court concludes as follows:

4 When evaluating a proposed settlement, the focus  
5 of the Court's inquiry is whether the settlement entered into  
6 by the trustee was reasonable, given the particular  
7 circumstances of the case. In re Equity Funding Corp. of  
8 America, 519 F.2d 1274 (9th Cir. 1975).

9 Specifically, to determine whether a compromise  
10 is fair and equitable, the Court should consider: (1) the  
11 probability of success in the litigation; (2) the  
12 difficulties, if any, to be encountered in collection; (3) the  
13 litigation's complexity and its attendant expense,  
14 inconvenience, and delay; and (4) the paramount interest of  
15 the creditors, with a proper deference to their reasonable  
16 view. In re A&C Properties, 784 F.2d 1377 (9th Cir. 1986).

17 On this record, the trustee is attempting to  
18 convey over \$100,000 in consideration to the Tucker/Cook group  
19 to avoid an administrative claim that this Court calculates to  
20 be between \$2,000 and \$75,000.

21 The Court concludes that this settlement is not  
22 reasonable and does not satisfy the A&C factors. The debtor  
23 would certainly do better than this proposal if he litigated  
24 the matter, even after litigation costs. In the absence of  
25 any evidence of significant damage that the estate might be

1 exposed to on an administrative expense basis, the trustee is  
2 overpaying, and Tucker/Cook is not compromising at all.

3 Further, saving litigation costs is not a  
4 sufficient basis to approve the settlement. If it were,  
5 anyone could threaten to file an administrative expense claim,  
6 and then the trustee would have to settle for litigation  
7 costs. Moreover, it appears that the litigation may not be  
8 ending, because, again, I can't really tell, from this  
9 lawsuit, what the purpose of paragraph 4 is, even though I now  
10 have some explanation.

11 It appears to the Court that getting this  
12 information, at least gives the trustee the ability to go  
13 after Ira Green for its damages. If that's not the case,  
14 that's great. It would be preferable if the settlement  
15 agreement stated that RETT is not suing Ira Green, and the  
16 trustee is not suing Ira Green. I'm not going to tell the  
17 parties that they need to include that. But unless Ira Green  
18 is involved in the settlement, the Court is not convinced that  
19 that litigation is done and completed by this settlement  
20 agreement.

21 Given that Tucker/Cook filed an inflated request  
22 for a break-up fee, albeit at the request of the trustee, the  
23 Court will not consider any request to compromise an alleged  
24 damages claim without declarations, based on personal  
25 knowledge, that identifies the damages allegedly caused by the



1 removal of items from the premises.

2 The motion is denied. The Court will enter the  
3 order.

4 Thank you, gentlemen.

5 If someone wants to reset the evidentiary  
6 hearing, send a letter asking us to do so.

7 Anything further?

8 MR. PHARRIS: Not from us.

9 THE COURT: All right.

10 All right. Thank you, Mr. Peterson.

11 MR. PETERSON: Thank you, Your Honor.

12 THE COURT: I do need to say that those emails  
13 are still very troubling.

14 MR. PETERSON: Understood, Your Honor.

15 THE COURT: You need to convey that to your  
16 client.

17

18 (The proceedings in this matter were concluded.)

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## 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 1st day of December, 2016.

14  
15  
16 by /s/ Shari L. Wheeler

17 SHARI L. WHEELER, CCR NO. 2396  
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**AhearnAndAssoc@comcast.net**