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

6 *General Bankruptcy Counsel for*
Victoria L. Nelson, Chapter 7 Trustee

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 Debtor.

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

DECLARATION OF VICTORIA L. NELSON IN SUPPORT OF APPLICATION TO EMPLOY ANDERSON LAW FIRM, LTD. AS SPECIAL LITIGATION COUNSEL FOR VICTORIA L. NELSON, CHAPTER 7 TRUSTEE PURSUANT TO 11 U.S.C. §§ 327(a) AND 328(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014

Date of Hearing: *OST Pending*
Time of Hearing: *OST Pending*
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley

22
23 I, Victoria L. Nelson, hereby declare as follows:

24 1. I am over the age of 18 and mentally competent. Except where stated on
25 information and belief, I have personal knowledge of the facts in this matter and if called upon to
26 testify, could and would do so. I make this declaration in support of the *Application to Employ*
27 *Andersen Law Firm, Ltd. as Special Litigation Counsel for Victoria L. Nelson, Chapter 7 Trustee*
28 *Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014* (the

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

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3900 Paradise Road, Suite U, Las Vegas, Nevada 89169
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

1 “Application”).¹

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]² (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 _____

23 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
24 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
25 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
26 Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
27 States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.
28 Unless otherwise provided herein, all defined terms shall have the same meaning ascribed to them
in the Application.

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.

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1 *Bankruptcy Forum* (the “Motion for Stay Relief”) [ECF No. 169]. The Motion for Stay Relief
2 sought relief from the automatic stay to pursue in a non-bankruptcy forum an action for
3 declaratory relief and to rescind the Debtor’s Malpractice Insurance Policy with MIC (Policy
4 Number LA303-630 (the “Malpractice Insurance Policy”).

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

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

9 10. On March 20, 2017, the Court entered an *Order Granting Motion of Markel*
10 *Insurance Company For Relief from Stay Pursuant to 11 U.S.C. § 362 to Proceed In Non-*
11 *Bankruptcy Forum* [ECF No. 209] (the “Stay Relief Order”).

12 11. The Stay Relief Order permits “MIC [to] proceed in an appropriate non-
13 bankruptcy forum with an action for declaratory relief and to rescind the [Malpractice Insurance
14 Policy] . . .”

15 12. On February 22, 2017, I filed an *Application to Employ Schwartz Flansburg,*
16 *PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11*
17 *U.S.C. § 327(e) and Federal Rule of Bankruptcy Procedure 2014* [ECF No. 184] (the “Schwartz
18 Application”).

19 13. The Schwartz Application sought to employ Schwartz Flansburg, PLLC as special
20 bankruptcy counsel pursuant to 11 U.S.C. § 327(e) to assist me in exercising any and all rights
21 held by the Debtor’s bankruptcy estate against the Malpractice Insurance Policy.

22 14. On March 31, 2017, the Court entered an *Order Denying Application to Employ*
23 *Schwartz Flansburg, PLLC as Special Bankruptcy Counsel for Victoria L. Nelson, Chapter*
24 *Trustee Pursuant to 11 U.S.C. § 327(e) and Federal Rule of Bankruptcy Procedure 2014* [ECF
25 No. 231].

26 15. At the hearing on the Schwartz Application, the Court denied the Schwartz
27 Application finding that there was a conflict of interest.

28 . . .

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1 16. On April 5, 2017, MIC filed a *Complaint for Rescission and Declaratory Relief* in
2 the United States District Court for the District of Nevada (the “District Court Action”).

3 17. In the District Court Action, MIC seeks declaratory relief and to rescind the
4 Malpractice Insurance Policy.

5 18. In order to assist me in defending against rescission of the Malpractice Insurance
6 Policy in the District Court Action and in pursuing the Claims and exercising any and all rights
7 held by the Debtor’s bankruptcy estate against the Malpractice Insurance Policy, I now desire to
8 employ the Andersen Law Firm (the “Firm”), as special litigation counsel in the Debtor’s
9 bankruptcy case for the purpose of defending any efforts to rescind the Malpractice Insurance
10 Policy and to evaluate and prosecute, if appropriate, litigation against MIC.

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

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

1 21. 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 me in this case.

4 22. 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 (a).

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

10 **Pre-litigation activity.** The Firm shall be entitled to a contingency
11 fee of 33 1/3% to be calculated on the gross amount of recovery
12 generated from all work performed prior to filing a lawsuit or
13 making a formal demand for arbitration. Such work may include,
14 but is not limited to, factual investigation, claims investigation and
15 analysis, document review, factual and legal research, work with
16 experts in preparation of a complaint and the requisite reports that
17 must be filed with a complaint, preparation of demand letters, pre-
18 suit settlement negotiations, preparation of a complaint and/or
19 arbitration demand, and pre-suit mediation(s), if any.

20 **Post-filing litigation activity.** Post-filing litigation activity. Once
21 the Litigation is initiated, either through the filing of a complaint or
22 making a formal demand for arbitration, the Firm shall be entitled
23 to a 40% contingency fee calculated on the gross amount of
24 recovery. Any work performed in the context of an arbitration
25 following a demand for arbitration shall constitute "Post-filing
26 litigation activity."

27 **Appellate activity.** In the event that a notice of appeal is filed by
28 any party, the Firm shall be entitled to a 45% contingency fee
calculated on the gross amount of recovery.

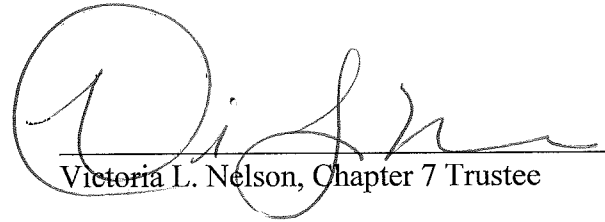
Payment of Contingency Fee. With respect to any recovery by the
Client or the Bankruptcy Estate rising out of, pertaining to, or
resulting from the pursuit of the Claims in the Litigation, whether
through any settlement, judgment, arbitration award, or otherwise,
the Client shall pay the appropriate contingency fee to the Firm
within fourteen (14) days of court approval of such fee. *See* Exhibit
"1" to the Andersen Declaration.

1 24. The Employment of the Firm will assist me in fulfilling my statutory obligations
2 under Section 704 by collecting and reducing to money assets of the Debtor's bankruptcy estate.

3 25. I have previously employed the Firm to represent bankruptcy estates in other
4 unrelated bankruptcy cases in which I am the Trustee.

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

7 Dated this 1st day of May, 2017.

8 
9 _____
10 Victoria L. Nelson, Chapter 7 Trustee

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