



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
April 11, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:

QUICKER LIQUOR LLC,

Debtor.

Case No. 22-10331-mkn  
Chapter 11  
(Jointly administered)

In re:

NEVADA WINE CELLARS, INC.

Debtor.

Case No. 22-10332-mkn  
Chapter 11

Date: March 23, 2022  
Time: 9:30 a.m.

**ORDER ON APPLICATION FOR ORDER APPROVING THE EMPLOYMENT OF LARSON & ZIRZOW, LLC AS REORGANIZATION COUNSEL TO THE DEBTORS<sup>1</sup>**

On March 23, 2022, a hearing was held on the Application for Order Approving the Employment of Larson & Zirzow, LLC as Reorganization Counsel to the Debtors (“L&Z Employment Application”), brought on behalf of the Debtors in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND<sup>2</sup>**

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §101, *et seq.* All references to “FRBP” are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned bankruptcy case. *See U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). *See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee*

1 On January 31, 2022, Quicker Liquor LLC (“QL”) and Nevada Wine Cellars, Inc.  
2 (“NWC”), filed separate “skeleton” Chapter 11 petitions. (QL ECF No. 1; NWC ECF No. 1).  
3 Both Chapter 11 petitions were filed by the law firm of Larson & Zirzow, LLC (“L&Z”). On the  
4 same date, a Notice of Chapter 11 Bankruptcy Case was entered informing parties in interest of  
5 the QL and NWC Chapter 11 bankruptcy proceedings; the deadline of June 1, 2022, for creditors  
6 to file a proof of claim and August 1, 2022, for any governmental unit to file a proof of claim;  
7 and set a meeting of creditors (“341 Meeting”) for March 3, 2022.

8 On February 3, 2022, QL and NWC filed separate emergency motions for order directing  
9 joint administration of their respective Chapter 11 cases for “procedural convenience and cost  
10 efficiencies” (“Joint Admin Motion”). (QL ECF No. 7; NWC ECF No. 7).

11 On February 4, 2022, an order was entered granting the motions to be heard on shortened  
12 time and set the matters for hearing on February 9, 2022, along with other motions. (QL ECF  
13 No. 16; NWC ECF No. 18).

14 In addition to the Joint Admin Motion, QL and NWC filed other emergency motions  
15 (“First Day Motions”) as follows: (1) First Day Motion Authorizing Debtors to Pay Employee  
16 Wages, etc. (“Employee Wages Motion”); (2) First Day Motion Authorization to: (i) Continue  
17 Using Existing Cash Management System..., (ii) to Honor Certain Prepetition Obligations  
18 Related to the Use of Cash Management System, and (iii) Maintain Existing Bank Accounts  
19 (“Cash Management System Motion”); (3) First Day Motion to Approve Kathy Trout as the  
20 Designated Responsible Person in Their Chapter 11 Cases (“Designated Person Motion”); and  
21 (4) First Day Motion for Continuation of Utility Service and Approval of Adequate Assurance of  
22 Payment to Utility Company (“Utilities Motion”). (QL ECF Nos. 8-11; NWC ECF Nos. 8-11).  
23 All of which were heard on February 9, 2022.

24 On February 4, 2022, an omnibus declaration of Kathy Trout (“Trout”) in support of the  
25 First Day Motions was filed (“Trout Declaration”). (QL ECF No. 17; NWC ECF No. 14). QL is

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28 Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this  
case, the underlying bankruptcy case and public records.”).

1 the holder of 100% of the shares in NWC, while NWC is the owner and operator of Pahrump  
2 Valley Winery (“PVW”). See Trout Declaration at ¶ 2.

3 On February 9, 2022, an order was entered granting joint administration of the cases and  
4 QL was designated as the lead debtor in possession (collectively “Debtors”). (QL ECF No. 24;  
5 NWC ECF No. 23). A Notice of Deadline to File Combined Matrix was also filed. (QL ECF  
6 No. 25). On this same date, interim orders were entered granting the Employee Wages Motion,  
7 the Cash Management System Motion, the Utilities Motion, and Designated Person Motion. (QL  
8 ECF Nos. 26, 27, 29, and 32).

9 On February 11, 2022, Debtors filed their consolidated matrix for the jointly administered  
10 cases. (QL ECF No. 34).

11 On February 14, 2022, Debtors filed their schedules of assets and liabilities  
12 (“Schedules”)<sup>3</sup> along with, *inter alia*, their statements of financial affairs (“SOFA”).<sup>4</sup> (QL ECF

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14 <sup>3</sup> QL Schedule “D” lists one secured creditor, The Ernest Moody Revocable Trust  
15 (“Moody Trust”), as having a claim in the amount of \$7,978,266.66, secured by “100% of the  
16 common stock of Nevada Wine Cellars, Inc.” The claim is designated as disputed, therefore  
17 requiring the Moody Trust to timely file a proof of claim. See FED.R.BANKR.P. 3003(c)(2). QL  
18 Schedule “E/F” lists zero priority unsecured creditors, and three nonpriority unsecured claims in  
19 unknown amounts owed to three creditors: JEH Investments, Inc. (“JEH”), John Hobbs  
20 (“Hobbs”), and PCC Holdings, LLC (“PCC Holdings”). JEH and Hobbs appear to be insiders of  
21 QL. None of the unsecured claims scheduled by QL are designated as contingent, unliquidated  
22 or disputed, and therefore no timely proofs of claim are required. See FED.R.BANKR.P.  
23 3003(b)(1). None of the claims scheduled by QL are owed to NWC.

24 NWC Schedule “D” lists four secured creditors having claims totaling \$226,771.14.  
25 NWC Schedule “E/F” lists thirty-one priority unsecured claims totaling \$43,663.98, thirty of  
26 which are for unpaid employee wages, in addition to five nonpriority unsecured claims totaling  
27 \$243,540.62 (the majority of which is owed to the Debtors’ principal). None of the claims  
28 scheduled by NWC are designated as contingent, unliquidated or disputed, and therefore no  
timely proofs of claim are required. None of the claims scheduled by NWC are owed to QL.  
None of the claims scheduled by NWC includes any amount owed to the Moody Trust.

29 <sup>4</sup> QL attests that it had one legal action pending within one year of the commencement of  
the Chapter 11 proceeding involving the liquor license for the restaurant at PVW which action  
had been concluded and was not on appeal. See QL SOFA at Item 7. NWC attests that it had  
two legal proceedings pending within one year of the commencement of the Chapter 11  
proceeding involving the same liquor license matter and an employee theft incident, both of  
which actions had been concluded and were not on appeal. See NWC SOFA at Item 7. NWC  
also attests that its assets include potential claims and causes of action against the Moody Trust,  
Nye County, and others of unknown value that are subject to investigation. See NWC Schedule  
“A/B” at Item 75.

1 No. 40; NWC ECF No. 28).<sup>5</sup> The Schedules and SOFA for both Debtors are signed under  
2 penalty of perjury by Trout on behalf of the managing member of QL and as secretary/treasurer  
3 of NWC.

4 On February 14, 2022, the instant L&Z Employment Application also was filed on behalf  
5 of Debtors, along with a supporting Declaration of Matthew C. Zirzow, Esq. (“Zirzow  
6 Declaration”). (ECF No. 38 and 39).

7 On February 17, 2022, a separate application was filed to employ the Law Offices of  
8 Timothy Elson (“Elson”) as special counsel for the Debtors (“Elson Employment Application”),  
9 supported by the declaration of Timothy Elson (“First Elson Declaration”). (ECF No. 42 and  
10 43).

11 On March 3, 2022, the 341 Meeting was concluded. (ECF No. 60).

12 On March 8, 2022, Elson filed an additional declaration (“Second Elson Declaration”) in  
13 support of the Elson Employment Application. (ECF No. 61).

14 On March 9, 2022, oppositions were filed by The Ernest W. Moody Revocable Trust  
15 (“Moody Trust”) to the L&Z Employment Application (“L&Z Opposition”) and Elson  
16 Employment Application (“Elson Employment Opposition”), along with a declaration of Ogonna  
17 M. Brown, Esq. (“Brown Declaration”) in support of the oppositions. (ECF Nos. 67-69). On  
18 this same date, a declaration of Hobbs was filed in support of the L&Z Employment  
19 Application as well as the Elson Employment Application (“Hobbs Declaration”).<sup>6</sup> (ECF No.  
20 65).

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23 <sup>5</sup> Hereinafter, all references to “ECF No.” are to the jointly administered Chapter 11 case,  
Quicker Loans LLC, denominated “lead” Case No. 22-10331-mkn.

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25 <sup>6</sup> The Hobbs Declaration apparently is intended to disclose the type of information  
26 considered by the bankruptcy court in In re Lar Dan Enterprises, Inc., 221 B.R. 93 (Bankr. S.D.  
27 N.Y. 1998). In Lar Dan, the court authorized a Chapter 11 debtor in possession to employ  
28 special counsel under Section 327 to oppose a landlord’s request for relief from stay. Special  
counsel disclosed that it received an initial retainer plus additional amounts from an identified  
principal of the debtor, rather than from the debtor in possession. Over the objection of the  
United States Trustee, the bankruptcy court granted the debtor’s request to employ special  
counsel.

1 On March 10, 2022, a joinder in opposition to the Elson Employment Application  
 2 (“Elson Opposition”) was filed on behalf of creditors, Giacomo Minella and Claudia Luppi  
 3 (“Joining Creditors”).<sup>7</sup> (ECF No. 70).<sup>8</sup>

4 On March 16, 2022, Debtors filed a reply to the L&Z Opposition as well as an omnibus  
 5 reply to the Elson Employment Opposition. (ECF Nos. 72 and 73).

### 6 DISCUSSION<sup>9</sup>

7 Both Debtors seek authorization under Section 327(a) to employ the same law firm,  
 8 L&Z, to serve as common bankruptcy counsel in these separate Chapter 11 proceedings. The  
 9 two cases are jointly administered by their separate bankruptcy estates but are not substantively  
 10 consolidated. Both entities are Chapter 11 debtors in possession that have fiduciary obligations  
 11 to their separate creditors. Those fiduciary obligations extend to the creditors rather than to the  
 12 shareholders or members of the Chapter 11 debtors. Likewise, counsel for Chapter 11 debtors in  
 13 possession have fiduciary obligations to the bankruptcy estate rather than individual  
 14 shareholders. See Shat v. Kistler (In re Shat), 2009 WL 7809004, at \*5 (B.A.P. 9th Cir. Nov. 25,  
 15 2009).

16 There is no dispute that JEH is the sole managing member of QL.<sup>10</sup> There is no dispute  
 17 that Hobbs is the president and Trout is the corporate secretary/treasurer for both JEH and NWC.  
 18 There is no apparent dispute that QL is a holding company while NWC is an operating entity.

19 \_\_\_\_\_  
 20 <sup>7</sup> Attached to the Elson Opposition is a copy of a 2017 New York confessed judgment in  
 21 the amount of \$2,267,180.22 against Trout in favor of the Joining Creditors, that was  
 22 domesticated in Nye County, Nevada, in July 2021. Apparently, Elson represents Trout in the  
 state court collection proceeding. The Joining Creditors do not appear on the Schedules as  
 creditors in either the QL or NWC proceeding.

23 <sup>8</sup> No objections to either employment application was filed by the Office of the United  
 24 States Trustee and no committee of unsecured creditors has been formed in the case.

25 <sup>9</sup> A separate order has been entered contemporaneously herewith addressing the Elson  
 26 Employment Application.

27 <sup>10</sup> Although JEH is a Wyoming corporation, it apparently operates in Nevada as JEH NV  
 28 Investments, Inc., which holds 100% of the membership interest in QL. See QL List of Equity  
 Security Holders (QL ECF No. 40). In other words, JEH is the sole and managing member of  
 QL. It is not clear, however, whether Hobbs is the sole shareholder of JEH.

1 There is no apparent dispute that the functional distinction between QL and NWC has existed  
2 since the PVW operation was acquired from the prior owner in 2019. There is no dispute that  
3 NWC paid the retainer received by L&Z to file both Chapter 11 petitions.<sup>11</sup> There is no apparent  
4 dispute that Hobbs “was the ultimate source” of the funds that NWC used to pay the retainers to  
5 both L&Z as Chapter 11 bankruptcy counsel, and to Elson<sup>12</sup> as proposed special counsel.<sup>13</sup>  
6 There is no apparent dispute that as of the commencement of these bankruptcy cases, L&Z holds  
7 in excess of \$27,000 in its trust account from the retainer funds received from NWC.

8 Section 327(a) allows a Chapter 11 debtor in possession to employ attorneys or other  
9 professionals with court approval. Approval requires that the attorneys or professionals “not  
10 hold or represent an interest adverse to the estate” and “are disinterested persons.” 11 U.S.C. §  
11 327(a). Attorneys and professionals who provide services to a Chapter 11 debtor in possession  
12 but who do not qualify under Section 327(a) are not eligible to be compensated from the  
13 bankruptcy estate under Section 330. See Mehdi pour v. Marcus & Millichap (In re Mehdi pour),  
14 202 B.R. 474, 478 (B.A.P. 9th Cir. 1996); In re B.E.S. Concrete Products, Inc., 93 B.R. 228,  
15 237-38 (Bankr. E.D. Cal. 1988).<sup>14</sup> In view of these requirements, the court must examine

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17 <sup>11</sup> For QL, L&Z received payments totaling \$14,785 between October 30, 2021 and  
18 January 31, 2022, and is holding \$12,044.00 as a retainer. See QL SOFA at Item 11.1. All of  
19 those amounts were received from NWC because QL did not have any bank accounts. For NWC  
20 SOFA, L&Z was paid \$19,339.00 for legal fees on January 31, 2022, see Exhibit 3 to NWC  
21 SOFA page 45 of 47, at Item 3.1, and was paid \$1,738.00 within one year of the bankruptcy  
22 filing, but holds a balance of \$15,772 in its trust account. See NWC SOFA at Item 11.1. The  
23 total of the two retainer balances, i.e., \$27,816.00, is misstated as “\$27,8166.00” in the  
24 supporting declaration. See Zirzow Declaration at ¶ 12.

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26 <sup>12</sup> Elson received payments totaling \$23,810.15 between November 17, 2021 and January  
27 26, 2022. See Exhibit 3 to NWC SOFA at page 42 of 47.

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29 <sup>13</sup> Hobbs attests that “JEH and I waive any claims against the Debtors and their  
30 bankruptcy estates for such advances.” Hobbs Declaration at ¶ 3. As president of JEH, Hobbs  
31 apparently has authority to waive any claim by JEH after attesting that he was “the ultimate  
32 source” of the funds. It is not clear whether JEH or Hobbs personally was the source of those  
33 funds.

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35 <sup>14</sup> Professionals are under a continuing duty to monitor whether they are disinterested  
36 persons eligible to be employed by a Chapter 11 debtor in possession. If a professional  
37 employed at the beginning of a Chapter 11 proceeding subsequently has an adverse interest,  
38 compensation from the bankruptcy estate may be denied or even disgorged for services rendered

1 whether (1) L&Z holds an interest adverse to the bankruptcy estate, (2) represents an interest  
2 adverse to the estate, and (3) is a disinterested person.<sup>15</sup>

3 All three of these inquiries must begin with the disclosures made by L&Z. Every  
4 professional seeking authorization for employment on behalf of a bankruptcy estate is required to  
5 provide a “verified statement...setting forth the person’s connections with the debtor, creditors,  
6 any other party in interest, their respective attorneys and accountants, the United States trustee,  
7 or any person employed in the office of the United States trustee.” FED.R.BANKR.P. 2014(a).  
8 Where the proposed employment involves a firm of professionals, the verified statement must  
9 encompass the relevant connections of the entire firm. See In re Gayler, 2014 Bankr. LEXIS  
10 5459 (Bankr. D. Nev. Feb. 24, 2014)(disqualification sought of Chapter 7 trustee’s former  
11 bankruptcy counsel for failure to disclose all law firm connections to the debtor). The rule does  
12 not solicit the proposed professional’s viewpoint on whether an adverse interest exists or whether  
13 the professional is a disinterested person. Those determinations are for the court, not the  
14 proposed professional. See Sundance Self Storage-El Dorado LP, 482 B.R. 613, 630-31 (Bankr.  
15 E.D. Cal. 2012). Those determinations, of course, must be based on the record before the court  
16 including the connections disclosed by the proposed professional and the admissible evidence  
17 provided by other parties.

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20 during the period of adversity. See, e.g., In re Lucky Dragon Hotel & Casino, LLC, 2021 WL  
21 3412936 (Bankr. D. Nev. Aug. 2, 2021) (disallowance of final compensation and disgorgement  
22 required of Chapter 11 counsel with a potential conflict of interest that subsequently became an  
actual conflict of interest).

23 <sup>15</sup> A “disinterested person” is a person that:

- 24 (A) is not a creditor, an equity security holder, or an insider;  
25 (B) is not and was not, within 2 years before the date of the filing of the  
petition, a director, officer, or employee of the debtor; and  
26 (C) does not have an interest materially adverse to the interest of the estate  
or of any class of creditors or equity security holders, by reason of any direct  
27 or indirect relationship to, connection with, or interest in, the debtor, or for  
any other reason.

28 11 U.S.C. § 101(14) (emphasis added).

1 In this instance, the L&Z Employment Application is supported by the declaration of its  
2 lead counsel as well as the declaration of the Debtors' common principal. The L&Z  
3 Employment Application is opposed by the Moody Trust which has submitted a declaration of its  
4 counsel. L&Z attests, in relevant part:

- 5 • “[O]ther than its pre-petition representation of the Debtors on a limited  
6 basis with respect to pre-bankruptcy workout negotiations, L&Z does not  
7 have any connections with the Debtors, its creditors, any other party in  
8 interest, their respective attorneys or accountants, the United States  
9 Trustee, or any person employed in the Office of the United States  
10 Trustee.”
- 11 • “NWC was the source of L&Z’s retainer because NWC is the only debtor  
12 with operations and bank accounts, whereas QL is a parent holding  
13 company that holds 100% of the interest in NWC. The two Debtors have  
14 operated as such from 2019, when the current owner acquired it, and as a  
15 common enterprise, and there are no known intercompany claims.”

16 Zirzow Declaration at ¶¶ 9 and 10.

17 Debtors’ principal attests, in relevant part:

- 18 • “I am the President and sole shareholder of JEH Investments, Inc., a  
19 Wyoming corporation, domiciled in Nevada as JEH NV Investments, Inc.  
20 (“JEH”). JEH is the managing member of QL, which in turn, wholly  
21 owns NWC. I am also the President of both of the Debtors.”
- 22 • “[I] was the ultimate source of the funds for the retainers for L&Z and  
23 Elson, which I caused to be advanced to NWC, which, in turn, funded  
24 them to L&Z and Elson. JEH and I waive any claim against the Debtors  
25 and their bankruptcy estates for such advances. Additionally, I have had  
26 the opportunity to consult with independent counsel, and understand and  
27 acknowledge that notwithstanding my advancing their retainers, L&Z and  
28 Elson owe their undivided loyalty to the Debtors and not to me.”

Hobbs Declaration at ¶¶ 2 and 3.

The Moody Trust attests, after describing the Moody Trust loan to QL,<sup>16</sup> in relevant part:

- “A series of forbearance agreements ensued after the December 31, 2019  
Maturity Date.”

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<sup>16</sup> “On January 7, 2019, the Moody Trust loaned to Quicker Liquor, LLC the principal amount of \$6,956,271.34 (“Loan”), evidenced by a Security Agreement, executed by Kathy Trout for the Debtor and Ernest W. Moody for the Lender (“Security Agreement”), and a security interest in “[a]ll of the tangible and intangible assets of [Quicker Liquor] including 100% of the common stock in Nevada Wine Cellars, Inc. currently owned by [Quicker Liquor]” (the “Security Interest”). Security Agreement § 1.1(a).” Brown Declaration at ¶ 5.



- 1 • “In the August 20, 2021 Forbearance Agreement, Lender agreed that if  
2 Debtor transferred \$7,000,000 to Lender on or before September 3, 2021,  
3 Lender would extend the notice deadline and deadline to cure the Note  
4 for any remaining amounts owed up through and including September 14,  
5 2021 and would not commence any efforts to enforce rights and remedies  
6 under the Note until September 15, 2021.”
- 7 • “Mr. Elson made representations to the Moody Trust that induced the  
8 Moody Trust to into the Forbearance Agreement based upon  
9 representations that nearly \$9 million was on deposit at Wells Fargo, and  
10 would become available to pay the Moody Trust in one lump sum  
11 payment once the freeze on the funds cleared from the Bank as the funds  
12 were derived from bitcoin.”
- 13 • “Specifically, on September 2, 2021, I received confirmation from  
14 Timothy Elson, Esq., counsel for the Debtor QL, that a wire transfer was  
15 forthcoming for the payoff amount of the Note but the funds were placed  
16 on a 7-day hold by Wells Fargo Bank for a compliance review which was  
17 set to be released on September 10, 2021.”
- 18 • “Mr. Elson provided what QL purported to be [a] redacted Wells Fargo  
19 bank statement reflecting an in-process transfer of \$7,005,028 initiated  
20 on August 16, 2021 and was to be made available on September 10,  
21 2021.”
- 22 • “On September 14, 2021, Attorney Elson sent me another redacted Wells  
23 Fargo bank statement reflecting an in-process transfer of \$1,980,063.19  
24 initiated on September 14, 2021, and was to be made available on  
25 September 27, 2021.”
- 26 • “On September 20, 2021, Mr. Elson me another email to indicating that  
27 Wells Fargo Bank extended the hold on the amount to be wired to the  
28 Moody Trust as funds involved bitcoin transactions.”
- “Mr. Elson made repeated representations me regarding the scheduling of  
an in-person meeting with Wells Fargo to allow the Moody Trust to verify  
the veracity of the Wells Fargo statements, but the in-person meeting was  
never arranged by Mr. Elson.”
- “Mr. Elson directly negotiated with the Moody Trust the release of QL’s  
and Ms. Trout’s claims against the Moody Trust.”
- “For months prior to the bankruptcy filings, Mr. Elson submitted financial  
information to me on behalf of the Moody Trust representing funds from  
bitcoin in excess of \$8 million were held in a Wells Fargo account ready  
to be paid to the Moody Trust to satisfy the outstanding indebtedness.”

- “Mr. Elson was directly involved in effectuating terms of the settlement agreement relating to arranging a meeting with Wells Fargo and the Moody Trust to allow the Moody Trust to test the veracity of the financial documents submitted by Mr. Elson.”

Brown Declaration at ¶¶ 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, and 22.<sup>17</sup>

Elson attests, in connection with the Elson Employment Application, in relevant part:

- “On June 28, 2021, the Debtors entered into a Legal Engagement Letter (the “Engagement Agreement”) with Elson.”
- “Elson discloses that it has a pre-petition connection to the Debtors given its representation of them pre-petition, including in litigation and forbearance matters, as well as its representation of Ms. Trout, one of the Debtors’ officers and operators of the Wintery, on certain personal matters, however, other than the foregoing, neither the firm nor any attorney or person working there has any present or prior connection with the Debtors’ creditors, or any other party in interest in these cases, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.”

First Elson Declaration at ¶¶ 4 and 7. Elson also attests in connection with the Elson Employment Application, in relevant part:

- “Elson had funds in its trust account as of the Petition Date in the total sum of \$11,335.80, which is to be replenished on a monthly basis as invoices are generated (it is an “evergreen” retainer). These fees and costs have been funded from JEH Investments, Inc., a Wyoming corporation (“JEH”), also known in Nevada as JEH Nevada Investments, Inc., not the Debtors. The Debtors have no direct interest in these funds. I understand that JEH’s President is John E. Hobbs, and its Secretary and Treasurer are Kathy Trout, and it is an entity owned by John Hobbs. I understand JEH is the managing member of QL, and QL, in turn, owns 100% of the membership interest in NWC. I understand Mr. Hobbs and Ms. Trout also have the same officer and director roles for the Debtors, but Ms. Trout does not own any of the Debtors. In short, I understand Mr. Hobbs is the indirect sole owner and in control of the Debtors, and thus JEH is advancing these sums to ensure that the Debtors have adequate representation and to protect his investment in the Debtors.”

Second Elson Declaration at ¶ 4.<sup>18</sup>

<sup>17</sup> Debtors’ responsible person, Trout, acknowledges the history of the Moody Trust obligation as well as the unsuccessful forbearance efforts, but does not address the details for any alleged breakdown in such efforts. See Trout Declaration at ¶¶ 5 through 19.

<sup>18</sup> Elson does not address any of the alleged circumstances for the breakdown in negotiations with the Moody Trust, nor whether Elson presently represents Trout in any personal matters.

1 Having considered the evidence and record presented, the court concludes that the  
2 Debtors have met their burden of proof. Subject to its continuing duty of disclosure, L&Z will  
3 be authorized to provide services as bankruptcy counsel for both QL and NWC in this jointly  
4 administered proceedings. Several reasons support approval of the L&Z Employment  
5 Application.

6 First, the evidence sufficiently demonstrates that L&Z does not hold an interest adverse  
7 to the bankruptcy estates. There is no dispute that NWC is the only operating entity and QL is a  
8 holding company. There is no dispute that QL has no current business operations and had no  
9 business operations prior to commencement of the Chapter 11 proceedings. There is no apparent  
10 dispute that Hobbs or JEH advanced the funds to NWC for which L&Z was paid for its  
11 prepetition services to both QL and NWC, and for the retainer balance on hand. There is no  
12 dispute that Hobbs and JEH have waived any claim against the Debtors to recover those  
13 advances.<sup>19</sup> There is no dispute that there are no claims of any kind scheduled by QL against  
14 NWC, nor by NWC against QL. It appears that NWC served as a conduit for Hobbs or JEH to  
15 advance funds for legal services, but did not incur any repayment obligation. In other words,  
16 there appears to be no intercompany debts between QL and NWC.

17 Second, the evidence sufficiently demonstrates that L&Z does not represent an interest  
18 adverse to the bankruptcy estates. As mentioned, there are no intercompany claims that are  
19 acknowledged by the Debtors. L&Z's representation of QL is not adverse to NWC, nor is  
20 L&Z's representation of NWC adverse to QL. Because the two Chapter 11 cases are jointly  
21 administered rather than substantively consolidated, however, L&Z still has two separate clients  
22 with all of the attendant responsibilities to separate clients, e.g., confidentiality, loyalty, and  
23 privilege. At the same time, L&Z holds a fiduciary responsibility to the bankruptcy estate. In  
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26 <sup>19</sup> As mentioned in note 3, supra, QL has scheduled three nonpriority unsecured claims,  
27 two of which are by JEH and Hobbs. The amount of the claims are stated as "Unknown." NWC  
28 has scheduled five nonpriority unsecured claims, one of which is by Hobbs. The amount of that  
claim is \$209,654.21. If any of those amounts include the advances made for the legal services  
of L&Z, as well as Elson, the waiver by Hobbs and JEH of the amounts so advanced would  
apply.

1 the event a conflict arises that impedes L&Z's ability to represent either or both clients, L&Z has  
2 a duty to advise the Debtors to seek the employment of conflicts counsel.

3 Third, the evidence sufficiently demonstrates that L&Z does not have an interest that is  
4 materially adverse to either bankruptcy estate or any class of creditors for each estate. Neither  
5 the Schedules nor the SOFA filed by both Debtors suggest that L&Z has a claim against the  
6 Debtors. There is no obligation by the Debtors to repay the advances paid for the services of  
7 L&Z. There is no evidence suggesting that the Debtors used their assets or incurred an  
8 obligation to pay L&Z on a preferential basis. In other words, there is no basis to suggest that  
9 either bankruptcy estate has an avoidance claim against L&Z. There is no suggestion that L&Z  
10 currently has or previously had a disqualifying relationship with any creditor or interested party.  
11 No one suggests that the contents of the Zirzow Declaration are in any way inaccurate,  
12 insufficient, or misleading.

13 Fourth, the functional distinction between QL and NWC is important. For whatever  
14 reason, two separate entities were formed: one entity to operate PVW, and one entity to own the  
15 operator. It is unclear whether PVW previously was operated and owned in a similar fashion. It  
16 is not clear why the Moody Trust made its loan to QL rather than to NWC or to both. See note  
17 16, supra. The Chapter 11 estates apparently have separate creditors, but QL has scheduled only  
18 four creditors: the Moody Trust, JEH, Hobbs, and PCC Holdings. See note 3, supra. While the  
19 Moody Trust appears to be the primary reason for the Chapter 11 filings, it appears that JEH and  
20 Hobbs are insiders, and the basis, status and amount of PCC Holdings' claim is unknown (but  
21 somehow not designated as contingent, unliquidated or disputed). Absent the latter claim, the  
22 QL bankruptcy might be characterized as a two-party dispute rather than a collective proceeding  
23 to address multiple claims. Moreover, absent substantive consolidation of the QL and NWC  
24 estates, QL apparently will have significant hurdles in confirming a separate Chapter 11 plan of  
25 reorganization over the objection of the Moody Trust. Unless QL can maintain its ownership  
26 and control over NWC, confirmation of a separate Chapter 11 plan of reorganization for NWC, if  
27 at all, may produce little if any value to the parties.

28

1 Finally, the court takes into account that JEH and Hobbs have scheduled claims for  
 2 nonpriority unsecured amounts against QL, and Hobbs has a scheduled claim for a significant  
 3 nonpriority unsecured amount against NWC. See note 19, supra. Inasmuch as the Schedules  
 4 were executed under penalty of perjury by Trout rather than Hobbs, the court will require both  
 5 JEH and Hobbs to timely file proofs of claim, if any, in both Chapter 11 cases. This will be  
 6 required because filing proofs of claims by the Debtors' insiders, executed under penalty of  
 7 perjury, otherwise would not be necessary. See discussion at note 3, supra. L&Z, of course, will  
 8 not be permitted to assist in the filing of such proofs of claim, if any.<sup>20</sup>

9 Based on the foregoing, the court concludes that L&Z has sufficiently demonstrated that  
 10 it does not hold or represent an interest adverse to either Chapter 11 estate, and does not have an  
 11 interest that is materially adverse to either bankruptcy estate, nor to any class of creditors or  
 12 equity security holders of either bankruptcy estate. As previously noted, L&Z has a fiduciary  
 13 duty to the bankruptcy estates as well as a continuing duty to monitor and disclose information  
 14 pertaining to such interests. Also as previously noted, any compensation sought by L&Z for its  
 15 services rendered to both Chapter 11 estates will take into consideration any evidence of  
 16 materially adverse interests existing during any period for which compensation is sought.

17 **IT IS THEREFORE ORDERED** that the Application for Order Approving the  
 18 Employment of Larson & Zirzow, LLC as Reorganization Counsel to the Debtors, Docket No.  
 19 38, be, and the same hereby is, **GRANTED as provided above**.

20  
 21 Copies sent via CM/ECF ELECTRONIC FILING

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25 \_\_\_\_\_  
 26 <sup>20</sup> As previously mentioned, QL scheduled the nonpriority unsecured claim of PCC  
 27 Holdings as being in an unknown amount but for some reason did not designate the claim as  
 28 contingent, unliquidated, or disputed. Because of the latter, PCC Holdings is not even required  
 to file a proof of claim. Absent a proof of claim, or some other evidence of the basis and amount  
 of its claim, however, it is not entirely clear how QL could propose or confirm a Chapter 11 plan  
 that would treat that claim.

1 QUICKER LIQUOR LLC  
2 ATTN: OFFICER OR MANAGING AGENT  
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4 LAS VEGAS, NV 89123

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