

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION**

In re:  
GREENFIELD SILVER, INC.  
f/k/a Lunt Silversmiths, Inc.

Debtor

Chapter 11  
Case No. 09-32228-HJB

**DEBTOR'S MOTION FOR AUTHORITY TO COMPROMISE CLAIM**

**(Request for Limited Notice)**

Now comes the debtor-in-possession Greenfield Silver, Inc. f/k/a Lunt Silversmiths, Inc. (the "Debtor"), and hereby requests authority to compromise a claim relating to alleged professional negligence by H. Clark Abbott. In support of this Motion, the Debtor respectfully states as follows:

1. On September 1, 2009 the Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code.
2. The matters set forth herein constitute core proceedings, pursuant to 28 U.S.C. §157(b)(2)(A).
3. Prior to the filing of the petition, the Debtor operated a silver flatware and giftware manufacturing and retail business. The Debtor has ceased operations and intends to liquidate all of its assets.
4. The last significant asset the Debtor intends to liquidate is its real estate known as Unit B of the 298 Federal Street Commercial Condominium, a condominium created by a Master Deed recorded in the Franklin County Registry of Deeds in Book 3812, Page 4 (the "Condominium"). The Debtor also owns a 60% interest in the common area of the

Condominium. Unit B consists of office space and a manufacturing facility, now vacant, which the Debtor used in the operation of its business.

5. The Condominium consists of one other unit, Unit A, which is owned by S&W Realty Corporation (“Realty”), a corporation organized under the laws of Massachusetts. Realty is not a bankruptcy debtor. Unit A is commercial retail space. Realty owns a 40% interest in the common area of the Condominium.

6. The two units in the Condominium, Unit A and Unit B, are from time to time hereinafter collectively referred to as the “Premises.”

7. Prior to filing this Chapter 11, the Debtor hired H. Clark Abbott (“Abbott”) to perform title examinations of the Premises.

8. Abbott’s title examinations indicated that Realty (Unit A) and the Debtor (Unit B) lacked record title to a portion of the Premises due to an unrecorded deed from T. Morey & Son (the “Morey Parcel”) to the Debtor’s parent company and predecessor in title, Rogers, Lunt and Bowlen (“RLB”).

9. In anticipation of selling the Premises to the City of Greenfield (the “City”), in or about January 2011, the Debtor and Realty entered into a contract employing Abbott as an expert in a lawsuit to establish that they acquired title to the Morey Parcel by adverse possession and to perform a due diligence search of the existence of T. Morey & Son.

10. This Bankruptcy Court approved Abbott’s employment on February 18, 2011.

11. On May 21, 2012, the Debtor and Realty initiated an adversary proceeding in this case requesting an order declaring that they own their respective units and fractional proportions of the common area by adverse possession (the “Adversary Proceeding”).

12. After a considerable amount of effort on the part of the Debtor's counsel, on November 30, 2012, this Bankruptcy Court granted default judgment and issued an order declaring that the Debtor and Realty had acquired title by adverse possession.

13. On December 31, 2012, the Debtor and Realty entered into an agreement for the sale of the Premises to the City.

14. The City hired Gary Gruber ("Gruber") as its title examiner to perform its due diligence with respect to the title contingencies for the purchase of the Premises.

15. Gruber reported that in 1947 the Morey Parcel vested in Debtor's parent company, RLB, as evidenced by Registered Land documents.

16. Abbott confirmed that Gruber was correct that the title to the Morey Parcel had in fact vested in RLB in 1947.

17. The Adversary Proceeding conferred no benefit to the Debtor's bankruptcy estate and in fact caused the Debtor to suffer harm when it relied upon Abbott's fatally flawed title examinations (the "Claim").

18. The Debtor's estate accrued significant legal fees and expenses as a result of Abbott's alleged professional negligence in the amount of \$54,741.98 through July 19, 2013. This includes the legal services required for approval to employ and compensate Abbott through this Court, research of a complex jurisdictional matter, travel and research to obtain evidence of adverse possession, preparation of Abbott's expert affidavit, preparation of the pleadings, motions, memoranda of law, proposed court orders, attending hearings, meetings with witnesses and title policy professionals and negotiating the compromise proposed herein.

19. The Debtor also paid Abbott \$1,250 for the Abbott's title examinations in 2009 prior to the commencement of this Chapter 11 bankruptcy and another \$1,514 for his expert fees in the Adversary Proceeding.

20. Further, Abbott's alleged negligent professional services caused the Debtor to lose valuable time in the potential sale of the Premises to the City or any third party in that the Debtor reasonably believed that the Adversary Proceeding was necessary to ultimately provide marketable title.

21. The Debtor has agreed to a resolution of the Claim with Abbott and his professional liability insurance carriers, Continental Casualty Company & CNA Insurance Companies (collectively the "Carrier"), subject to approval by this Court, to settle the Claim for \$57,500 in exchange for a full and general release of all claims (the "Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as Exhibit A.

22. The Debtor believes this Settlement is in the best interests of the estate because it makes the Debtor whole. The settlement amount equals the Debtor's legal fees and expenses associated with the Claim; as well as the expenses the Debtor incurred to pay Abbott for the title examinations and expert fees.

23. Although Realty was a party to the Adversary Proceeding, Realty did not suffer any monetary harm in that the Debtor paid out-of-pocket for the title examinations and expert fees, and the legal fees accrued against the Debtor pursuant to an Agency Agreement approved by this Court on January 20, 2011.

24. In evaluating a settlement for the estate, a Bankruptcy Court should "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Jeffrey v. Desmond*, 70 F.3d 183, 185, quoting *In re GHR Cos.*, 50 B.R. 931 (Bankr. D. Mass. 1985).

25. The Debtor believes that this compromise satisfies these criteria, as the estate will be recovering 100% of the monetary value of the Claim.

**Notice**

26. Request is hereby made to limit notice regarding this Application upon the individuals and entities served this Application which are as follows: the U.S. Trustee, the Debtor, the top twenty unsecured creditors, the creditors committee, Gary Weiner, Esquire as counsel to the creditors committee, the Debtor and Donald Allison, Esquire as counsel to S&W Realty Corporation, and Carol Iancu and Melissa Hoffer, Assistant Attorneys General, Massachusetts Attorney General's Office, as Counsel to the Massachusetts Department of Environmental Protection.

27. The Applicant submits that due to the nature of this Application, no further service is necessary.

WHEREFORE, for cause shown, and pursuant to Bankruptcy Rule 9019 the Debtor respectfully prays:

1. That this Court authorize the Debtor to enter into the forgoing compromise;
2. That the Debtor be authorized to execute documents reasonably necessary to complete this compromise;
3. That notice be limited as set forth above; and
4. For such further relief as this Court deems just and proper.

Respectfully submitted this 25<sup>th</sup> day of July, 2013.

SHATZ, SCHWARTZ AND FENTIN, P.C.

By: /s/ Edward V. Sabella  
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For the Debtor

# **EXHIBIT A**

**FULL AND GENERAL RELEASE**

In consideration of Fifty Seven Thousand Five Hundred and 00/100 Dollars (\$57,500.00) paid to Greenfield Silver, Inc. f/k/a Lunt Silversmiths, Inc. ("Greenfield Silver") on behalf of H. Clark Abbott, Esquire ("Abbott"), the receipt and sufficiency of which is hereby acknowledged, Greenfield Silver does for itself and for all of its successors and assigns (hereinafter "RELEASOR"), hereby remise, release and forever discharge Abbott, Continental Casualty Company & CNA Insurance Companies, and all of their subdivisions, officers, agents, principals, employees, servants, partners, associates, trustees, independent contractors, owners, affiliates, representatives, heirs, executors, administrators, beneficiaries, successors or assigns and attorneys, insurers, reinsurers, and insurance agents, past and present (hereinafter all collectively "RELEASEES"), from all debts, demands, actions, claims, causes of action, suits, covenants, contracts, controversies, agreements, promises, acts, omissions, damages, and liabilities and any and all other claims of every kind, nature and description whatsoever, both in law and equity, which against RELEASEES, Greenfield Silver now has, or had, or will ever have on account of any losses, damages, emotional distress, injuries, expenses, costs, or fees allegedly sustained or incurred by Greenfield Silver or which have yet to be sustained or incurred by Greenfield Silver from the beginning of the world to the present date, including but not limited to, those claims relating to or concerning Abbott's legal representation of Releasor including but not limited to his examination for and preparation of a Title Report regarding Units A and B of the 298 Federal Street Commercial Condominium, Greenfield, Massachusetts, and those claims which were asserted or could have been asserted In re: Greenfield Silver, Inc. f/k/a Lunt Silversmiths, Inc., United States Bankruptcy Court for the District of Massachusetts Western Division, Case No. 09-32228-HJB, and/or by reason of or as result of any acts or omissions by

Abbott regarding the aforesaid losses, damages, emotional distress, injuries, expenses, costs, fees or legal action, and the adjustment and settlement thereof whether such claims are known or unknown, suspected or unsuspected, patent or latent or unseen, including all claims of any type whatsoever in tort, contract, indemnity, contribution, statutory, M.G.L. c. 93A, M.G.L. c. 176D, or under any other theory, both in law and equity.

It is expressly understood and agreed that acceptance of the above amount is in full accord and satisfaction of a disputed claim, and that payment of the above amount is not an admission of liability. Any liability is expressly denied.

RELEASOR acknowledges that as a condition of the consideration provided pursuant to this Full and General Release, neither it nor its attorneys will disclose, describe, opine on the merits of or discuss, directly or indirectly, in any manner whatsoever, any of the allegations asserted against Abbott nor any information regarding the terms or the substance of the settlement and this Release to any person or entity, including but not limited to members of the press and media, nor in any way denigrate, disparage, or otherwise offer comment, in any form, regarding Abbott. The preceding prohibition on disclosure shall not apply to information disclosed for the purpose of obtaining financial services from tax advisors (in which event, the party making such disclosure must instruct and make all reasonable efforts to ensure that any such tax advisors, accountants and lawyers shall maintain the confidentiality of the matters covered by this Section), or for the purpose of complying with any court order or other legal process. It is understood that this Release is subject to Bankruptcy Court approval and will be filed with the Bankruptcy Court as part of a motion for authority to compromise claim.

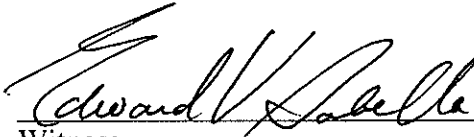
RELEASOR also agrees that RELEASEES are not responsible for the satisfaction of any outstanding and future expenses, fees, liens, or damages of whatever kind and nature arising out of or in any way related to Abbott's legal representation or to the claims as otherwise set forth

above, and that RELEASOR shall completely remise, release and forever discharge the RELEASEES of and from such expenses, fees, liens, or damages, and will defend RELEASEES and hold them harmless against prosecution relative to such expenses, fees, liens, or damages. Greenfield Silver hereby represents, warrants and agrees that if any lien or claim is asserted against any of the RELEASEES arising from the underlying cases, Greenfield Silver will satisfy such lien or claim and will indemnify, hold harmless and defend RELEASEES from any such lien or claim up to the amount of this settlement.

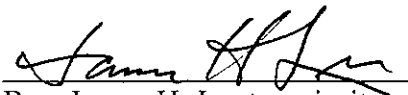
The undersigned has participated through my legal counsel in negotiations leading to this settlement, and have had the benefit of consultation and advice of said counsel regarding the settlement of this legal action, and regarding the terms and effect of this document.

THE UNDERSIGNED HAS READ THIS RELEASE AND FULLY UNDERSTANDS IT.

Executed as a sealed instrument this day and year herein written July 24, 2013.

  
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Witness

Greenfield Silver, Inc.  
f/k/a Lunt Silversmiths, Inc.

  
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By: James H. Lunt, majority stockholder and  
Director of Greenfield Silver, Inc.