

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

The Honorable Christopher M. Alston  
Chapter 11  
Hearing Date: September 16, 2016  
Hearing Time: 11:00 am  
Hearing Place: Seattle  
Response Date: September 9, 2016

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

NORTHWEST TERRITORIAL MINT, LLC

Debtor.

No. 16-11767-CMA

APPLICATION TO APPROVE  
EMPLOYMENT OF THE TRACY LAW  
GROUP PLLC AS DEBTOR'S COUNSEL  
*NUNC PRO TUNC* FOR THE PERIOD  
OF APRIL 1, 2016 THROUGH APRIL 15,  
2016 AND TO APPROVE FINAL  
COMPENSATION AND  
REIMBURSEMENT OF EXPENSES FOR  
THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016

The Tracy Law Group PLLC applies to this Court for an order approving the employment of The Tracy Law Group PLLC ("TTLG") as Chapter 11 counsel for Northwest Territorial Mint LLC ("Debtor") *nunc pro tunc* for the period April 1, 2016 through April 15, 2016, the date that the Debtor and TTLG terminated its representation in writing. Further, TTLG applies to this Court for approval of compensation in the amount of \$35,715.50 and reimbursement of expenses of \$2,239.07 for the period April 1, 2016 through April 11, 2016, the date that the Court entered its

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
*NUNC PRO TUNC* FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 1

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 Ex Parte Order Approving Appointment of Chapter 11 Trustee (*Doc. #51*) (Together, the  
2  
3 “Application”). The Tracy Law Group PLLC makes this Application under 11 U.S.C. §§ 327, 330  
4  
5 and 33, FRBP 2014, FRBP 6003(a), LBR 2014-1, LBR 2016. The Application is supported by the  
6  
7 declaration of J. Todd Tracy filed concurrently herewith (“Tracy Declaration”).  
8  
9

10 I. **NUNC PRO TUNC APPROVAL OF EMPLOYMENT**

11  
12 **A. Facts**

13  
14 1. TTLG was contacted by Northwest Territorial Mint, LLC about a potential  
15  
16 receivership or bankruptcy on March 25, 2016. Northwest Territorial Mint, LLC was insistent  
17  
18 upon filing either a receivership case or a bankruptcy by April 1, 2016 because of actions  
19  
20 scheduled in the King County Superior Court on that date. The Debtor executed an engagement  
21  
22 letter on March 31, 2016, retaining TTLG for purposes of representing it in the present Chapter  
23  
24 11 bankruptcy (“Engagement Letter”). A copy of the Engagement Letter is attached as an exhibit  
25  
26 to the Tracy Declaration, filed concurrently herewith.  
27  
28

29  
30 2. Debtor filed a Chapter 11 petition on April 1, 2016. The Debtor was a debtor-in-  
31  
32 possession under 11 U.S.C. §§ 1107(a) and 1108(b).  
33  
34

35 3. The Debtor was informed that J. Todd Tracy (“Tracy”) and Steven J. Reilly  
36  
37 (“Reilly”), the attorneys at TTLG that would be primarily involved in this case, were admitted to  
38  
39 practice before this Court and have read LBR 2016.  
40  
41

42 4. Debtor agreed to compensate TTLG on the basis of its ordinary hourly rates, with  
43  
44 additional reasonable fees to be paid on the basis of criteria set forth in the Washington Rules of  
45  
46 Professional Conduct, including time spent, skill needed to perform legal services properly,  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR’S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 2

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 preclusion of other employment, fees customarily charged, the amount involved and the results  
2  
3 obtained, and the experience, reputation and ability of counsel.  
4

5 5. Debtor and TTLG agreed to an initial security retainer of \$149,460.00.<sup>1</sup> TTLG  
6 received the advanced fee security funds (“Funds”) and deposited the Funds into TTLG’s IOLTA  
7 Trust Account as follows: (i) a \$50,000.00 wire from an individual named Diane Erdmann on  
8 March 31, 2016; and (ii) A cashier’s check from an individual named John Drummey to Diane  
9 Erdman that Diane Erdman then endorsed over to TTLG on March 31, 2016, in the amount of  
10 \$99,460.00. Since the case was filed, issues arose regarding ownership of the Funds. On August 4,  
11 2016, the Court entered a memorandum decision finding that the Trustee had not met his burden  
12 of establishing that the Funds were the property of NWTM and that the Funds, after payment of  
13 any allowed fees to TTLG, should be returned to Ms. Erdmann. The Trustee has appealed that  
14 ruling.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

28 6. Prior to the filing of the Chapter 11 Petition, TTLG sent the Debtor an invoice for  
29 pre-petition fees and costs related to preparing the case to file. This e-mail was sent to Mr.  
30 Hansen at 10:28 p.m. on March 31, 2016. Mr. Hansen did not raise any objections to the invoiced  
31 amount and subsequently authorized the filing of the petition. Prior to electronically filing the  
32 petition, TTLG drew down \$21,885.50 for pre-petition fees incurred related to advising the  
33 Debtor as to its options under the Washington State Receivership Act, the federal receivership  
34 statute and the United States Bankruptcy Code. TTLG also prepared the initial petition, entered  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

---

45 <sup>1</sup> The Engagement Letter provides for a pre-petition retainer amount of \$150,000. TTLG subsequently agreed to  
46 accept \$149,460 as a pre-petition retainer. TTLG agrees that the funds are not a true retainer as defined by the  
47 Washington Rules of Professional Conduct but are an advanced fee deposit.

1 approximately 3400 priority unsecured creditors and 160 general unsecured creditors into the  
2  
3 bankruptcy software filing software used by the firm. It total, TTLG spent 63.5 hours in pre-  
4  
5 petition time prior to the filing. The United States Courts debited \$1,717.00 for the Chapter 11  
6  
7 filing fee, via ACH from the funds in the IOLTA Trust account. Accordingly, as of the time of  
8  
9 filing and continuing forward, the trust account has a balance of \$125,857.50. Pursuant to the  
10  
11 Order permitting TTLG to withdraw, TTLG continues to hold those funds in its IOLTA Trust  
12  
13 Account.  
14

15  
16 7. To the best of the Debtor's knowledge, the attorneys at TTLG did not have any  
17  
18 connection with the Debtor, its creditors, any other party in interest, their respective attorneys or  
19  
20 accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee. TTLG  
21  
22 has not represented, and will not represent, any client other than the Debtor with respect to this  
23  
24 case.  
25  
26

27  
28 8. On April 5, 2016, the Debtor filed an emergency motion to approve the  
29  
30 employment of Bill Weisfield and Stuart Heath of Elliot Bay Asset Solutions, LLC, as chief  
31  
32 restructuring officers of the Debtor (*Docket No. 12*). That motion was withdrawn on April 6, 2016  
33  
34 when Elliot Bay indicated it was no longer willing to proceed in the case (*Docket No. 29*). At a  
35  
36 hearing on April 7, 2016, TTLG advised the Court that the Debtor would not oppose entry of an  
37  
38 order appointing a Chapter 11 Trustee. On April 7, 2016, the Court entered an order directing the  
39  
40 U.S. Trustee to appoint a Chapter 11 Trustee (*Docket No. 45*). On April 11, 2016, the Court  
41  
42 entered an order appointing Mark Calvert at the Chapter 11 Trustee in the case (*Docket No. 51*).  
43  
44  
45  
46  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 4

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1           9.       On April 5, 2016, the Debtor also filed an emergency motion to pay priority wages  
2 and salaries (*Docket No. 9*), an emergency motion for continuation of utility service and payment of  
3 adequate assurance payments to utilities (*Docket No. 10*) and an emergency motion for a case  
4 management order (*Docket No. 11*). These motions were set for hearing on April 7, 2016  
5  
6  
7  
8

9  
10           10.       On April 7, 2016, the Court entered an order denying the emergency motion  
11 approving the employment of Bill Weisfield and Stuart Heath of Elliot Bay Asset Solutions, LLC  
12 as chief restructuring officers of the Debtor (*Docket No. 39*). The same day, the Court entered an  
13 order approving the adequate assurance payments to the utilities (*Docket No. 41*) and an order  
14 authorizing the payment of pre-petition employee wages and compensation (*Docket No. 42*).  
15  
16  
17  
18

19           11.       On April 7, 2016, the Court also entered an order directing the U.S. Trustee to  
20 appoint a Chapter 11 Trustee (*Docket No. 45*). On April 11, 2016, the Court entered an order  
21 appointing Mark Calvert as the Chapter 11 Trustee in the case (*Docket No. 51*).  
22  
23  
24  
25

26           12.       On April 15, 2016, the principal of the Debtor, Mr. Ross Hansen, contacted Mr.  
27 Tracy and requested the return of the funds held in the TTLG IOLTA Trust Account. Mr. Tracy  
28 advised Hansen that due to the competing interests asserted in the funds, he was not in a position  
29 to return the funds and instead would continue holding the funds in the IOLTA Trust Account.  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

          13.       On April 15, 2016, TTLG formally sent a written termination of representation  
letter to NWTM. In the letter, TTLG reiterated that it would continue to hold the funds pursuant  
to Washington Rule of Professional Conduct 1.15A(g) and would file a motion to authorize TTLG  
to withdraw as counsel for NWTM.

1           14.     On April 18, 2016, TTLG filed a motion to withdraw as attorneys for NWTM  
2  
3     (*Docket No. 76*). TTLG also filed a motion to shorten time for a hearing on the motion to  
4  
5     withdraw (*Docket No. 78*). The Court set a hearing on TTLG's motion to withdraw on May 6,  
6  
7     2016.  
8  
9

10           15.     On May 9, 2016, the Court entered an order authoring TTLG to withdraw as  
11  
12     counsel for NWTM and further ordering TTLG to hold the funds in the firm's IOLTA trust  
13  
14     account (*Docket No. 212*). The Court also set an evidentiary hearing to determine ownership of the  
15  
16     Funds for June 22, 2016. The evidentiary hearing concluded on July 6, 2016.  
17  
18

19           16.     On August 4, 2016, the Court entered this Court's Memorandum Opinion and  
20  
21     Further Order on Motion for Authority to Withdraw as Attorney for Debtor, holding that the  
22  
23     Funds must be returned to Ms. Erdmann after payment of any allowed compensation awarded to  
24  
25     TTLG. (*Docket No. 580*) The Court directed TTLG to submit a fee application by August 25, 2016.  
26  
27

28           **B. Analysis**  
29

30           TTLG concedes that employment pursuant to 11 U.S.C. §327 is a prerequisite to approval  
31  
32     of compensation under 11 U.S.C. §330. Furthermore, TTLG concedes that it had not obtained an  
33  
34     order of employment prior to the time its representation was terminated fourteen days after the  
35  
36     case was filed. However, TTLG asserts that the Court can approve the employment of TTLG on  
37  
38     a *nunc pro tunc* basis using its sound discretion and applying equitable principles. *In re Triangle*  
39  
40     *Chemicals, Inc.*, 697 F.2d 1280, 1289 (5<sup>th</sup> Cir. 1983).  
41  
42

43  
44           In the Ninth Circuit, *nunc pro tunc* approval of employment of professionals for the estate  
45  
46     and a retroactive award of fees for services rendered without court approval is limited to  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 6

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 “exceptional circumstances where an applicant can show both a satisfactory explanation for the  
2 failure to receive prior judicial approval and that he or she has benefited the bankruptcy estate in  
3 some significant manner.” *Okamoto v. THC Fin’l Corp.*, 837 F.2d 389 (9<sup>th</sup> Cir. 1988); see also *Atkins*  
4 *v. Wain, Samuel & Co.*, 69 F.3d 970 (9<sup>th</sup> Cir. 1995). Thus, in order to obtain court approval of its  
5 *nunc pro tunc* employment, TTLG must demonstrate that it qualified for employment under 11  
6 U.S.C. §327(e) and must satisfactorily explain its failure to apply for earlier court approval and  
7 show that its services benefitted the estate<sup>2</sup>. *Atkins at 975-76.*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17 A professional may seek *nunc pro tunc* employment, even over the objections of the trustee  
18 or debtor in possession. *Atkins at 978.*

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
As set forth in this Application and in the Tracy Declaration, TTLG meets all of the  
qualifications for appointment as counsel for the Debtors pursuant to 11 U.S.C. §327(e). TTLG  
has been appointed as counsel for multiple debtors pursuant to Section 327(e) since its inception  
in 2014. Tracy has been appointed as counsel for debtors and trustees pursuant to Section 327(e)  
for years before that time.

Here, TTLG can demonstrate “exceptional circumstances” in this case justifying approval  
of its employment *nunc pro tunc*. First, TTLG can demonstrate a satisfactory explanation for not  
seeking appointment. Initially, TTLG’s involvement was concluded in less than two weeks after  
the case was filed. The case was filed on April 1, 2014. The Court ordered the appointment of a  
Chapter 11 Trustee on April 7, 2016. Given that compressed time frame, there was no ability to

---

<sup>2</sup> In reviewing applications for retroactive employment, Courts have often utilized the nine factors set forth in *In re Twinton Properties Partnership*, 27 B.R. 817 (Bankr. M.D. Tenn 1983), which include the three factors herein. In *Atkins*, the Ninth Circuit expressly held that the *Twinton Properties* factors may be, but need not be, considered by the bankruptcy court in exercising its discretion.



1 obtain court approval of its employment under the Federal Rules of Bankruptcy Procedure. There  
2 was likely, little time to obtain interim court approval given the procedures set forth in the Local  
3 Bankruptcy Rules for the Western District of Washington. As noted, the Court entered an order  
4 directing the United States Trustee to appoint a chapter 11 Trustee seven days after the case was  
5 filed. TTLG terminated the representation, orally on April 13, 2016 and in again in writing on  
6 April 15, 2016.  
7  
8  
9  
10  
11  
12  
13

14 Federal Rule of Bankruptcy Procedure 6003 provides that a Court shall not enter an order  
15 granting an application for employment under Rule 2014 within twenty one (21) days of the filing  
16 of the petition. There is an exception where relief is necessary to avoid immediate and irreparable  
17 harm. The rule seemingly permits interim relief provided that no final order can be entered prior  
18 to the expiration of waiting period. In order to obtain entry of an interim order, TTLG would be  
19 required to comply with Local Bankruptcy Rule 2014-1(a).  
20  
21  
22  
23  
24  
25  
26  
27

28 TTLG may have been able to seek an ex parte interim order authorizing its employment  
29 under Local Bankruptcy Rule 2014-1(a). Local Bankruptcy Rule 2014-1(a) provides that if any  
30 professional seeks entry of an order approving employment on an ex parte bases, that professional  
31 must either obtain the consent of the United States Trustee to the ex parte order approving  
32 employment, or must serve the application on the Office of the United States Trustee and then  
33 certify to the Court that at least seven days had passed since the application was served and that  
34 the United States Trustee had no objections. TTLG's experience with the Office of the United  
35 States Trustee is that when an advanced fee deposit is paid by a third party, the U.S. Trustee  
36 requires that the motion be set for a hearing and notice be provided to creditors. Again, given the  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 8

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)



1 compressed time between the filing, the appointment of the Chapter 11 Trustee, and the written  
2 termination of representation, TTLG was unable to seek appointment under Section 327 prior to  
3 the time that the case was filed and the representation was terminated.  
4  
5  
6

7  
8 On April 18, 2016, TTLG filed its motion to withdraw indicating that the mere filing of  
9 the case was considered an appearance on behalf of the Debtor that required an order permitting  
10 TTLG to withdraw. During oral argument on May 6, 2016 at the hearing on TTLG's motion to  
11 withdraw, all of the parties conceded that TTLG had been representing the Debtor until the  
12 written termination letter was issued. The parties conceded that TTLG was entitled to look to the  
13 advanced fee deposit for fees that would be awarded and Ms. Erdmann conceded that TTLG  
14 would have a lien against the funds for the actual fees and expenses incurred and approved by the  
15 Court.  
16  
17  
18  
19  
20  
21  
22  
23  
24

25 Having established that exceptional circumstances exist, TTLG must also establish that it  
26 provided benefit to the estate for a *nunc pro tunc* order authorizing employment. TTLG provided  
27 numerous benefits to the case.  
28  
29  
30  
31

32 For example, at the time the case was filed, a judgment creditor was taking very aggressive  
33 collection efforts to realize on its judgment. If successful, it would have obtained all of the assets  
34 to the detriment of the 3400 other creditors in the case. The Debtor was looking for meaningful  
35 protections so that it could reorganize or wind-down its affairs to the benefit of the creditors,  
36 including those with potentially priority claims, including either a state court receivership or a  
37 bankruptcy. Ultimately the receivership was ruled out because it was not clear as to the  
38 extraterritorial effect of the automatic stay issued out of a Washington superior court.  
39  
40  
41  
42  
43  
44  
45  
46  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016-9

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1           TTLG was also very clear from the initial consultations that the principal of the debtor  
2 could not be involved in management of the corporation due to his prior felony convictions and  
3 other legal issues. Because of those issues, it was obvious that existing management would not  
4 have the confidence or support of the creditors, the United States Trustee or the Court. As a  
5 result, TTLG was very forthcoming with the Debtor from the beginning that an alternate  
6 management scenario would need to immediately be put in place if the case were to have any  
7 potential for success.  
8  
9

10           Initially, it was determined that the Debtor would engage Elliot Bay Asset Solutions  
11 (“EBAS”) to operate the company as a Chief Restructuring Officer, having been given all of the  
12 operational controls. TTLG went so far as to contact the United States Trustee and advise them  
13 of the case status, the known operational issues and the need for alternate management structures,  
14 including the request for a chief restructuring officer.  
15  
16

17           TTLG negotiated with EBAS over the terms of the engagement and on April 5, 2016 filed  
18 a motion to authorize its retention as the chief restructuring officer. (*Docket No. 12*). Multiple  
19 parties, including the United States Trustee objected to the motion (*Docket Nos. 18, 24 and 25*).  
20 Because of the various objections, as well as for other reasons, EBAS withdrew its name from  
21 consideration on April 6, 2016. TTLG then began advising the Debtor on the likelihood of the  
22 appointment of a Chapter 11 Trustee. After exhaustive discussions, the Debtor ultimately agreed  
23 not to oppose entry of an order requiring the appointment of a Chapter 11 Trustee.  
24  
25  
26  
27

28           Additionally, TTLG filed other “first day” motions including motions to authorize the  
29 payment of a prepetition payroll (*Docket No. 9*), to enter a case management order (*Docket No. 11*)  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 10

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 and to approve utility deposits to ensure continued utility services (*Docket No. 10*). The Court  
2  
3 approved the payroll motion (*Docket No. 42*) and the motion for continued utility service (*Docket*  
4  
5 *No. 41*). The Court continued the motion for a case management order until after the Chapter 11  
6  
7 Trustee was appointed.  
8  
9

10 The overall strategy in filing the case provided substantial benefit to the estate in that the  
11  
12 property of the estate was brought under Court supervision for the benefit of all creditors instead  
13  
14 of just one aggressive creditor. The case also benefitted from TTLG's insistence that the case  
15  
16 could not move forward with existing management. Those discussions with the Debtor's  
17  
18 management were difficult but ultimately resulted in an unopposed appointment of a Chapter 11  
19  
20 Trustee.<sup>3</sup>  
21  
22

### 23 C. Conclusion

24  
25 TTLG asserts that its efforts in the very short time it was involved in the case brought  
26  
27 benefit to the estate. Furthermore, it has a satisfactory reason for not obtaining prior Court  
28  
29 approval of its employment, namely, its representation terminated before any order could have  
30  
31 been entered approving that employment under either the Federal Rules of Bankruptcy Procedure  
32  
33 or the Local Rules of Bankruptcy Procedure.  
34  
35  
36

37 TTLG requests that the Court enter an order authorizing its employment *nunc pro tunc* for  
38  
39 the period of April 1, 2016 through April 15, 2016.  
40  
41

---

42 <sup>3</sup> Even after the Chapter 11 Trustee was appointed, TTLG continued to receive several hundred calls and e-mails  
43  
44 from creditors concerning the status of the case. Because no order for withdrawal of TTLG had been entered, and  
45  
46 because TTLG was still an officer of the Court, TTLG returned hundreds of calls and responded to e-mails from  
47  
creditors. None of these efforts can be compensated after appointment of the Chapter 11 Trustee. *Lamie v. United States Trustee*, 540 U.S. 526 (2004).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

II. **APPLICATION FOR FINAL COMPENSATION FOR THE PERIOD  
APRIL 1, 2016 THROUGH APRIL 11, 2016**

Pursuant to 11 U.S.C. §330 and Local Bankruptcy Rule 2016-1, The Tracy Law Group PLLC (“TTLG”) hereby applies for compensation for services rendered and costs related thereto from April 1, 2016, through April 11, 2016. For this period, TTLG applies for fees in the amount of \$35,715.50 and costs in the amount of \$2,239.07 for a total request of \$37,954.57. In support of this application, TTLG respectfully represents the following:

1. **Order Authorizing Employment.** TTLG is seeking approval of its employment, *nunc pro tunc*, as part of this motion. Debtor’s case was filed on April 1, 2016.
2. **Statement Regarding Prior Fee Applications.** TTLG has not filed any fee applications in this case. Debtor and TTLG agreed to an initial security retainer of \$149,460.00.<sup>4</sup> TTLG received the advanced fee security funds (“Funds”) and deposited the Funds into the TTLG’s IOLTA Trust Account as follows: (i) a \$50,000.00 wire from an individual named Diane Erdmann on March 31, 2016; and (ii) A cashier’s check from an individual named John Drummey to Diane Erdman that Diane Erdman then endorsed over to TTLG on March 31, 2016, in the amount of \$99,460.00. Since the case was filed, issues arose regarding ownership of the Funds. On August 4, 2016, the Court entered its memorandum decision finding that the Trustee had not met his burden of establishing that the Funds were the property of NWTM and that the Funds, after payment of any allowed fees to TTLG, should be returned to Ms. Erdmann. The Trustee has appealed that ruling.

---

<sup>4</sup> The Engagement Letter provides for a pre-petition retainer amount of \$150,000. TTLG subsequently agreed to accept \$149,460 as a pre-petition retainer. TTLG agrees that the funds are not a true retainer as defined by the Washington Rules of Professional Conduct but are an advanced fee deposit.

1 Prior to the filing of the Chapter 11 Petition, TTLG drew down \$21,885.50 for pre-  
2 petition fees incurred related to advising the Debtor as to its options under the Washington States  
3 Receivership Act, the federal receivership statute and the United States Bankruptcy Code. TTLG  
4  
5 also prepared the initial petition, entered approximately 3400 priority unsecured creditors and 160  
6  
7 general unsecured creditors into the bankruptcy software filing software used by the firm. It total,  
8  
9 TTLG spent 63.5 hours in pre-petition time prior to the filing. The United States Courts debited  
10  
11 \$1,717.00 for the Chapter 11 filing fee, via ACH from the Funds in the trust account.  
12  
13

14 Accordingly, as of the time of filing and continuing forward, the trust account has a balance of  
15  
16 \$125,857.50. Pursuant to the Order permitting TTLG to withdraw, TTLG continues to hold those  
17  
18 Funds in its IOLTA Trust Account.  
19  
20  
21

22  
23 3. Other Professionals Employed. The Court appointed Mark Calvert as the Chapter 11  
24  
25 Trustee. The Chapter 11 Trustee has employed K&L Gates as his counsel. The Chapter 11 Trustee  
26  
27 has also employed Cascade Capital Group LLC as accountants. Finally, the Official Unsecured  
28  
29 Creditors Committee has employed Miller Nash Graham & Dunn LLP as its counsel.  
30  
31

32 4. Source of Payment. Pursuant to this Court's Memorandum Opinion (*Docket No.*  
33  
34 *580*), the source of payment of allowed fees will be the Funds identified above that are currently held  
35  
36 in TTLG's IOLTA Trust Account.  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1           5.       Narrative Summary of Professional Services Provided, Results Obtained, and Benefit.

2  
3           a.       Pursuant to Local Bankruptcy Rule 2016, the services performed on behalf  
4 of the Debtors have been divided into general categories. A report summarizing the total time by  
5 activity is attached. These general categories of service, with the amount of fees and hours of  
6 attorney time allocated to each, are as follows:  
7  
8  
9

10                **Case Administration.** Fees in this category include meetings with the Debtor; multiple  
11 telephone conferences with counsel for various creditors. TTLG also began working on the  
12 schedules in the case, primarily working on corrections to the priority amounts for the estimated  
13 3,400 priority creditors.  
14  
15  
16  
17  
18  
19

20                TTLG also drafted and various first day motions, including a motion to authorize  
21 payment of utility deposits for continues utility service (*Docket No. 10*). Because of the substantial  
22 number of creditors, TTLG also drafted and filed a motion for a case management order (*Docket*  
23 *No. 11*). TTLG also drafted and filed a motion and order to shorten time for hearings on the  
24 above identified first day motions. TTLG served the above motions in accordance with the  
25 Court's order shortening time. The Court held a hearing on the above identified motions on  
26 April 7, 2016. The Court approved the motion for continued utility service (*Docket No. 41*). The  
27 Court continued the motion for a case management order until after the Chapter 11 Trustee was  
28 appointed. Ultimately, the Court entered a revised order after revisions sought by the Chapter 11  
29 Trustee.  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 Finally, TTLG worked with the Office of the United States Trustee regarding the  
2  
3 appointment of the Chapter 11 Trustee, including providing them with banking documents to  
4  
5 permit the establishment of a trustee bond amount.  
6

7  
8 Approximately 55.3 hours of legal services, representing fees of \$19,404.50 are attributable  
9  
10 to this category.

11  
12 **Asset Analysis and Recovery.** The Debtor was a party to several precious metal “leases”  
13  
14 with its customers. Fees in this category related to beginning analysis of the nature and treatment  
15  
16 of these “leases” in a bankruptcy context. Specifically, TTLG began analyzing whether the  
17  
18 “leases” were true leases/executor contracts, bailments, or merely unsecured loans.  
19

20  
21 Approximately 7.3 hours of legal services, representing fees of \$2,746.00 are attributable  
22  
23 to this category.  
24

25  
26 **Relief From Stay/ Adequate Protection Proceedings.** Prior to the filing of the case, a  
27  
28 judgment creditor had garnished multiple bank accounts of the Debtor. TTLG researched  
29  
30 whether the failure to release the garnishments violated the automatic stay of 11 U.S.C. §362.  
31  
32 TTLG communicated the Debtor’s position that failure to release the garnishments constituted a  
33  
34 stay violation to counsel for the judgment creditor.  
35

36  
37 Approximately 1.5 hours of legal services, representing fees of \$675.00 are attributable to  
38  
39 this category.  
40

41  
42 **Business Operations.** TTLG researched the number and status of the Debtor’s banking  
43  
44 operations and analyzed whether a cash management motion and order would be appropriate in  
45  
46  
47



1 the case. After analyzing the status, TTLG concluded that a cash management order was not  
2 required.  
3  
4

5 Approximately 2.0 hours of legal services, representing fees of \$590.00 are attributable to  
6 this category.  
7  
8

9  
10 **Employee Benefits.** The Debtor had a payroll coming due shortly after the case was  
11 filed. TTLG worked with the Debtor to determine the payroll requirements and filed a motion to  
12 authorize payment of of prepetition payroll (*Docket No. 9*). The Court approved the motion.  
13  
14  
15  
16  
17 (*Docket No. 42*).

18  
19 Approximately 4.5 hours of legal services, representing fees of \$1,327.50 are attributable  
20 to this category.  
21  
22

23 **Employment Applications.** Time in this category reflects time spent on motion to  
24 appoint the Chief Restructuring Officer in the case. Initially, it was determined that the Debtor  
25 would engage Elliot Bay Asset Solutions (“EBAS”) to operate the company as a Chief  
26 Restructuring Officer, having been given all of the operational controls. TTLG negotiated with  
27 EBAS over the terms of the engagement and on April 5, 2016 filed a motion to authorize its  
28 retention as the chief restructuring officer. (*Docket No. 12*). Multiple parties, including the United  
29 States Trustee objected to the motion (*Docket Nos. 18, 24 and 25*). Because of the various  
30 objections and for other reasons, EBAS withdrew its name from consideration on April 6, 2016.  
31 TTLG then began advising the Debtor on the likelihood of the appointment of a Chapter 11  
32 Trustee. After exhaustive discussions, the Debtor ultimately agreed not to oppose entry of an  
33 order requiring the appointment of a Chapter 11 Trustee.  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1           Once the Trustee was appointed, TTLG received numerous contacts from parties who  
2  
3 were interested in serving as the Chapter 11 Trustee. TTLG referred those parties to the Office of  
4  
5 the United States Trustee.  
6

7  
8           Approximately 29.3 hours of legal services, representing \$10,972.50 hours in fees are  
9  
10 attributable to this category.employment applications.  
11

12           b.       Benefit to the estate. TTLG incorporates its discussion of benefit to the  
13  
14 estate set forth above at pages 9 – 11.  
15

16           c.       Itemized Record of Services. Attached to the Tracy Declaration is a copy of invoice  
17  
18 #14438 that sets forth: (a) the date of each service that was rendered; (b) a detailed description of  
19  
20 each service rendered; (c) a list of the costs incurred; and (d) the total number of hours spent and total  
21  
22 amount of compensation requested. Also attached to the Tracy Declaration is a time listing sheet that  
23  
24 breaks down the amount of time spent by each lawyer, per category identified above.  
25  
26

27  
28           All of the services billed in connection with this matter were billed at rates equal to  
29  
30 TTLG's normal hourly rates as follows:  
31

<u>Name</u>	<u>Hourly Rate</u>
J. Todd Tracy	\$450
Jamie J. McFarlane	\$340
Steven J. Reilly	\$295

32  
33  
34  
35  
36  
37  
38  
39           The normal hourly rates charged by TTLG are consistent with or less than other attorneys  
40  
41 of equal experience in Seattle. No agreement or understanding exists between TTLG and any  
42  
43 other person for the sharing of compensation received or to be received for services rendered in,  
44  
45 or in connection with this case.  
46  
47

1           7.       Itemized Statement of Expenses. The invoice and time listing attached hereto sets  
2  
3 forth the date each expense was incurred, the description of each expense, and the amount of each  
4  
5 expense for which reimbursement is sought. Costs set forth in this statement are the same as  
6  
7 those routinely billed to clients of TTLG.  
8  
9

10           TTLG utilizes an offsite answering service as part of its telephone service. TTLG plays a  
11  
12 flat monthly fee for the service. If the actual call time exceeds the plan amount, TTLG is billed  
13  
14 for the overage. TTLG received several hundred phone calls regarding this case in April and May  
15  
16 2016. TTLG provided a script for the answering service directing the callers to the Court's  
17  
18 website for answers about the case. TTLG believed that this was a more efficient and cost-  
19  
20 effective method of dealing with the creditor calls than expending attorney time and fees  
21  
22 responding. TTLG has billed the excess telephone charges attributable to this case. These  
23  
24 amounts were \$1,525.82 for April 2016 and \$396.97 for May 2016.  
25  
26  
27

28           8.       Status of Case. The Court has appointed a Chapter 11 Trustee who continues to  
29  
30 operate the Debtor. The Court entered an order authorizing TTLG to withdraw as counsel for  
31  
32 the Debtors on May 9, 2016. TTLG has no further knowledge as to the status of the case.  
33  
34

35           9.       Conclusion. The application for compensation, as discussed above, is reasonable  
36  
37 compensation for actual, necessary services rendered by TTLG. In our independent judgment, the  
38  
39 fees and costs are fair. The rates charged are reasonable for the level of service provided. The  
40  
41 application is based on the nature, the extent, and the value of the services performed, time spent  
42  
43 on such services, and the cost of comparable services other than in a case under Title 11 of the  
44  
45 United States Code. Further, the request for reimbursement of costs is for actual and necessary  
46  
47

APPLICATION TO APPROVE EMPLOYMENT OF THE  
TRACY LAW GROUP PLLC AS DEBTOR'S COUNSEL  
NUNC PRO TUNC FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 15, 2016 AND TO APPROVE FINAL  
COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF APRIL 1, 2016  
THROUGH APRIL 11, 2016- 18

**THE TRACY LAW GROUP** PLLC  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

