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 NV Bar No. 6170
 2 CANDACE C. CARLYON, ESQ.
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 3 **MORRIS POLICH & PURDY LLP**
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 7 *Attorneys for Markel Insurance Company*

8 **UNITED STATES BANKRUPTCY COURT**
 9 **DISTRICT OF NEVADA**

10 In re:
 11 ROBERT C. GRAHAM, LTD., fdba ROB
 GRAHAM & ASSOCIATES fdba
 12 LAWYERSWEST,
 13
 14
 15

Case No.: BK-S-16-16655-BTB
 Chapter: 7

**OPPOSITION TO APPLICATION TO
 EMPLOY SCHWARTZ FLANSBURG,
 PLLC AS SPECIAL COUNSEL TO THE
 TRUSTEE.**

Hearing Date: March 28, 2017
 Hearing Time: 1:30 p.m.

16 Markel Insurance Company (“MIC”) by and through its counsel, Nicholas M. Wiczorek,
 17 Esq. and Candace C. Carlyon, Esq. of the law firm of Morris Polich & Purdy, LLP, respectfully files
 18 this Opposition to Trustee’s Application to Employ Schwartz Flansburg, PLLC as special counsel to
 19 the Trustee...[Dkt. #184] (“the “Application”)
 20

21 This Opposition is made pursuant to 11 U.S.C. §327(e), and is based upon the Points and
 22 Authorities attached hereto, the pleadings, papers and records on file in this action, and any oral
 23
 24
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argument which the Court may entertain at the time of the hearing on the Motion.

Respectfully submitted this 14th day of March, 2017.

MORRIS POLICH & PURDY LLP



By: _____
NICHOLAS M. WIECZOREK, ESQ.
Nevada Bar No. 6170
CANDACE C. CARLYON, ESQ.
Nevada Bar No. 2666
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Markel Insurance Company

POINTS AND AUTHORITIES

I. BACKGROUND

1. This case arises from allegations of the theft of millions of dollars in client trust monies from Debtor’s accounts.

2. Debtor is a Nevada Professional Corporation whose sole officer and director is Robert Graham. *See* Nevada Secretary of State records attached hereto as Exhibit 1.

3. The law firm of Schwartz Flansburg, PLLC (“Schwartz”) represents the Debtor, Robert C. Graham, Ltd. *See* Notice of Appearance [Dkt. 31] attached hereto as Exhibit 2.

4. The Trustee is seeking to employ Schwartz as “special counsel” on the basis that “In order to assist the Trustee in pursuing the Claims and exercising any and all rights held by the Debtor’s bankruptcy estate against the Malpractice Insurance Policy” the Trustee desires to employ Schwartz “for the purpose of evaluating and prosecuting, if appropriate, litigation against MIC.”

5. “Claims” is defined in ¶6 of the Application as referring approximately 390 potential malpractice claims made under the MIC policy (the “Policy”).

1 6. The Application seeks to approve the employment on a contingency fee basis,
 2 ranging from 40-45% of the “gross recovery”.

3 7. The retainer agreement [found at Dkt. 185-1] specifies, at ¶2, that Schwartz is being
 4 hired to evaluate and, if appropriate, prosecute “litigation for the professional malpractice claims
 5 filed against Robert C. Graham, Ltd. With Markel Insurance Company under Policy Number LA
 6 303-630.” Although a retainer agreement is referenced as being attached to the Schwartz
 7 Declaration filed in support of the Application [Dkt. #185], no retainer agreement was attached.

8 8. While the Court has yet to rule on the Application, Schwartz has already commenced
 9 representation of the Trustee by filing, on her behalf, an opposition to MIC’s Motion for Relief From
 10 Stay in order to determine whether the Policy is void. *See* Dkt. #193 (Opposition) and Dkt. #200
 11 (Errata, in which Schwartz “clarifies” that the references in the Opposition to “the Debtor” should be
 12 read as referring to “the Trustee”).
 13

14 II. ARGUMENT

A. **Schwartz is not Disinterested**

15
 16 As counsel for the “Debtor”, Schwartz’s only point of contact, both with respect to
 17 information provided to Schwartz and advice given by Schwartz, is Mr. Graham himself. The
 18 Trustee, on the other hand, is sharply adverse to Mr. Graham. As set forth in the Trustee’s first
 19 status report filed on Feb. 14, 2017 [Dkt. #180] (attached hereto as Exhibit 3), this case arises from
 20 reports that “the Debtor had neglected its clients and that its principal, Robert C. Graham, Esq. (“Mr.
 21 Graham”), had misappropriated funds from the Debtor’s IOLTA Account.” Exhibit 3 at p. 2 lls. 10-
 22 13. Mr. Graham has been suspended from practice by the Nevada Supreme Court “based upon his
 23 misappropriation of millions of dollars from more than fifty clients, guardianships, special needs
 24 trusts and estates.” *Id.* at lls. 17-18; Dkt. #169 Ex. 2. The Trustee’s main efforts to date have
 25 revolved around the targeted investigation of the Debtor’s and Mr. Graham’s finances in an effort to
 26 identify (and presumably recover) funds that Mr. Graham appropriated. The Trustee “has served
 27
 28

1 seventeen (17) subpoenas...requesting the production of documents on third party financial
2 institutions, title companies, accountants, and other entities that may have information related to the
3 Debtor's affairs." Status Report, Dkt. 180, at p. 3 lls. 9-12.

4 As counsel for the Debtor, Schwartz owes a duty of loyalty and confidentiality. Given the
5 pervasive adversity of the Trustee to Mr. Graham, and the fact that the Debtor's principal and only
6 officer and director is Mr. Graham, it is submitted that, under the unique facts of this case, Debtor's
7 counsel is not disinterested. *Compare In re Southern Kitchens, Inc.*, 216 B.R. 819, 829 (Bankr. D.
8 Minn. 1998)(proposed special counsel not disinterested where he "may be influenced by continuing
9 loyalty to an unsued agent of the Debtor's downfall"); *In re Granite Ptnrs., L.P.*, 219 B.R. 22, 33-34
10 (Bankr. S.D.N.Y.)(finding conflict since ethical rules forbid an attorney "from commencing or
11 continuing simultaneous representation of two clients if his exercise of independent professional
12 judgment on behalf of either would likely be 'adversely affected,' or where the dual representation
13 would likely involve the representation of 'differing interests'"). A similar case was presented in *In*
14 *re Mercury*, 280 B.R. 35 (Bankr. S.D.N.Y. 2002). There, an application to employ Debtor's counsel
15 as special counsel to pursue litigation claims had been approved, but the Trustee later advocated a
16 settlement which the Debtors objected to. This put the attorney in an ethical dilemma. As counsel
17 for the Debtor, he was required to carry out his client's instructions. The court found that the law
18 firm was not disinterested; that it had breached its ethical duties; and that compensation would be
19 denied. It is not hard to imagine a similar result in this case.

20
21
22 The monetary arrangement further illustrates this conflict. As discussed below, the
23 Application proposes to pay a fee to Schwartz which is dependent on proving malpractice claims
24 against the Debtor-Schwartz's own client. If the Debtor did not commit malpractice (which is
25 certainly in the Debtor's best interest to establish), Debtor's attorney receives no payment.

26
27 ///

B. The Trustee Cannot Grant a Contingent Interest in the “Claims”

1 The Retainer Agreement reflects that Schwartz is being retained “for the purpose of
 2 evaluating and prosecuting, if appropriate, litigation for the professional malpractice claims filed
 3 against Robert C. Graham, Ltd. with Markel Insurance Company under Policy Number LA303-630.”
 4 To the extent that the Trustee is attempting to prosecute, and grant a contingent interest in, the
 5 malpractice claims held by Debtor’s clients, such conduct is clearly inappropriate. The “Claims” are
 6 claims against the Debtor and Mr. Graham, and belong to the individuals allegedly harmed by the
 7 Debtor and Mr. Graham. Such claims are not assignable under Nevada law, even in the context of a
 8 bankruptcy matter. “Nevada law prohibits the assignment of legal malpractice claims...” *Tower*
 9 *Homes v. Heaton*, 132 Nev. Adv. Op. 62, 377 P.3d 118, 122 (2016). While that case involved an
 10 attempt to permit a creditor to bring the estate’s claims, any effort to permit the estate to bring the
 11 creditor’s claims is subject to the same prohibition. Simply put, the Trustee does not own the
 12 “Claims”, they cannot be assigned to the Trustee under Nevada law, and she cannot assign a
 13 contingency interest in such Claims. Just as the Trustee does not own and cannot prosecute the
 14 malpractice claims, the Trustee certainly cannot attempt to dilute recovery to claimants (if coverage
 15 is held to exist) by pledging 40-45% of the policy proceeds to her proposed special counsel.

III. CONCLUSION

20 For the reasons stated above, it is respectfully requested that the Application be denied.

21 Respectfully submitted this 14th day of March, 2017.

22 **MORRIS POLICH & PURDY LLP**

23 

24 By: _____
 25 NICHOLAS M. WIECZOREK, ESQ.
 Nevada Bar No. 6170
 26 CANDACE C. CARLYON, ESQ.
 Nevada Bar No. 02666
 27 3800 Howard Hughes Parkway, Suite 500
 Las Vegas, Nevada 89169
 28 Attorneys for Markel Insurance Company

Exhibit 1

Exhibit 1

NEVADA SECRETARY OF STATE

Barbara K. Gegavske

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ROBERT C. GRAHAM, LTD.

Business Entity Information			
Status:	Default	File Date:	1/30/1995
Type:	Domestic Professional Corporation	Entity Number:	C1573-1995
Qualifying State:	NV	List of Officers Due:	1/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV19951049970	Business License Exp:	1/31/2017

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	CASSADY LAW OFFICES, P.C.	Address 1:	2425 W HORIZON RIDGE PKWY
Address 2:		City:	HENDERSON
State:	NV	Zip Code:	89052
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

[View all business entities under this registered agent](#)

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 50.00
Par Share Count:	5,000.00	Par Share Value:	\$ 0.01

Officers Include Inactive Officers

Address 1:	10000 W CHARLESTON BLVD STE 140	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Secretary - ROBERT C GRAHAM			
Address 1:	10000 W CHARLESTON BLVD STE 140	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Treasurer - ROBERT C GRAHAM			
Address 1:	10000 W CHARLESTON BLVD STE 140	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	
Director - ROBERT C GRAHAM			
Address 1:	10000 W CHARLESTON BLVD STE 140	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	USA
Status:	Active	Email:	

Actions\Amendments
[Click here to view 22 actions\amendments associated with this company](#)

Exhibit 2

Exhibit 2

E-Filed: December 27, 2016

1 Samuel A. Schwartz, Esq.
2 Bryan A. Lindsey, Esq.
3 Nevada Bar No. 10662
4 M. Michelle Nisce, Esq.
5 Schwartz Flansburg PLLC
6 6623 Las Vegas Blvd., Suite 300
7 Las Vegas, Nevada 89119
8 Telephone: (702) 385-5544
9 Facsimile: (702) 385-2741
10 Attorneys for Robert C. Graham, Ltd.

11 **UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA**

12 In re:) Case No.: 16-16655-BTB
13)
14 Robert C. Graham, Ltd.,) Chapter 11
15)
16 Debtor.)
17)

18 **NOTICE OF APPEARANCE AND REQUEST FOR SPECIAL NOTICE**

19 TO: CLERK OF THE U.S. BANKRUPTCY COURT, THE DEBTOR, THE ATTORNEY OF
20 RECORD, THE U.S. TRUSTEE AND TO ALL PARTIES IN INTEREST:

21 Schwartz Flansburg PLLC hereby appears on behalf of Robert C. Graham, Ltd., and
22 requests special notice of all hearings, actions, contested matters, in this case, together with copies
23 of all notices, pleadings, motions, responses and other related materials that are issued or filed in
24 connection with these proceedings. Pursuant to Federal Rule of Bankruptcy Procedure 2002(g),
25 all notices and copies in response to the foregoing, and all notices required to be mailed to Robert
26 C. Graham, Ltd. pursuant to Bankruptcy Rule 2002, should be sent to the following:

27 Samuel A. Schwartz, Esq.
28 Nevada Bar No. 10985
29 Schwartz Flansburg PLLC
30 6623 Las Vegas Blvd., Suite 300
31 Las Vegas, Nevada 89119
32 Telephone: (702) 385-5544
33 Facsimile: (702) 385-2741
34 sam@nvfirm.com; and

1 Bryan A. Lindsey, Esq.
2 Nevada Bar No. 10662
3 Schwartz Flansburg PLLC
4 6623 Las Vegas Blvd., Suite 300
5 Las Vegas, Nevada 89119
6 Telephone: (702) 385-5544
7 Facsimile: (702) 385-2741
8 bryan@nvfirm.com; and

9 M. Michelle Nisce, Esq.
10 Nevada Bar No. 13552
11 Schwartz Flansburg PLLC
12 6623 Las Vegas Blvd., Suite 300
13 Las Vegas, Nevada 89119
14 Telephone: (702) 385-5544
15 Facsimile: (702) 385-2741
16 michellen@nvfirm.com.

17 DATED this 27th day of December, 2016.

18 /s/ Samuel A. Schwartz
19 Nevada Bar No. 10985
20 Bryan A. Lindsey, Esq.
21 Nevada Bar No. 10662
22 M. Michelle Nisce, Esq.
23 Nevada Bar No. 13552
24 Schwartz Flansburg PLLC
25 6623 Las Vegas Blvd. South, Suite 300
26 Las Vegas, Nevada 89119
27 Telephone: (702) 385-5544
28 Facsimile: (702) 385-2741
29 Attorneys for Robert C. Graham, Ltd.

CERTIFICATE OF SERVICE

1
2 I hereby certify that a true and correct copy of the foregoing was sent electronically via
3
4 the Courts CM/ECF system on December 27, 2016, to the following:

5 ERICK T. GJERDINGEN on behalf of Petitioning Creditor ESTATE OF MICHAEL B.
6 MACKNIN
7 bknotices@gtg.legal, egjerdingen@gtg.legal

8 ERICK T. GJERDINGEN on behalf of Petitioning Creditor THE MARGUERITTE OWENS
9 REVOCABLE TRUST
10 bknotices@gtg.legal, egjerdingen@gtg.legal

11 ERICK T. GJERDINGEN on behalf of Petitioning Creditor THE SHARONA DAGONI
12 TRUST
13 bknotices@gtg.legal, egjerdingen@gtg.legal

14 GERALD M GORDON on behalf of Petitioning Creditor ESTATE OF MICHAEL B.
15 MACKNIN
16 ggordon@gtg.legal, bknotices@gtg.legal

17 GERALD M GORDON on behalf of Petitioning Creditor THE MARGUERITTE OWENS
18 REVOCABLE TRUST
19 ggordon@gtg.legal, bknotices@gtg.legal

20 GERALD M GORDON on behalf of Petitioning Creditor THE SHARONA DAGONI TRUST
21 ggordon@gtg.legal, bknotices@gtg.legal

22 JOSEPH S. KISTLER on behalf of Interested Party THE ESTATE OF MICHAEL B.
23 MACKNIN
24 jkistler@hutchlegal.com, bbenitez@hutchlegal.com

25 JOSEPH S. KISTLER on behalf of Petitioning Creditor ESTATE OF MICHAEL B.
26 MACKNIN
27 jkistler@hutchlegal.com, bbenitez@hutchlegal.com

28 VICTORIA L. NELSON
29 trustee@nelsonhoumand.com,
30 cgauss@nelsonhoumand.com;vln@trustesolutions.net;nv29@ecfbis.com;trustee2@nelsonhou
mand.com;trustee3@nelsonhoumand.com

31 SAMUEL A. SCHWARTZ on behalf of Debtor ROBERT C. GRAHAM, LTD.
32 sam@nvfirm.com, ecf@schwartzlawyers.com;schwartzecf@gmail.com

1 U.S. TRUSTEE - LV - 7
2 USTPRegion17.LV.ECF@usdoj.gov

3 I hereby certify that a true and correct copy of the foregoing was sent via U.S. Regular

4 Mail on December 27, 2016, to the following:

5
6 United States Trustee
7 300 Las Vegas Blvd. South #4300
8 Las Vegas, NV 89101

9 Joseph S. Kistler (3458)
10 Joshua O. Igeleke Jr. (13506)
11 HUTCHISON & STEFFEN, LLC
12 Peccole Professional Park
13 10080 West Alta Drive, Suite 200
14 Las Vegas, Nevada 89145

15 /s/Christy L. Cahall
16 Christy L. Cahall, an employee of Schwartz Flansburg PLLC
17
18
19
20
21
22
23
24
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26
27
28
29
30
31
32
33
34

Exhibit 3

1 Kathy Bazoian Phelps, Esq. (CA Bar No. 155564)
2 Email: kphelps@diamondmccarthy.com
3 DIAMOND MCCARTHY LLP
4 1999 Avenue of the Stars, Suite 1100
5 Los Angeles, California 90067
6 Telephone: 310/651-2997
7 *Admitted Pro Hac Vice*

Electronically Filed On February 14, 2017

8 Jacob L. Houmand, Esq. (NV Bar No. 12781)
9 Email: jhoumand@nelsonhoumand.com
10 Kyle J. Ortiz, Esq. (NV Bar No. 14252)
11 Email: kortiz@nelsonhoumand.com
12 NELSON & HOUMAND, P.C.
13 3900 Paradise Road, Suite U
14 Las Vegas, Nevada 89169-0903
15 Telephone: 702/720-3370
16 Facsimile: 702/720-3371

17 *[Proposed] Counsel for Victoria L. Nelson, Chapter 7 Trustee*

18 **UNITED STATES BANKRUPTCY COURT**
19 **DISTRICT OF NEVADA**

20 In re:
21
22 ROBERT C. GRAHAM, LTD. fdba ROB
23 GRAHAM & ASSOCIATES fdba
24 LAWYERSWEST,

25 Debtor.

26 Case No. BK-S-16-16655-BTB
27 Chapter 7

28 **STATUS REPORT**

Date of Hearing: February 16, 2017
Time of Hearing: 11:00 a.m.
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley¹

29 VICTORIA L. NELSON, the duly appointed Chapter 7 Trustee in the above-captioned
30 bankruptcy case (the "Trustee"), by and through her proposed counsel of record, Kathy Bazoian
31 Phelps, Esq. of the law firm of Diamond McCarthy, LLP and Jacob L. Houmand, Esq. and Kyle J.

32 _____
33 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
34 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
35 Federal Rules of Civil Procedure will be referred to as "FRCP" and the Federal Rules of
36 Bankruptcy Procedure will be referred to as "FRBP." The Local Rules of Practice for the United
37 States Bankruptcy Court for the District of Nevada shall be referred to as the "Local Rules".

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3900 Paradise Road, Suite U, Las Vegas, Nevada 89169
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1 Ortiz, Esq. of the law firm of Nelson & Houmand, P.C. files this *Status Report* (the “Status
2 Report”). The purpose of this Status Report is to update the Court regarding the administration of
3 the Debtor’s bankruptcy case prior to the Status Conference scheduled for February 16, 2017, at
4 10:00 a.m.

5 **A. General Background of the Debtor’s Bankruptcy Filing**

6 On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]² (the
7 “Involuntary Petition”) was filed against ROBERT C. GRAHAM, LTD., fdba ROB GRAHAM &
8 ASSOCIATES fdba LAWYERSWEST (the “Debtor”) pursuant to 11 U.S.C. § 303. The
9 Involuntary Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust,
10 and the Margueritte Owens Revocable Trust (collectively, the “Petitioning Creditors”). The filing
11 of the Involuntary Petition against the Debtor followed numerous reports that the Debtor had
12 neglected its clients and that its principal, Robert C. Graham, Esq. (“Mr. Graham”), had
13 misappropriated funds from the Debtor’s IOLTA Account. Specifically, on December 9, 2016,
14 the State Bar of Nevada filed an *Emergency Petition for Temporary Suspension Pursuant to*
15 *Supreme Court Rule 102(4)* (the “Emergency Petition”) with the Supreme Court of the State of
16 Nevada (Case No. 71849). The Emergency Petition sought a temporary suspension of Mr.
17 Graham based upon his misappropriation of millions of dollars from more than fifty clients,
18 guardianships, special needs trusts and estates. The Emergency Petition further details that Mr.
19 Graham abruptly closed his practice and abandoned more than one hundred clients without
20 providing them with any advance notice.

21 On December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim*
22 *Trustee in Involuntary Case* [ECF No. 3] (the “Interim Trustee Motion”), which sought authority
23 to appoint an interim trustee to take possession of property and to manage the business operations
24 and assets of the Debtor. On December 21, 2016, the Bankruptcy Court entered an *Order on*
25 *Trustee Motion and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”).
26 The Order for Relief provided that the Debtor had consented to the filing of a bankruptcy petition

27
28 ² All references to “ECF No.” are to the numbers assigned to the documents filed in the above-
referenced case as they appear on the docket maintained by the clerk of the court.

NELSON & HOUMAND, P.C.
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1 and that the filing of the bankruptcy case was effective as of December 15, 2016 (the "Petition
2 Date"). The Order for Relief further required the Office of the United States Trustee (the "U.S.
3 Trustee") appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701. On December 22,
4 2016, the Trustee was appointed as the Chapter 7 Trustee in the Debtor's bankruptcy case [ECF
5 No. 22].

6 **B. The Trustee's Investigation of the Debtor's Financial Affairs**

7 Consistent with her obligations under Section 704(a)(4), the Trustee began investigating
8 the Debtor's financial affairs immediately following her appointment as Chapter 7 Trustee.
9 Following discussions with counsel for the Petitioning Creditors and the State Bar of Nevada, the
10 Trustee has served seventeen (17) subpoenas (the "Subpoenas") requesting the production of
11 documents on third party financial institutions, title companies, accountants, and other entities
12 that may have information related to the Debtor's financial affairs. One of the Subpoenas was
13 served on City National Bank, N.A., the bank where the Debtor held its general operating account
14 and IOLTA trust account. The majority of the institutions that were served with the Subpoenas
15 have produced responsive documents.

16 The Trustee has also employed Agilitec IT ("Agilitec"), a technology services firm, to
17 recover thousands of documents deleted by Mr. Graham from his Dropbox, Inc. account (the
18 "Dropbox Account") prior to the filing of the Involuntary Petition. Agilitec was successful in
19 restoring all files that were deleted by Mr. Graham. The Trustee has also obtained copies of the
20 Debtor's books and records pertaining to its business operations and the accounting of its IOLTA
21 trust account.

22 The Trustee is in the process of reviewing the extensive documentation that has been
23 produced as a result of the Subpoenas, the data that was restored from the Dropbox Account, and
24 the Debtor's books and records to determine the extent of assets that can be recovered for the
25 benefit of creditors.

26 ...
27 ...
28 ...

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1 **C. The Employment of Professionals On Behalf of the Debtor’s Bankruptcy Estate**

2 In order to assist the Trustee with her efforts in administering the Debtor’s bankruptcy
3 estate and fulfilling her obligations under Section 704, the Trustee has sought the employment of
4 legal and accounting professionals on behalf of the Debtor’s bankruptcy estate.

5 On January 4, 2017, the Trustee filed an *Application to Employ Nelson & Houmand, P.C.,*
6 *Nunc Pro Tunc, As General Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee*
7 *Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014*
8 *[ECF No. 35]* (the “N&H Employment Application”). The N&H Employment Application seeks
9 authority to employ the law firm of Nelson & Houmand, P.C. as general bankruptcy counsel for
10 the Trustee. The hearing on the N&H Employment Application is currently scheduled for March
11 15, 2017, at 10:00 a.m.

12 On January 4, 2017, the Trustee filed an *Ex Parte Application to Employ Diamond*
13 *McCarthy LLP, Nunc Pro Tunc to December 28, 2016, As Special Litigation Counsel for Victoria*
14 *L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy*
15 *Procedure 2014 [ECF No. 39]* (the “DM Employment Application”). The DM Employment
16 Application sought authority to employ the law firm of Diamond McCarthy LLP (“Diamond
17 McCarthy”) as special litigation counsel for the Trustee. The Trustee selected Diamond
18 McCarthy because it is a national litigation boutique that practices complex and high-stakes
19 business cases. Diamond McCarthy represents corporations, creditors’ committees, receivers,
20 shareholders, trustees, secured and unsecured creditors, court-appointed trustees and others in
21 bankruptcy litigation as well as parties involved in disputes arising from business dissolutions or
22 restructurings. Diamond McCarthy has developed a specialty in representing bankruptcy trustees
23 and receivers in litigation involving fraudulent activities and has been lead counsel in large-scale
24 litigation involving recovery of assets in Ponzi scheme cases. Diamond McCarthy has also served
25 as lead counsel in three of the largest law firm bankruptcies in United States history. On January
26 11, 2017, the Court entered an *Order Granting Ex Parte Application to Employ Diamond*
27 *McCarthy LLP, Nunc Pro Tunc to December 28, 2016, As Special Litigation Counsel for Victoria*

28

1 *L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. § 327(a) and Federal Rule of Bankruptcy*
2 *Procedure 2014* [ECF No. 104].

3 On February 1, 2017, the Trustee also filed an *Ex Parte Application to Employ Paul M.*
4 *Healey & Sons CPAS, Ltd. As Accountant for Victoria L. Nelson, Chapter 7 Trustee, Pursuant to*
5 *11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure* [ECF No. 141] (the
6 “Healey Employment Application”). The Healey Employment Application sought to employ
7 Paul M. Healey & Sons CPAS, Ltd. (“Healey”) as accountant for the Trustee in order to assist
8 with the filing of tax returns on behalf of the bankruptcy estate and advise on the tax implications
9 of certain bankruptcy sales.

10 The Trustee is also in the process of interviewing several accounting firms that have
11 specialties in forensic accounting to assist in the review and analysis of the financial records
12 obtained via the Subpoenas, the Dropbox Account, and the Debtor’s books and records. The
13 Trustee anticipates that she will seek court approval of the employment of an accounting firm
14 within thirty (30) days.

15 **D. The Inspection of Personal Property At the Debtor’s Offices In Las Vegas, Nevada**
16 **and Fort Collins, Colorado**

17 The Trustee has inspected the Debtor’s office location in Las Vegas, Nevada located at
18 10000 West Charleston Boulevard, Suite 140, Las Vegas, Nevada 89135 (the “Las Vegas
19 Office”). The Trustee was informed by Nellis Auction, a licensed auctioneer, that the value of the
20 personal property remaining at the Las Vegas Office (the “Las Vegas Personal Property”) was of
21 limited value and would not likely generate sufficient funds to justify an auction after
22 commissions unless an auction could be conducted at the Las Vegas Office. The Debtor’s former
23 landlord refused to allow an auction to be held at the Las Vegas Office and, on February 7, 2017,
24 the Trustee filed a *Motion to Approve Sale of Personal Property to Ken Chupinsky Pursuant to 11*
25 *U.S.C. § 363* [ECF No. 160] (the “Motion to Sell”), which sought court approval of the sale of the
26 Las Vegas Personal Property to Ken Chupinsky, the principal of Nellis Auction, for \$2,500. The
27 hearing on the Motion to Sell is scheduled for March 16, 2017, at 11:00 a.m.

28 ...

NELSON & HOUMAND, P.C.
3900 Paradise Road, Suite U, Las Vegas, Nevada 89169
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

1 The Trustee also arranged for an auctioneer to evaluate the Debtor’s office location in Fort
2 Collins, Colorado located at 2720 Council Tree Avenue, Suite 242, Fort Collins, Colorado 80528
3 (the “Fort Collins Office”). The Trustee was informed by the auctioneer that the personal
4 property remaining at the Fort Collins Office (the “Fort Collins Personal Property”) would likely
5 not generate gross proceeds in excess of \$2,000. Accordingly, the Trustee determined that the
6 Fort Collins Personal Property was of inconsequently value and burdensome to the Debtor’s
7 bankruptcy estate. On February 8, 2017, the Trustee filed a *Negative Notice of Intent to Abandon*
8 *Property Pursuant to 11 U.S.C. § 554* [ECF No. 166].

9 **E. The Scheduling of the Debtor’s Section 341(a) Meeting of Creditors and the Filing of**
10 **the Debtor’s Bankruptcy Schedules**

11 On January 26, 2017, the Court entered a *Notice of Chapter 7 Bankruptcy Case* [ECF No.
12 133], which scheduled the Debtor’s Section 341(a) Meeting of Creditors for March 10, 2017, at
13 8:00 a.m. The Trustee may seek to continue the Debtor’s Section 341(a) Meeting of Creditors to
14 a different date and time to accommodate the large number of creditors and parties-in-interest that
15 are likely to attend such a meeting. On February 9, 2017, the Debtor filed its Bankruptcy
16 Schedules and Statement of Financial Affairs.

17 **F. The Debtor’s Malpractice Insurance Policy**

18 Prior to the filing of the Involuntary Petition, the Debtor was a party to a MIC Lawyers
19 Professional Liability Insurance Policy (the “Malpractice Insurance Policy”) that covered claims
20 in the aggregate amount of \$2,000,000. The Trustee timely filed a claim against the Malpractice
21 Insurance Policy on behalf of the Debtor’s creditor body.

22 On February 9, 2017, Markel Insurance Company filed a *Motion of Markel Insurance*
23 *Company for Relief from Stay Pursuant to 11 U.S.C. § 362 to Proceed In Non-Bankruptcy Forum*
24 [ECF No. 169] (the “Motion for Stay Relief”). The Motion for Stay Relief seeks relief from the
25 automatic stay to pursue in a non-bankruptcy forum an action for declaratory relief and to rescind
26 the MIC Lawyers Professional Liability Insurance Policy issue to the Debtor. The hearing on the
27 Motion for Stay Relief is scheduled for March 14, 2017. The Trustee anticipates seeking
28 employment of special litigation counsel on a contingency fee basis to pursue any and all claims

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1 available to the Debtor’s bankruptcy estate related to the Malpractice Insurance Policy.

2 **G. The Development and Maintenance of A Website to Provide Updates to the Debtor’s**
3 **Creditors and Parties-In-Interest**

4 Due to the number of individuals affected by the Debtor’s bankruptcy case, the Trustee
5 has created a website dedicated to provide creditors and parties-in-interest with information
6 related to the administration of the Debtor’s bankruptcy case. This website has two components:

7 (a) a webpage containing general information related to the Debtor’s bankruptcy case, including
8 general background, the deadline for timely filing proofs of claim, details concerning upcoming
9 court hearings (the “General Information Webpage”); and (b) a webpage that provides access to
10 all pleadings and documents that have been filed in the Debtor’s bankruptcy case (the
11 “Bankruptcy Court Docket Webpage”). The General Information Webpage can be accessed at
12 the following link: <http://nelsonhoumand.com/robert-c-graham-bankruptcy-petition/>. The
13 Bankruptcy Court Docket Webpage can be accessed at the following link:
14 <http://nelsonhoumand.com/robert-c-graham-main-bankruptcy-court-documents/>. The Trustee will
15 continually update the content of both the General Information Webpage and Bankruptcy Court
16 Docket Webpage as needed to provide timely information to creditors and parties-in-interest.

17 Dated this 14th day of February, 2017.

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

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