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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: April 20, 2018
Hearing Time: 9:30 a.m.
Response Date: April 13, 2018

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

11 In re:

12 NORTHWEST TERRITORIAL MINT, LLC,
13 Debtor.

Case No. 16-11767-CMA

MOTION TO APPROVE (I) DEADLINE TO
ASSERT CLAIMS WITH RESPECT TO
OWNERSHIP OF NWTM COINING DIES;
AND (II) SETTLEMENT PROTOCOL TO
RESOLVE CLAIMS TO OWNERSHIP OF
NWTM DIES

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16 Mark Calvert (the "Trustee"), Chapter 11 Trustee for the consolidated estates of Medallic Art
17 Company, LLC ("MACLLC") and Northwest Territorial Mint, LLC ("NWTM"), hereby files this
18 motion (the "Motion") for entry of an order approving a settlement protocol allowing the Trustee to
19 compromise claims that certain former customers have to coining dies in the possession of the
20 Trustee. The Trustee believes that the coining dies in his possession are property of the Debtor and
21 may be sold by the Trustee to third parties.

22 The Trustee recognizes that certain current and former customers of the Debtor have asserted
23 an interest in coining dies used by the Debtor to manufacture products for them and ordered through
24 NWTM. In total, there are thousands of NWTM coining dies and thousands of customers for whom
25 such dies were manufactured. Because of the inconsistent policy that NWTM articulated with
26 respect to the dies, the cost of attempting to sell the dies in bulk, and the potential objections that the

MOTION TO APPROVE SETTLEMENT PROTOCOL
REGARDING NWTM DIES - 1
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1 Trustee may receive to a sale of the dies to third parties, the Trustee has filed this Motion. This
2 motion seeks to establish a form of notice to be transmitted to all customers for whom NWTM
3 coining dies were manufactured, giving them a deadline of 60 days to assert a claim to any coining
4 dies. The Motion also seeks the Court's authorization of the terms of an offer of compromise
5 contained in that notice. The Trustee believes that the relief requested herein establishes an
6 expeditious and fair means to resolve any ownership issues with respect to NWTM dies. In support
7 of the Motion, the Trustee respectfully states as follows:

8 I. FACTS

9 A. The Dies.

10 As this Court is aware, NWTM operated a custom minting service whereby customers would
11 contract with NWTM to produce coins and medallions bearing specific designs. In order to produce
12 these coins and medallions, NWTM first had to create a custom coining die (a "NWTM Die") used
13 to press the coin or medallion. These NWTM Dies were stored by NWTM when not being actively
14 used for production. NWTM currently possesses thousands of NWTM Dies. Of the NWTM Dies,
15 the Trustee has identified 12,037 that were created for custom jobs (the "NWTM Custom Dies") for
16 4,594 customers ("Custom Job Customers"). Because NWTM's records only go back ten years, it is
17 likely there are some Custom Dies which have not been identified. The remaining NWTM Dies
18 were used for production of stock items which NWTM marketed.

19 B. General Background.

20 On January 19, 2018, the Trustee filed his Motion for Order Authorizing the Auction and
21 Sale of the Debtor's Equipment, Dies, Tooling, Archives, and Inventory Free and Clear of All Liens,
22 Claims, Interests, and Encumbrances (the "Auction Motion"). Dkt. No.1350. A handful of parties
23 filed objections to the Auction Motion, asserting an interest in specific dies, plasters and galvanos.

24 The Trustee continued the hearing on the Auction Motion and filed separate motions to sell
25 certain assets of the estate including certain coining dies used to manufacture medals and
26 medallions. In particular, the Trustee filed a motion to approve the sale of some of the estate's dies,

1 manufactured by MACLLC (the “Medallic Coining Dies”), to Medalcraft Mint, Inc. (the
2 “Medalcraft Sale Motion”). Dkt. No. 1457. The Trustee’s sale to Medalcraft was not approved.
3 Numerous parties objected to the sale of coining dies, arguing that they had a right to such dies. The
4 question of ownership of the coining dies was not resolved by the Court. The Court did, however,
5 rule that any intellectual property embodied in the coining dies is separate and apart from the
6 ownership of the Coining Dies themselves. Thus, assuming that the estate owns the NWTM Dies,
7 they may be sold by the Trustee.

8 The Trustee has determined that, with certain exceptions, the company owned all Medallic
9 Coining Dies. The ability of the Trustee to prove that NWTM Custom Dies are property of the
10 estate is complicated by inconsistent statements made by NWTM sales agents to customers. In
11 many instances, the paperwork provided to NWTM customers made it clear that all dies remained
12 the property of NWTM. In other instances, the policy was not expressed on the paperwork, and
13 customers have indicated that they assumed the “die charge” they paid was a purchase price rather
14 than a charge for the expense NWTM incurred in creating a die. Because there are thousands of
15 NWTM Custom Dies and thousands of customers who could assert an ownership interest therein, it
16 would be costly and time consuming for the Trustee to determine the question of ownership with
17 regards to each NWTM Custom Die. As a result, the Trustee has developed the settlement protocol
18 set forth herein that will allow the Trustee to resolve the question of ownership with individual
19 current and former customers of NWTM.

20 **C. The Settlement Protocol.**

21 The Trustee proposes to resolve all claims of ownership through a settlement protocol (the
22 “Settlement Protocol”) whereby the estate would cede any claim of an ownership interest in any
23 particular NWTM Die in exchange for a settlement payment of \$300, a figure which, as explained in
24 the accompanying Declaration of Mark Calvert, represents an allocation of some of the overhead
25 cost of storing the NWTM Dies through June, 2018, costs of notifying customers, costs of
26 identifying, pulling, and packaging dies, the costs of confirming association of a die with a customer,

1 as well as an amount to settle disputed ownership. Any settling customer would have to pay the cost
2 of shipping the die to their location. The Settlement Protocol would give customers a period of 60
3 days to claim and resolve ownership, after which they will be deemed to have waived any interest
4 they have in a die.

5 The Trustee proposes to send notice of the Settlement Protocol (the “Settlement Notice”) to
6 all Custom Customers which he has identified (i.e., those reflected in the records related to the last
7 ten years). The form of the Settlement Notice is attached to the accompanying Declaration of Mark
8 Calvert accompanying this Motion. The Trustee also proposes to post the Settlement Notice on
9 NWTM’s websites, and will publish the Settlement Notice in a prominent trade magazine once a
10 week for four weeks.

11 II. ARGUMENT

12 Compromises are a “normal part of the process of reorganization.” *Protective Comm. for*
13 *Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court
14 has great latitude in approving compromise agreements and may approve a compromise if it is “fair
15 and equitable.” *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir.
16 1988). The Court does not have to decide the numerous questions of fact and law raised by
17 objecting parties. *In re Planned Protective Serv., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).
18 The focus of the Court’s inquiry is whether the settlement entered into by the Trustee was reasonable
19 given the particular circumstances of the case. *Bache & Co. v. Loeffler (In re Equity Funding Corp.*
20 *of Am.)*, 519 F.2d 1274, 1277 (9th Cir. 1975). Specifically, to determine whether a compromise is
21 “fair and equitable,” the Court should consider: (1) the probability of success in the litigation; (2)
22 the difficulties, if any, to be encountered in collection; (3) the litigation’s complexity and its
23 attendant expense, inconvenience and delay; and (4) the paramount interest of the creditors with a
24 proper deference to their reasonable view. *Martin v. Kane (In re A & C Prop.)*, 784 F.2d 1377, 1381
25 (9th Cir. 1986).

1 Given the number of NWTM Dies at issue, the number of Custom Customers, and the
2 relatively low value of a die on an individual basis, there is no practical way to resolve ownership of
3 the NWTM Dies through a litigation process. Moreover, because the Trustee will lose access to the
4 Dayton Facility at the end of June, there is need for an expedited process to notify potentially
5 affected parties so that they can assert and interest in a die. The alternative to the Settlement
6 Protocol would be to scrap or abandon the dies, an outcome which would be detrimental to the
7 interest of parties which believe they own a NWTM Die. Simply put, the Settlement Protocol
8 represents a practical and efficient way of resolving disputed title issues, and, and the conclusion of
9 the process, will allow the Trustee to attempt to realize value from dies that are not subject to a
10 claim.

11 III. CONCLUSION

12 Based on the foregoing, the Trustee respectfully requests that the Court enter an Order
13 approving the Settlement Protocol.

14 DATED this 30th day of March, 2018.

K&L GATES LLP

16 By /s/ David C. Neu

17 Michael J. Gearin, WSBA #20982

David C. Neu, WSBA #33143

18 Brian T. Peterson, WSBA #42088

Attorneys for Mark Calvert, Chapter 11 Trustee

CERTIFICATE OF SERVICE

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The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on March 30, 2018, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on March 30, 2018, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC
c/o Ross Hansen, Member
P.O. Box 2148
Auburn, WA 98071-2148

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 30th day of March, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

Case No. 16-11767-CMA

ORDER APPROVING MOTION TO
APPROVE (I) DEADLINE TO ASSERT
CLAIMS WITH RESPECT TO
OWNERSHIP OF NWTM COINING
DIES; AND (II) SETTLEMENT
PROTOCOL TO RESOLVE CLAIMS
TO OWNERSHIP OF NWTM DIES

THIS MATTER comes before the Court upon the Trustee’s Motion to Approve (I) Deadline to Assert Claims with Respect to Ownership of NWTM Coining Dies; and (II) Settlement Protocol to Resolve Claims to Ownership of NWTM Dies (the “Motion”)¹. The Court having considered the Motion, the accompanying declarations, and objections and replies, and having heard the argument of counsel, if any, and having found that approval of the Settlement Protocol is in the best interest of the estate and customers claiming an interest in NWTM Dies, NOW, THEREFORE, it is

ORDERED as follows:

¹ Unless specifically defined, capitalized terms used herein shall have the meanings given to them in the Motion.

ORDER APPROVING MOTION TO APPROVE (I) DEADLINE TO ASSERT CLAIMS WITH RESPECT TO OWNERSHIP OF NWTM COINING DIES; AND (II) SETTLEMENT PROTOCOL TO RESOLVE CLAIMS TO OWNERSHIP OF NWTM DIES - 1
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1. The Settlement Protocol proposed by the Trustee is approved;
2. The Trustee is authorized, without further court order to settle all disputes regarding ownership of NWTM Dies for a settlement payment of \$300 per die;
3. The Trustee shall mail copies of the Settlement Notice to all Custom Customers that have been identified;
4. The Settlement Notice shall be posted on NWTM's websites;
5. The Trustee shall publish the Settlement Notice in a prominent trade publication once a week for four (4) consecutive weeks;
6. Any NWTM Die, ownership of which had not been settled pursuant to the Settlement Protocol, held by the Trustee after the Settlement Deadline shall be deemed property of NWTM's bankruptcy estate.

///END OF ORDER///

Presented by:

K&L GATES LLP

/s/ David C. Neu

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David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee