

*Electronically Filed On: February 22, 2017*

Jacob L. Houmand, Esq. (NV Bar No. 12781)  
Email: jhoumand@nelsonhoumand.com  
Kyle J. Ortiz, Esq. (NV Bar No. 14252)  
Email: kortiz@nelsonhoumand.com  
NELSON & HOUMAND, P.C.  
3900 Paradise Road, Suite U  
Las Vegas, Nevada 89169-0903  
Telephone: 702/720-3370  
Facsimile: 702/720-3371

*[Proposed] General Bankruptcy Counsel for  
Victoria L. Nelson, 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-16-16655-BTB  
Chapter 7

**DECLARATION OF VICTORIA L.  
NELSON IN SUPPORT OF  
APPLICATION TO EMPLOY  
SCHWARTZ FLANSBURG, PLLC AS  
SPECIAL BANKRUPTCY COUNSEL  
FOR VICTORIA L. NELSON, CHAPTER  
7 TRUSTEE PURSUANT TO 11 U.S.C. §  
327(e) AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 2014**

Date of Hearing: March 28, 2017  
Time of Hearing: 1:30 p.m.  
Place: Courtroom No. 4, Second Floor  
Foley Federal Building  
300 Las Vegas Blvd., S.  
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley

I, Victoria L. Nelson, hereby declare as follows:

1. I am over the age of 18 and mentally competent. Except where stated on information and belief, I have personal knowledge of the facts in this matter and if called upon to testify, could and would do so. I make this declaration in support of the *Application to Employ Schwartz Flansburg, PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(e) and Federal Rule of Bankruptcy Procedure 2014* (the

**NELSON & HOUMAND, P.C.**  
3900 Paradise Road, Suite U, Las Vegas, Nevada 89169  
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1 “Application”).<sup>1</sup>

2 2. I am the appointed Chapter 7 Trustee in the above-captioned bankruptcy case.

3 3. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]<sup>2</sup> (the  
4 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &  
5 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The  
6 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust,  
7 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”).

8 4. On December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim*  
9 *Trustee in Involuntary Case* [ECF No. 3] (the “Interim Trustee Motion”), which sought authority  
10 to appoint an interim trustee to take possession of property and to manage the business operations  
11 and assets of the Debtor.

12 5. On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion*  
13 *and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”). The Order for  
14 Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the  
15 filing of the bankruptcy case was effective as of December 15, 2016 (the “Petition Date”). The  
16 Order for Relief further required that the Office of the United States Trustee (the “U.S. Trustee”)  
17 appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

18 6. On December 22, 2016, I was appointed as the Chapter 7 Trustee in the Debtor’s  
19 bankruptcy case [ECF No. 22].

20 7. On February 9, 2017, Markel Insurance Company (“MIC”) filed the *Motion of*  
21 *Markel Insurance Company for Relief from Stay Pursuant to 11 U.S.C. 362 to Proceed in Non-*  
22 *Bankruptcy Forum* (the “Motion for Stay Relief”) [ECF No. 169]. The Motion for Stay Relief  
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25 <sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11  
26 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
27 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of  
28 Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United  
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

<sup>2</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in the above-  
referred case as they appear on the docket maintained by the clerk of the court.

1 seeks relief from the automatic stay to pursue in a non-bankruptcy forum an action for declaratory  
2 relief and to rescind the Debtor’s Malpractice Insurance Policy with MIC (the “Malpractice  
3 Insurance Policy”).

4 8. The Motion for Stay Relief further states that approximately 390 parties have  
5 notified MIC of possible malpractice claims (the “Claims”).

6 9. I have filed a claim on behalf of the Debtor’s creditor body within the applicable  
7 deadlines to file such a claim under the terms of the Malpractice Insurance Policy.

8 10. In order to assist me in pursuing the Claims and exercising any and all rights held  
9 by the Debtor’s bankruptcy estate against the Malpractice Insurance Policy, I now desire to  
10 employ the law firm of Schwartz Flansburg, PLLC (the “Firm”), as special bankruptcy counsel in  
11 the Debtor’s bankruptcy case for the purpose of evaluating and prosecuting, if appropriate,  
12 litigation against MIC.

13 11. I have selected the Firm as my special litigation counsel to investigate, evaluate,  
14 and, if appropriate, prosecute the Claims against MIC. I have concluded that the Firm is the best  
15 qualified and, in my judgment, is best able to provide the required services and the Firm most  
16 likely to secure a favorable outcome in the best interests of the estate. My conclusion is based on  
17 the firm’s extensive experience in the practice of business, commercial and complex litigation,  
18 with expertise in areas of substantive law likely to become relevant in prosecution of the Claim.

19 12. I desire to employ the Firm as my special counsel in this bankruptcy case to render  
20 the following professional services: take the role of lead counsel with respect to the evaluation  
21 and prosecuting, if applicable, litigation of the Claims; continue the Trustee’s detailed  
22 investigation into all matters related to the Claims, including any adversary proceeding which  
23 may result following the Trustee’s investigation (the “Adversary Proceeding”); maintain and  
24 settle the Claims, including the Adversary Proceeding; and perform such other legal services  
25 (including, but not limited to, appearing before this Court, any other federal court, state court, or  
26 appellate courts) as may be required in connection with, and in furtherance of, the foregoing and  
27 which are in the interests of the bankruptcy estate.

28 . . .

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1 13. I have selected the Firm because its attorneys have experience in matters of this  
2 character, are familiar with bankruptcy practice and insurance law and are qualified to represent  
3 the Trustee in this case.

4 14. I am informed that the Firm is a disinterested person within the meaning of 11  
5 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(e), as it pertains to representing the bankruptcy  
6 estate's interest as special bankruptcy counsel.

7 15. The fees incurred by the Firm will be handled on a contingency fee basis with the  
8 Firm's fees being dependent upon recovery through settlement or trial, except in the event of  
9 discharge from representation as provided below. The Firm's fees, costs and expenses will be  
10 paid as follows:

11 **Pre-litigation activity.** The Firm shall be entitled to a contingency fee  
12 of 40% to be calculated on the gross amount of recovery (i.e., before  
13 deducting for or seeking reimbursement of any expenses paid by the  
14 Trustee to the Firm or otherwise) generated from all work performed  
15 prior to filing a lawsuit or making a formal demand for arbitration. Such  
16 work may include, but is not limited to, factual investigation, claims  
17 investigation and analysis, document review, factual and legal  
18 research, work with experts in preparation of a complaint and the  
19 requisite reports that must be filed with a complaint, preparation of  
20 demand letters, pre-suit settlement negotiations, preparation of a  
21 complaint and/or arbitration demand, and pre-suit mediation(s), if any.

22 **Post-filing litigation activity.** Once any litigation is initiated, either  
23 through the filing of a complaint or making a formal demand for  
24 arbitration, the Firm shall be entitled to a 40% contingency fee  
25 calculated on the gross amount of recovery (i.e., before deducting for  
26 or seeking reimbursement of any expenses paid by the Trustee to the  
27 Firm or otherwise). Any work performed in the context of an arbitration  
28 following a demand for arbitration shall constitute "Post-filing  
litigation activity."

**Appellate activity.** In the event that a notice of appeal is filed by any  
party, the Firm shall be entitled to an additional 5% contingency fee  
calculated on the gross amount of recovery (i.e., before deducting for or  
seeking reimbursement any expenses paid by the Trustee to the Firm or  
otherwise) for an appeal to the District Court or Bankruptcy  
Appellate Panel, and an additional 5% contingency fee calculated  
on the gross amount of recovery in the event of an appeal to the  
Ninth Circuit Court of Appeals.

**Payment of Contingency Fee.** With respect to any recovery by the  
Trustee arising out of, pertaining to, or resulting from the pursuit of the  
claims in the Litigation, whether through any settlement, judgment,  
arbitration award, or otherwise, the Trustee shall pay the appropriate  
contingency fee to the Firm within fourteen (14) days of court approval.

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The Firm expressly agrees that it is being retained to represent the Trustee in her capacity as the Chapter 7 Trustee in the Bankruptcy Case and, therefore, the Trustee shall not be personally liable for any fees incurred as part of this Agreement. *See* Exhibit “1” to the Schwartz Declaration.

16. The Employment of the Firm will assist me in fulfilling my statutory obligations under Section 704 by collecting and reducing to money assets of the Debtor’s bankruptcy estate. *See* 11 U.S.C. § 704(a)(1).

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

Dated this 22nd day of February, 2017.

/s/ Victoria L. Nelson  
Victoria L. Nelson, Chapter 7 Trustee

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