

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
§
SOME DEBTOR, § Case No. 11-99999
§ (Chapter ___)
Debtor. § JUDGE [NAME OF JUDGE]

NUNC PRO TUNC APPLICATION TO EMPLOY
[NAME OF LAW FIRM]
AS SPECIAL LITIGATION COUNSEL PURSUANT TO 11 U.S.C. § 328(a)

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

To the Honorable [NAME OF JUDGE],
United States Bankruptcy Judge:

[Moving Party], (the “Movant”) files this *Nunc Pro Tunc* Application to Employ [Law Firm Name] (the “Firm”) as special litigation counsel pursuant to 11 U.S.C. § 328(a).

Application to Employ

1. The Movant desires to employ the Firm on a contingency fee basis [or other fee arrangement] to represent the Movant in analyzing and prosecuting [define the claim to be pursued] against third parties.

2. The employment of the Firm is required at this time to pursue the estate’s claims.
A contingency fee arrangement was negotiated as the estate does not have sufficient

unencumbered funds with which to engage counsel and pursue litigation [or other basis for the negotiated fee agreement].

3. The Firm maintains offices at _____, Houston, Texas 770____. The Firm's main telephone number is (____) ____-____. The Firm's fax number is (____) ____-____.

4. The Movant has selected the Firm because its members have extensive experience in matters relating to _____. The Movant believes that the Firm can provide the estate with the required legal expertise to allow the Movant to handle this litigation effectively and prudently.

5. _____ of the Firm will be designated as attorney-in-charge and will be responsible for the representation of the Movant by the Firm as set forth in this Application.

6. _____ is admitted to practice before all courts in _____. Mr./Ms. _____ has significant experience in handling litigation matters of this type. The Movant has selected Mr./Ms. _____ because of his/her prior experience and specialization in _____. The Trustee believes that Mr./Ms. _____ and the Firm are well qualified to represent the Movant.

7. The Firm will render professional services including, but not limited to:
- assisting the Movant in analyzing/prosecuting/etc. claims owned by the estate against third parties;
 - preparing and filing such pleadings as are necessary to pursue the estate's claims against third parties;
 - conducting appropriate examinations of witnesses, claimants and other parties in interest in connection with such litigation;
 - representing the Movant in any adversary proceedings and other proceedings before the Court and in any other judicial or administrative proceeding in which the claims described herein may be affected;

- collecting any judgment that may be entered in the contemplated litigation;
- handling any appeals that may result from the contemplated litigation;
- performing any other legal services that may be appropriate in connection with the prosecution of the litigation described above; and
- [list any other specific services to be performed].

Statement Regarding Connections to the Case

8. The Firm has previously represented the Movant prior to [or during] this bankruptcy case. [Describe connections]. Except as set forth above and in the attached affidavit, the Firm has no other connection with the Debtor, its creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee and are “disinterested persons” within the definition of Section 101(14) of the Bankruptcy Code on the matters for which it is to be engaged as special counsel. *See Attached Affidavit.*

Compensation

9. The Movant has negotiated a contingency fee arrangement with the Movant. Under the proposed agreement, the Firm will receive _____% of any recovery [Describe the fee arrangement]. A copy of the proposed agreement is attached as **Exhibit 1**.

10. In reaching his decision, the Movant has evaluated the estate’s available resources, the complexity of the litigation, the anticipated costs and the associated risks of the litigation. The Movant is concerned that the estate does not have sufficient resources to employ counsel and any needed forensic expert assistance that may be needed on an hourly fee basis. Even if sufficient resources were available, the Movant believes that such resources should be preserved for creditors and non-litigation matters. Under the circumstances, the Movant believes

that the terms of the proposed agreement are both reasonable and prudent. The estate incurs no additional administrative expense without a direct corresponding benefit.

11. The Firm has/has not received any funds from the Debtor or any other party in this case. [If funds have been received, identify amounts received].

12. In the attached affidavit, the Firm has identified the amount and source of compensation to be paid to the Firm for services rendered in connection with its representation of the Movant in this case.

Authority for Employment *Nunc Pro Tunc*

13. The Debtor originally contacted the Firm in [date hired] to represent the Debtor in connection with the litigation. The Firm immediately took action in the case to protect the Debtor's interests and has continuously since represented the Debtor. The firm was not aware of the bankruptcy filing [insert other facts]. As soon as the Firm discovered the existence of the bankruptcy, it promptly took all necessary actions to prepare/file this *nunc pro tunc* application.

14. The Court has discretion to issue an order approving the employment of an attorney *nunc pro tunc* under its general equity powers. *In re Triangle Chemicals, Inc.*, 697 F.2d 1280, 1288-89 (5th Cir. 1983). Bankruptcy Local Rule 2014-1(b) sets forth the requirements for a *nunc pro tunc* application. First, [set forth reason why the application was not filed earlier]. Second, [explain why *nunc pro tunc* approval is required, i.e. services have been provided, etc.]. Finally, [explain the prejudice to parties in interest of *nunc pro tunc* approval]. The Firm understands that it bears responsibility for ensuring that its employment applications are properly filed with the Court. The Firm has, however, acted reasonably and

prudently in this case. No party has been prejudiced. Under these circumstances, an order *nunc pro tunc* is appropriate.

Accordingly, the Movant requests that the Court approve the retention of the Firm as special litigation counsel under 11 U.S.C. § 328(a) *nunc pro tunc* as set forth above and for such other relief as is just.

Dated: [Date].

Respectfully submitted,

By: _____
Joe Doe, chapter X trustee
123 Main Street
Houston, Texas XXXXX
(XXX) XXX-XXXX
(XXX) XXX-XXXX (facsimile)
Movant

[Law Firm Name]

By: _____
John Smith
State Bar No. YYYYYYYY
1000 Highway 1, 36th Floor
Houston, TX YYYYYY
(YYY) YYY-YYYY
(YYY) YYY-YYYY (fax)
Proposed Special Litigation Counsel

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Bankr. R. 2014, this instrument was served by United States first class mail, with proper postage affixed, addressed to the parties set forth on the attached Service List on this ____ day of _____, 20__.

John Smith

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: §
§
SOME DEBTOR, § **Case No. 11-99999**
§ **(Chapter __)**
Debtor. § **JUDGE [NAME OF JUDGE]**

ORDER AUTHORIZING EMPLOYMENT OF ATTORNEYS

The Court, having considered the *Nunc Pro Tunc* Application to Employ [Law Firm Name] (the “Firm”) as special litigation counsel pursuant to 11 U.S.C. § 328(a) filed by [Moving Party], (the “Movant”), is of the opinion that the requested relief is in the best interest of the estate and its creditors; that the Firm represents no interest adverse to the estate in the matters upon which they are to be engaged and are disinterested persons within the definition of 11 U.S.C. § 101(14); and that the application should be approved. Accordingly, it is therefore

ORDERED THAT:

1. The contingency fee agreement attached as **Exhibit 1** is approved pursuant to 11 U.S.C. § 328(a).
2. The Firm is employed *nunc pro tunc* from [date of employment] as special litigation counsel to provide all necessary legal services to the Movant in this case as set forth on **Exhibit 1** and in the Application.
3. [Lead Counsel] is designated as attorney in charge for the representation by the Firm of the Movant in this case.
4. All applications for compensation shall be filed with the Court in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

SIGNED this ____ day of _____, 20__.

**THE HONORABLE [NAME OF JUDGE],
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|---------------------|---|------------------------------|
| IN RE: | § | |
| | § | |
| SOME DEBTOR, | § | Case No. 11-99999 |
| | § | (Chapter __) |
| Debtor. | § | JUDGE [NAME OF JUDGE] |

**AFFIDAVIT OF PROPOSED COUNSEL
PURSUANT TO 11 U.S.C. § 329(a) AND BANKRUPTCY RULES 2014, 2016(b)**

[Law Firm Name] (the “Firm”), proposed counsel for [Moving Party], (the “Movant”), states that to the best of its knowledge, the Firm represents no interest adverse to the estate in the matters upon which the Firm has been or is to be engaged; that the Firm’s employment has been and would be in the best interest of the estate; and that the attorneys in this firm are disinterested persons as defined under 11 U.S.C. § 101(14).

Except as set forth herein and the Application, the Firm has not represented the Debtor prior to or during this bankruptcy case. [set forth terms of the original engagement]. The Firm does not believe that any conflict exists which precludes its unbiased representation of the Movant and the estate in this case in its proposed role as special counsel.

Except as set forth herein and to the best of its knowledge, the Firm has no other connections with the Debtor, its creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee and is a “disinterested person” within the definition of Section 101(14) of the Bankruptcy Code on the matters for which it is to be engaged as special counsel.

Legal representation undertaken by the Firm includes (a) assisting the Movant in _____ claims owned by the estate against third parties; (b) preparing and filing such pleadings as are necessary to pursue the estate’s claims against third parties; (c) conducting appropriate examinations of witnesses, claimants and other parties in interest in connection with such litigation; (d) representing the Movant in any adversary proceedings and other proceedings before the Court and in any other judicial or administrative proceeding in which the claims described herein may be affected; (e) collecting any judgment that may be entered in the contemplated litigation; (f) handling any appeals that may result from the contemplated litigation; (g) performing any other legal services that may be appropriate in connection with the prosecution of the litigation described above; and (h) [any other services to be performed].

The Firm has agreed to the contingency fee arrangement as set forth in the application and **Exhibit 1** to the Application. The agreement is the product of free and arms-length discussions. To date, the Firm has not received any funds from the Debtor, the estate or the Movant in connection with the proposed representation in this case.

The Firm has not promised, either directly or indirectly to share any compensation with any other persons nor does the Firm have any agreement for payment of attorney's fees and expenses except as stated herein.

Dated: _____, 20__.

[Law Firm Name]

By: _____

John Smith
State Bar No. YYYYYYY
1000 Highway 1, 36th Floor
Houston, TX YYYYY
(YYY) YYY-YYYY
(YYY) YYY-YYYY (fax)
Proposed Special Litigation Counsel

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

SWORN TO AND SUBSCRIBED BEFORE ME, a notary public in the State of Texas, County of Harris, on this the ____ day of _____, 20__ by John Smith, to certify which, witness my hand and seal of office.

Notary Public in and for the State of Texas