

EXHIBIT “1”

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[PROPOSED ORDER]

Kathy Bazoian Phelps, Esq. (CA Bar No. 155564)
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Pro Hac Vice Application Pending

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[Proposed] Counsel for Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
ROBERT C. GRAHAM, LTD. fdba ROB
GRAHAM & ASSOCIATES fdba
LAWYERSWEST,

Debtor.

Case No. BK-S-16655-BTB
Chapter 7

**ORDER GRANTING EX PARTE
APPLICATION TO EMPLOY DIAMOND
MCCARTHY LLP, NUNC PRO TUNC TO
DECEMBER 28, 2016, AS SPECIAL
LITIGATION COUNSEL FOR
VICTORIA L. NELSON, CHAPTER 7
TRUSTEE PURSUANT TO 11 U.S.C. §
327(a) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2014**

Date of Hearing: N/A
Time of Hearing: N/A

Judge: Honorable Bruce T. Beesley

1 The Court has reviewed the *Ex Parte Application to Employ Diamond McCarthy LLP,*
2 *Nunc Pro Tunc to December 28, 2016, as Special Litigation Counsel for Victoria L. Nelson,*
3 *Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy Procedure*
4 *2014* (the “Application”) [ECF No. ___]¹, filed on January 4, 2017, by VICTORIA L. NELSON,
5 the Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), by and through her
6 proposed counsel of record, Jacob L. Houmand, Esq. and Kyle J. Ortiz, Esq. of the Law Firm of
7 Nelson & Houmand, P.C.² The Application sought authority to employ the law firm of Diamond
8 McCarthy LLP, *nunc pro tunc*, as special litigation counsel pursuant to 11 U.S.C. § 327(a) and
9 Federal Rule of Bankruptcy Procedure 2014.

10 The Court reviewed the Application, the *Declaration of Kathy Bazoian Phelps, Esq. In*
11 *Support of the Ex Parte Application to Employ Diamond McCarthy LLP, Nunc Pro Tunc to*
12 *December 28, 2016, as Special Litigation Counsel for Victoria L. Nelson, Chapter 7 Trustee*
13 *Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy Procedure 2014* [ECF No. ___],
14 the *Declaration of Victoria L. Nelson In Support of the Ex Parte Application to Employ Diamond*
15 *McCarthy LLP, Nunc Pro Tunc to December 28, 2016, as Special Litigation Counsel for Victoria*
16 *L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy*
17 *Procedure 2014* [ECF No. ___], the *Certificate of Service Regarding the Ex Parte Application to*
18 *Employ Diamond McCarthy LLP, Nunc Pro Tunc to December 28, 2016, as Special Litigation*
19 *Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal*
20 *Rule of Bankruptcy Procedure 2014* [ECF No. ___], the exhibits attached thereto, and all of the
21 papers on file herein.

22 It appearing to the Court that the relief requested in the Application is necessary and in the
23 best interests of the Bankruptcy Estate and its creditors, and upon consideration of the pleadings
24 and good cause appearing,

25 _____
26 ¹ All references to “ECF No.” are to the numbers assigned to the documents filed in the case as
27 they appear on the docket maintained by the clerk of the court.

28 ² All defined terms in this Order shall have the same meaning ascribed to them in the Application
unless otherwise provided herein.

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IT IS HEREBY ORDERED that:

(1) The Application is **GRANTED** pursuant to the modified terms included in this Order to which the Trustee has agreed, in response to inquiries from the Office of the United States Trustee, in order to ensure the continued application of the recent holding of the Supreme Court of the United States in *Baker Botts L.L.P., et al. v. ASARCO, LLC*, ___ U.S. ___, 135 S. Ct. 2158 (2015) and to prevent any approval under 11 U.S.C. § 328(a) of the Application and/or its related retention/engagement agreements from changing, modifying, abridging, or nullifying the application of the holding of that case here; and

(2) The Firm shall not be eligible to receive any award of attorneys’ fees for fee defense litigation as proscribed by *Baker Botts L.L.P., et al. v. ASARCO, LLC*, ___ U.S. ___, 135 S. Ct. 2158 (2015) and by the express terms of 11 U.S.C. § 330(a)(1), whether such award is sought in the form of compensation, or re-characterized as an expense reimbursement or otherwise; and

(3) The Trustee appointed in the above-referenced bankruptcy case is hereby authorized pursuant to 11 U.S.C. § 327(a) and the Federal Rule of Bankruptcy Procedure 2014 to employ Diamond McCarthy LLP as her special litigation counsel effective as of December 28, 2016; and

(4) The terms of such employment shall be as described in the Application and in the supporting Verified Statement of Kathy Bazoian Phelps, Esq.; and

(5) Such terms of employment are approved as reasonable in accordance with 11 U.S.C. § 330; and

IT IS SO ORDERED.

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1 Prepared and Submitted By:

2 **NELSON & HOUMAND, P.C.**

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10 —and—

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17 [*Proposed*] Counsel for Chapter 7 Trustee

18 **Approved As to Form and Content**
19 **OFFICE OF THE UNITED STATES TRUSTEE**

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21 _____
22 Trial Attorney
23 United States Department of Justice
24 Office of the United States Trustee
25 Region 17; Las Vegas Field Office
26 300 Las Vegas Blvd. South, Suite 4300
27 Las Vegas, NV 89101
28 *Counsel for Tracy Hope Davis, Region 17 United States Trustee*

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