

The Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, WA
Hearing Date:
Hearing Time:
Response Due:

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re
NORTHWEST TERRITORIAL MINT, LLC
Debtor.

No. 16-11767-CMA
MOTION FOR AUTHORITY TO
WITHDRAW AS ATTORNEY FOR
DEBTOR

COMES NOW The Tracy Law Group PLLC (“TTLG”) and pursuant to Local Civil Rule 83.2 of the Local Rules W.D., as incorporated by Local Rules W.D. Wash. Bankr. 9029-2, and requests entry of an order authorizing The Tracy Law Group PLLC to withdraw as Counsel of Record for the Debtor.

TTLG was initially contacted regarding this case on or about March 25, 2016. On March 31, 2016, Northwest Territorial Mint LLC executed an engagement letter with The Tracy Law Group PLLC. Attached to the Declaration of J. Todd Tracy in Support of Motion for Authority to Withdraw as Attorney for Debtor as Exhibit A, is a copy the fully executed engagement letter. The terms of the engagement letter required payment of a \$150,000.00 advance fee deposit to be held in the TTLG IOLTA Trust Account at First

MOTION FOR AUTHORITY TO WITHDRAW AS
ATTORNEY FOR DEBTOR - 1

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1 Sound Bank. Because of entry of a restraining order by the King County Superior Court
2 that prevented any funds of the Debtor being transferred to any third party, the advance fee
3 deposit was paid by a third-party, Ms. Diane Erdmann. On March 31, 2016, TTLG received
4 a wire transfer in the sum of \$50,000 from Ms. Erdman. In addition, on March 31, 2016,
5 TTLG received a third party cashier's check, drawn by John Drummey and payable to Diane
6 Erdmann which was, in turn, endorsed to TTLG. The cashier's check was in the amount of
7 \$99,460.00. This check was deposited into the TTLG IOLTA Trust account on March 31,
8 2016 and was credited on April 1, 2016. Copies of these documents have been provided to
9 the Chapter 11 Trustee's counsel per his request.
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21 Prior to the filing of the Chapter 11 Petition, TTLG drew down \$21,885.50 for pre-
22 petition fees incurred related to advising the Debtor as to its options under the Washington
23 States Receivership Act, the federal receivership statute and the United States Bankruptcy
24 Code. TTLG also prepared the initial petition, entered approximately 3400 priority
25 unsecured creditors and 160 general unsecured creditors into the bankruptcy software filing
26 software used by the firm. It total, TTLG spent 63.5 hours in pre-petition time prior to the
27 filing. The United States Courts debited \$1,717.00 for the Chapter 11 filing fee, via ACH
28 from the funds in the trust account.. Accordingly, as of the time of filing and continuing
29 forward, the trust account has a balance of \$125,857.50.
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41 The filing of the bankruptcy is considered at a minimum as an appearance on behalf
42 of the Debtor. Employment as counsel for the Debtor must be approved by the Bankruptcy
43 Court pursuant to 11 U.S.C. §327. Local Rule 83.2(b)(1) W.D. Wash. provides that "[N]o
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MOTION FOR AUTHORITY TO WITHDRAW AS
ATTORNEY FOR DEBTOR - 2

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1 attorney shall withdraw an appearance in any case, civil or criminal, except by leave of
2 court.” Local Rule 83.2 W.D. Wash. is incorporated into the Local Rules W.D. Wash.
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4 Bankr. pursuant to Rule 9029-2.
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8 TTLG has three separate bases to seek authority to withdraw its appearance on
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10 behalf of the Debtor.

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12 Paragraph 10 of the executed engagement letter expressly states that TTLG’s
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14 continued representation was contingent upon the Court’s approval of the retention of a
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16 Chief Restructuring Officer and that if the Court denied such a motion, TTLG would have a
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18 basis for terminating the engagement. On April 7, 2016, the Court denied the Debtor’s
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20 motion to appoint a Chief Restructuring Officer and entered an order directing the Office of
21
22 the United States Trustee to appoint a Chapter 11 Trustee. Mark Calvert was appointed as
23
24 the Chapter 11 Trustee by order entered on April 11, 2016. Because the Court ordered the
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26 appointment of the Chapter 11 Trustee so quickly after the case was filed, and because of
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28 the restrictions contained in Fed. R. Bankr. P. 6003(a), The Court did not enter an order
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30 approving the employment of TTLG as counsel for the Debtor prior to appointment of the
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32 Chapter 11 Trustee.
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37 As an additional basis to permit TTLG to withdraw, the attorney-client working
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39 relationship between TTLG and Mr. Hansen, as the member of Northwest Territorial Mint
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41 LLC has deteriorated to the point where any continued representation of the Debtor is not
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43 possible.
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MOTION FOR AUTHORITY TO WITHDRAW AS
ATTORNEY FOR DEBTOR - 3

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1 Finally, upon appointment of the Chapter 11 Trustee, TTLG may no longer be paid
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3 for its representation of the Debtor. *See Lamie v. United States Trustee*, 540 U.S. 526 (2004).
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5 On April 15, 2016, TTLG sent its written letter terminating its engagement to the
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7 Debtor to its last known mailing addresses and to Mr. Ross Hansen at his last known e-mail
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9 address.
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11 TTLG further requests that the Court enter an order directing what steps TTLG
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13 should take regarding the funds held in its IOLTA Trust Account. Washington Rule of
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15 Professional Conduct 1.15A(g) governs this situation and provides:
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19 **(g) If a lawyer possesses property in which two or more persons**
20 **(one of which may be the lawyer) claim interests, the lawyer**
21 **must maintain the property in trust until the dispute is resolved.**
22 **The lawyer must promptly distribute all undisputed portions of**
23 **the property. The lawyer must take reasonable action to resolve**
24 **the dispute, including, when appropriate, interpleading the**
25 **disputed funds.**
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28 Washington State Bar Association Ethics Advisory Opinion 2213 confirms that
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30 TTLG should maintain the funds in its Trust Account, or alternatively, interplead the funds
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32 into the Bankruptcy Court for future determination.
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34 As noted above, TTLG currently holds the sum of \$125,857.50 in its IOLTA Trust
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36 Account at First Sound Bank. Ms. Diane Erdmann is demanding that the funds be returned
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38 to her as she provided the advanced fee deposit. TTLG is intending to seek Bankruptcy
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40 Court approval for fees incurred between the filing and the appointment of the Trustee in
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42 the approximate amount of \$36,000. Finally, the Chapter 11 Trustee has asserted, in writing,
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1 that he may have an interest in the funds and is investigating whether the funds are property
2 of the bankruptcy estate.
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5 TTLG requests the Court's direction regarding these funds and will take such steps
6 to safeguard the funds, including interpleading the funds to the Bankruptcy Court, pursuant
7 to RPC 1.15A(g) as required.
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10 WHEREFORE The Tracy Law Group PLLC requests that the Court enter an order
11 authorizing TTLG to withdraw as counsel of record for the Debtor and further directing
12 what steps TTLG should take to safeguard funds held in its IOLTA Trust Account
13 including interpleading the funds to the Bankruptcy Court.
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21 DATED this 18th day of April, 2016.
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23 THE TRACY LAW GROUP PLLC.
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25 By /s/ J. Todd Tracy
26 J. Todd Tracy, WSBA #17342
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THE TRACY LAW GROUP PLLC

J. Todd Tracy
Jamie J. McFarlane
Steven J. Reilly

March 31, 2016

Via E-Mail to Ross@nwtmint.com

Northwest Territorial Mint LLC
Attn: Ross Hansen
2505 S 320th St.
Federal Way, WA 98003

Re: Limited Engagement of The Tracy Law Group PLLC for Northwest Territorial Mint LLC.

Dear Mr. Hansen:

1. Scope of Representation

This letter is to confirm that you have retained The Tracy Law Group PLLC ("TTLG") on behalf of Northwest Territorial Mint LLC (hereinafter "NWTM") in connection with a Chapter 11 bankruptcy. We are pleased to have this opportunity to work with you. **We will not open a file until we have a signed engagement letter and a retainer from you.**

2. Conflicts

We have advised you that to the best of our knowledge, no conflicts of interest presently exist between NWTM and any of our present clients. We are precluded by our Rules of Professional Conduct from representing multiple clients with potentially adverse interests unless we reasonably believe that we can adequately represent the interests of each client without adversely affecting the relationship with the other client and unless each client consents in writing to the multiple representation after consultation and a full disclosure of the material facts.

3. Basis for Fee

We believe that a complete understanding as to the basis of our charges and the method of payment of our charges are essential to our relationship. In connection with our representation, we agree that NWTM shall pay TTLG for representing it at the customary hourly rate in effect when legal services are provided to NWTM. Our hourly rates are: \$295-\$450 for attorneys; \$190 for paralegals; \$150 for law clerks and legal assistants. Hourly rates are subject to change from time to time.

4. Uncertainties Regarding Outcome and Total Fees

Because of uncertainties regarding the nature and extent of the matters on which we will represent NWTM, including any potential opposition to be encountered in our representation, we cannot predict accurately the total amount of legal fees to be incurred. Although we can give no assurances regarding any resulting outcome, we will use our best efforts on behalf of NWTM. Our fees are not contingent upon a particular outcome.

5. Billing

Legal services include all time expended on behalf of NWTM, including but not limited to telephone conversations, personal conferences, preparation, research, drafting, negotiating, court appearances and travel. It is TTLG's practice to keep daily records of time expended, including a description of the services rendered.

Our policy is to not charge a client for normal overhead costs such as postage or day-to-day photocopies or faxes. NWTM, however, is obligated to pay directly all TTLG's out-of-pocket expenses, including, and without limitation, court reporters, independent experts and professionals such as appraisers and investigators, travel expenses, special mailing or couriers and certain document production costs. We may from time to time advance the payment, or obligate ourselves to pay for such expenses. Such advanced payments or obligation to pay such out-of-pocket expenses become part of our charges.

TTLG normally renders bills that reflect our charges on a monthly basis. The bills will describe the matter and services performed and will separately identify fees for legal services and out-of-pocket expenses. Some expense charges, because of the lag in the receipt or recording of such charges, may not be billed until a later billing cycle than the date on which the expense was incurred. We welcome any questions or comments you may have about your bill.

TTLG must apply to the Bankruptcy Court for approval of its attorneys fees and costs. Payment of allowed fees and costs shall be paid from any retainer below and any balance shall be paid by the Debtor.

TTLG will draw on the below retainer to pay all fees and costs incurred prior to any bankruptcy filing so that TTLG will not be a pre-petition creditor of the estate.

6. Retainer

TTLG requests an initial security retainer of \$150,000.00. This retainer will be deposited into our firms IOLTA Trust Account. **TTLG will not file any bankruptcy case until said retainer has been paid and has cleared TTLG's bank as available funds.**

7. TTLG's Obligations

We will notify NWTM promptly of all significant developments and consult with you, NWTM's representative, in advance as to any significant decision attendant to those developments. We will endeavor to keep NWTM informed of all of our activities on its behalf. NWTM will receive copies of all correspondence, memoranda and other documents relating to this matter.

8. Termination

Either NWTM or TTLG may terminate our relationship if the other fails to live up to its obligations under this agreement. TTLG may also terminate its representation immediately upon conversion to Chapter 7. If NWTM terminates our representation, NWTM agrees that it will promptly seek court approval and pay us for all of our services and expenses incurred through the termination. If withdrawal or termination occurs, we will cooperate with any successor counsel to accommodate a smooth transition of the representation.

9. Confidentiality

We recognize our duty to maintain confidentiality. In addition, NWTM should be aware that the attorney-client privilege protects any communication between you and us. This privilege applies so long as neither you nor we communicate the privileged information to anyone else with whom you do not have a similar privilege; otherwise, the privilege is waived. Privileged information cannot be used in court or admitted as evidence without your consent. Therefore, to preserve the privilege you should not show written communications or discuss oral communications with anyone unless that communication is itself also privileged. Disputes can arise as to whether certain items are or are not privileged information, and if anyone has any questions about this, be sure to ask.

10. Additional Terms

TTLG has required, as a condition to this representation, that NWTM engage a chief restructuring officer who will be granted sole and exclusive management and decision making authority in any chapter 11 case that is filed. It is understood between TTLG and NWTM that NWTM has engaged or will engage Elliott Bay Asset Solutions LLC in this capacity. Failure to engage Elliott Bay Asset Solutions LLC as chief restructuring officer shall be independent grounds for termination of this representation by TTLG. Further, if Elliott Bay Asset Solutions LLC is not approved as NWTM's chief restructuring officer by the United States Bankruptcy Court, this shall also constitute independent grounds for termination of this representation by TTLG.

If this letter accurately sets forth the terms of our engagement, please date, sign and return a copy of this letter agreement with your retainer check. We look forward to our representation of NWTM in this matter. If you have any questions at any time regarding these matters or our representation, please call me.

Sincerely,

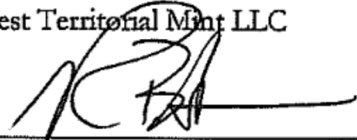


J. Todd Tracy

Northwest Territorial Mint LLC
March 31, 2016
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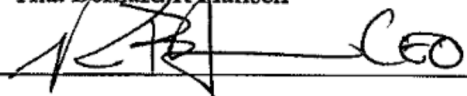
ACKNOWLEDGED AND AGREED:

Northwest Territorial Mint LLC

By 

Ross B Hansen
Aka Bernard R Hansen

3-31-2016
Dated

Its 
_____ CEO

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

NORTHWEST TERRITORIAL MINT, LLC

Debtor.

No. 16-11767-CMA

ORDER AUTHORIZING THE TRACY
LAW GROUP PLLC TO WITHDRAW AS
COUNSEL TO THE DEBTOR

The Court has considered the Motion filed by The Tracy Law Group PLLC to permit it to withdraw as Counsel to the Debtor; and the Court having reviewed the motion and any objections thereto; now, therefore it is

ORDERED that pursuant to Local Civil Rule 83.2 of the Local Rules W.D., as incorporated by Local Rules W.D. Wash. Bankr. 9029-2, The Tracy Law Group PLLC is permitted to withdraw as Counsel of record for the Debtor; and it is

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ORDER AUTHORIZING THE TRACY LAW GROUP
PLLC TO WITHDRAW AS COUNSEL TO THE
DEBTOR - 1

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1 FURTHER ORDERED that The Tracy Law Group PLLC shall continue to hold
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3 the sum of \$125,857.50 in its IOLTA Trust Account at First Sound Bank, pursuant to
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5 Washington Rule of Professional Conduct 1.15A(g) pending further order of this Court.
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10 END OF ORDER
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14 Presented by:

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16 THE TRACY LAW GROUP PLLC
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21 By /s/ J. Todd Tracy
22 J. Todd Tracy, WSBA #17342
23 Steven J. Reilly, WSBA #44306
24 Attorneys for Debtor
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ORDER AUTHORIZING THE TRACY LAW GROUP
PLLC TO WITHDRAW AS COUNSEL TO THE
DEBTOR - 2

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