

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
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In re
KLUKWAN, INC.,
Debtor(s)

Case No. J12-00486-HAR
In Chapter 11

MEMORANDUM REGARDING
EMPLOYMENT AUTHORIZATION OF
CABOT CHRISITANSON

On December 17, 2012, I approved the employment of Cabot Christianson as debtor's attorney because I believed he was a "disinterested person" and does not represent an interest "materially adverse" to the estate.¹

Subsequently, in Judge Stephens' most recent memorandum decision, he said:

Filings in the bankruptcy proceedings reflect that the KLI Trusts are paying counsel for KLI and the KLI defendants for legal services performed with respect to this case [presumably referring to the state court case, not the bankruptcy case]. The KLI Trusts' Trustees have not formally approved such payments.² [italics added]

However, I do not, myself, find anything in the bankruptcy file saying that Cabot Christianson was being paid by the KLI Trusts. At the hearing on approval of his employment on December

¹ 11 USC § 327(a). The definition of the quoted terms are found in 11 USC § 101(14).

² See, ECF No. 62, *Request for Ruling on Employment of James Sheehan*, and attached *Memorandum and Orders* of Judge Stephens in the state court case, Case No. 1PE-10-67CI, Hotch v. Klukwan, Inc., dated December 18, 2012, Docket No. 62-1, at page 20.

1 17, 2012, Mr. Christianson said he did not represent the directors of KLI or the KLI Trusts or its
2 directors (who had been the same directors as those of KLI, at least until recently).

3 Had the KLI Trusts, which are creditors in the bankruptcy, paid Mr. Christianson directly,
4 his employment could have been challenged on those grounds.³ His attorney disclosures,
5 however, merely say that he held money in his attorney trust account which he received from
6 KLI (not the KLI Trusts) at various times.⁴

7 So, I still believe that he qualifies as being disinterested and not representing an adverse
8 interest under the requirements of § 327(a).

9 Nonetheless, Judge Stephens' various written decisions are replete with statements
10 inferring that KLI used funds improperly received from the KLI Trusts to fund KLI operations –
11 e.g., by overcharging the KLI Trusts for administrative services to fund KLI operations.⁵ So,
12 payment from the funds Mr. Christianson holds in his trust account may still be subject to tracing
13 back to the KLI Trusts and challenged on those grounds. Or, perhaps, those issues are resolved by
14 the settlements reached in state court.

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20 ³ In the Matter of American International Refinery, Inc., 676 F.3d 455, 462-66 (5th Cir. 2012), citing In
21 re Lotus Properties LP, 200 B.R. 388, 391-96 (Bankr. C.D. Cal. 1996) [comparing the restrictive *per se* approach
22 requiring automatic with a “totality of the circumstances” test; there is no need at this time in the present case
to choose between the options].

23 ⁴ *See*, Mr. Christianson's declaration in support of the application to employ him, ECF No. 4 and his
disclosure of compensation (which essentially refers back to the declaration). ECF No. 19.

24 ⁵ *See*, Judge Stephens' April 9, 2011 *Memorandum and Order Re: Plaintiffs' First Motion for Partial*
25 *Summary Judgment* in the state court case that plaintiff was entitled to a preliminary injunction prohibiting
26 unauthorized KLI Trust payments (and, prepayments) under the guise of Service Agreements charging the KLI
Trust excessive amounts, apparently to fund the cash strapped KLI. ECF No. 47-6 , at pages 35-40.

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DATED: December 19, 2012

 /s/ Herb Ross
HERB ROSS
U.S. Bankruptcy Judge

Serve:
Cabot Christianson, Esq., for debtor
Charles Evans, Esq., for Travelers
David Shoup, Esq., for the KLI Trusts
US Trustee