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**MIDDLE DISTRICT OF NORTH CAROLINA**  
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**Via Email to Consumer Debtor's Bar**

**Re: Retention and compensation of personal injury special counsel  
in chapter 13 cases**

Dear Attorneys,

This office reviews all applications to retain and compensate personal injury special counsel in chapter 13 cases. This letter provides guidance about the BA's positions related to personal injury special counsel.

**Employment Motions**

The debtor should move to employ personal injury counsel in connection with any claim that arises after the filing of the case. But the debtor need not immediately move to employ personal injury counsel hired prepetition to pursue claims that are disclosed in the debtor's schedules. Approval for the employment of personal injury attorneys hired pre-petition can be requested in a later motion requesting settlement approval.

**Settlement Approval**

The debtor must move for court approval of any personal injury settlement. The settlement motion should request approval of special counsel's employment if not already approved, as well as their proposed compensation. This gives the trustee and other parties an opportunity to review the debtor's exemptions and raise any objections, whether to the proposed distribution of the settlement proceeds or otherwise.

**Section 327(e) and Bankruptcy Rule 2014**

Employment of personal injury counsel is governed by section 327(e) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014(a). Under section 327(e), counsel need not be disinterested to be employed for a specified special purpose such as representing the debtor in connection with a personal injury claim. They simply must not hold or represent any interest adverse to the debtor or to the estate with respect to the matter for which they are to be employed.

Under Rule 2014(a), a motion to employ a professional must be filed with the court and served on the BA. It must contain the following information:

- 1) Specific facts showing necessity for the employment;
- 2) The name of the professional;
- 3) The reason for the selection of that professional;
- 4) A detailed description of the terms of the proposed employment, including the professional services to be rendered and the proposed arrangement for compensation; and
- 5) All the professional's connections to the parties listed in Rule 2014. If the professional has no such connections, the motion should so state.

Any party moving to employ a professional must attach the following documentation as exhibits:

- 1) A copy of the employment contract or engagement letter, if applicable; and
- 2) A verified statement signed by the professional setting forth his/her connections to the parties listed in Rule 2014 and stating that the professional has no adverse interest to the debtor or the estate with respect to the matter on which he/she is to be employed.

You may request the \$350 presumptive fee for filing these motions, as provided in the Bankruptcy Court's Standing Order, available [here](#).

### **Contractual Provisions to Avoid**

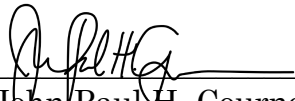
The standard employment contracts used by non-bankruptcy counsel often contain provisions that are inappropriate in the bankruptcy context and will draw objection from the BA. For example:

- Unlimited withdrawal provisions. In the BA's view, special counsel may only withdraw from representation if the court approves. The BA will object to provisions in any employment contract that allow special counsel to withdraw without court approval.
- "Quantum meruit" provisions. Standard attorney representation contracts often contain the following or similar language: "If firm negotiates and recommends acceptance of a particular settlement, as offered by the defendant or his agent, and I refuse to accept the settlement, such refusal shall constitute sufficient grounds for firm to withdraw from representation and I agree to be indebted to the firm for the amount of attorney's fees and costs and expenses incurred based upon said offer as recommended, if the same is subsequently accepted. [Attorney's] hourly rate is [\$x] per hour which

is mutually agreed as the quantum meruit rate for a fee determination where appropriate.” Because the Bankruptcy Court retains jurisdiction over special counsel’s hourly rate and compensation, the BA opposes such provisions.

- Provisions requiring the debtor to pay unlimited costs or maintain an evergreen retainer for expenses. Under the Bankruptcy Court’s [Standing Order](#), no review is necessary to pay litigation costs to court-approved counsel of \$500 or less. Between \$500 and \$2,500, you must obtain the chapter 13 trustee’s approval before such costs and expenses are paid. For amounts above \$2,500, court approval is required. For this reason, please strike contractual language providing for unlimited cost reimbursement or evergreen retains. The proposed order should also provide that that litigation costs and expenses are subject to the Standing Order.
- Non-standard compensation terms. The BA will typically object to unusual compensation terms, such as large retention retainers, hybrid terms or contingency fees of more than 40%. The BA may also object to above-market hourly rates.
- Fee sharing provisions. Personal injury counsel fee contracts sometimes authorize counsel to engage and share fees with outside counsel as needed. The BA will object to such provisions since they violate 11 U.S.C. § 504.
- Venue selection clauses. Provisions requiring disputes under the employment contract to be adjudicated in another state or jurisdiction should be stricken. The Bankruptcy Court should resolve any such disputes.

Thank you for your hard work on behalf of your clients. Please reach out with any questions.

  
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John Paul H. Cournoyer  
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