

To Counsel Representing Debtor(s) in an On-going Lawsuit or Claim:

You apparently represent a client(s) in an ongoing lawsuit or claim where your client(s) seek to recover damages from a third party and your client has filed a Chapter 13 bankruptcy proceeding. By virtue of the debtor(s)' filing bankruptcy, all or a portion of that lawsuit or claim may belong to the bankruptcy estate and must be administered in accordance to the terms of the debtor(s) confirmed plan and the Bankruptcy Code. I believe that is true whether the lawsuit or claim arose prior to the debtor(s)' filing bankruptcy or after the debtor(s) filed bankruptcy but before the bankruptcy is closed, dismissed, or converted to a case under Chapters 7, 11, or 12. See 11 U.S.C. 1306(a).

I am the Chapter 13 Trustee that has been appointed to administer this Chapter 13 bankruptcy case. **As such, I cannot give you, the debtor(s), or the creditors legal advice concerning their rights in this bankruptcy or give legal advice on how to proceed with the prosecution of any claim or lawsuit.**

I provide the information and forms attached to this web-page as a courtesy to you in order to assist in the administration of this case and I urge you to independently verify the accuracy of this information. You are free to use this information and forms as you see fit. While I believe that the information and forms herein are accurate, I am not guaranteeing you such is true or that, with subsequent changes in the bankruptcy law or rules, the information and forms may become inaccurate. You are free to disregard the information as set forth herein. You are free to use forms provided to you by the debtor(s)' bankruptcy attorney or your own forms.

All or a portion of any settlement or recovery may be deemed exempt property. The Bankruptcy Court may have entered an Order continuing a pending Objection to Exemptions (what the Court refers to as a *Comeaux* Order), meaning that the debtor(s)' claimed exemptions have not become final until a court hearing is scheduled pursuant to such an Order to determine the amount, if any, of any future settlement or recovery from the claim or lawsuit is in fact exempt. I would suggest that you either contact the debtor(s)' bankruptcy attorney or review the Court's file in order for you to make a determination of the status of the debtor(s)' exemptions and what affect, if any, the exemptions have on any future settlement or recovery from the claim or lawsuit.

I believe that the portion of the settlement or recovery that is in excess of the exempt portion constitutes property of the bankruptcy estate and must be tendered to this office as the Chapter 13 Trustee of this case for the benefit of the unsecured creditors.

There are tabs containing the following information or forms:

--Local Bankruptcy Rule 2014 governing the employment of professional persons. As you can see, the Rule provides for different requirements if the Application is filed immediately upon your retention by the debtor(s) [or immediately after the debtor(s) filed for bankruptcy, whichever is earlier] or on a *nunc pro tunc* basis if there was a delay in filing the Application.

--It is my opinion that you should immediately apply to the Bankruptcy Court for permission to continue to represent the bankruptcy estate in this pending lawsuit or claim. Without such, I do not believe that you have any authority to prosecute the underlying litigation on behalf of the bankruptcy estate.

--Application to Retain Special Counsel with supporting documentation and proposed Order.

--Application to Retain Special Counsel *Nunc Pro Tunc* (required if the Application is being filed more than 30 days after the employment of the special counsel) with supporting documentation and proposed Order.

--Motion for Approval of Compromise of Claim and Approval of Attorney's fees and Costs with proposed Order. The Motion contemplates not only approving the settlement of the lawsuit but also contemplates the approval of the attorney fees to the Special Counsel.

Any portion of settlements or recoveries that has been determined to be turned over to the Trustee for the benefit of the creditors should be paid to the "Chapter 13 Trustee" and mailed to the following address: Chapter 13 Trustee, P. O. Box 734, Tyler, TX 75710. Any such check should indicate that the name(s) of the debtor(s) and their case number and should indicate that such is being forwarded to the Trustee as a result of a settlement or recovery from the lawsuit or claim that you were handling.

Please keep my office advised of the status of any settlement offers that may be made.

Very truly yours,

Lloyd Kraus
Chapter 13 Trustee