

**OFFICE OF STANDING CHAPTER THIRTEEN TRUSTEE**

EASTERN DISTRICT OF TEXAS  
110 N. COLLEGE, SUITE 300  
TYLER, TEXAS 75702

JOHN J. TALTON  
TRUSTEE

LLOYD KRAUS  
STAFF ATTORNEY

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

If you represent a client(s) in an ongoing lawsuit or claim that has filed a Chapter 13 bankruptcy proceeding **and** I have been appointed as the Trustee to administer this case, I provide you with the following information for the purpose of assisting you in your prosecution of the underlying lawsuit or claim within the parameters of this bankruptcy. **However, as the Trustee, 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 that you are currently handling.**

--**Property of the Bankruptcy Estate:** By virtue of your client(s)' filing bankruptcy, all or a portion of that lawsuit or claim may belong to the bankruptcy estate and, accordingly, must be administered in accordance to your client(s)' Chapter 13 Plan and the provisions of the Bankruptcy Code. This is true regardless of whether the lawsuit or claim arose prior to the filing of this bankruptcy or arose after the filing of the bankruptcy but before the bankruptcy is closed, dismissed, or converted to a case under Chapters 7, 11, or 12 of the Bankruptcy Code. See 11 U.S.C. 1306(a).

--**Status of Exemptions:** In order to determine whether all or portion of the underlying lawsuit or claim constitutes property of the estate, a determination of whether your client(s) were able to successfully exempt all or part of the lawsuit or claim must be made. **The portion of the lawsuit or claim that your client(s) were not able to exempt constitutes property of the Bankruptcy Estate.** In order to determine the status of any claimed exemptions, you will need to either contact your client(s)' bankruptcy attorney or review the Court's file.

--**Status Reports:** Once you learn of the filing of your client(s)' bankruptcy, I would request that you complete and return to me the document included in this section entitled "Lawsuit Information Sheet" which will give me an idea of the current status of the underlying lawsuit or claim. If the lawsuit or claim is still pending after a year from the time you provide me this initial information, I would also request that you provide me additional information concerning the status by completing and submitting to me the document included in this section entitled "Annual Status Report."

--**Application for Employment:** Generally, I recommend that you prepare and file with the Court an Application for Employment As Special Counsel. For your convenience, I have included under this tab a sample Application and other information that you may find useful in this process. The *Nunc Pro Tunc* Application is required if the Application is being filed more than 30 days after your employment. You are, of course, free to use forms provided to you by your client(s)' bankruptcy attorney or use your own forms.

--**Settlement Proposals:** If there is a proposed settlement of the lawsuit or claim, I would request that you complete the attached Settlement Report outlining the terms of the proposed settlement along with your recommendation on whether the settlement should be accepted as follows:

--If you recommend not accepting the settlement, I will generally agree with you and will advise you to continue to prosecute the lawsuit or claim as you see fit.

--If you recommend accepting the settlement, I will generally agree with you and I recommend your filing a Motion to Approve the Settlement.

**In order for the Court to approve such a Motion, you must represent to the Court that I have approved of the settlement (otherwise, the Court will probably enter a Court Order suspending his ruling on the pending Motion until such time as my approval of the settlement is filed with the Court, usually in the form of a Comment).** The purpose of the attached Settlement Report is to facilitate your getting to my staff and I the terms of the settlement and my approval of such if applicable. Attached hereto is a sample Motion for Approval of Compromise of Claim and Approval of Attorney's Fees and Costs. **This Motion makes a specific representation that I have approved the proposed settlement.** The proposed Order not only approves the settlement but also approves the payment of your attorney's fees and costs. Again, you are free to use forms provided to you by your client(s)' bankruptcy attorney or use your own forms....but such forms must specifically advise the Court that I have approved the settlement.

--**Recoveries from Trial:** If the case does not settle and actually goes to trial resulting in a recovery, basically, the same analysis must be made as above. You will probably have to prepare and file a fee application for the approval of your fees and costs by the Court. Once there is a Court determination of your fees and costs, a determination will need to be made concerning the amount, if any, of the recovery has been exempted by the debtor(s) and the amount, if any, that needs to be turned over to my office for the benefit of the creditors.

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,

/s/ John J. Talton  
John J. Talton  
Chapter 13 Trustee