



The Nuts & Bolts Of Bankruptcy Law (SERIES II)

The Nuts & Bolts of Retention

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*** These slides were produced in connection with a video webinar that premiered on 6/24/25. Take note, we make the PDF available for free download because the real benefit of a Financial Poise webinar is the conversation that the faculty has around the slide deck. You can access the webinar on-demand at Cerfi's LegalEdge (f/k/a West Legal Ed Center) (for attorneys or accountants seeking CLE or CPE) or Financial Poise (for everyone else).

Meet the Faculty

Panelists

[Matt Christensen](#) - Johnson May

[Doug Flahaut](#) - Echo Park Legal, APC

[Jonathan Friedland](#) - Much Shelist, P.C.

Moderator

[Matt Grimshaw](#) - Grimshaw Law Group, P.C.

About This Webinar

The Nuts & Bolts of Retention

Some lawyers and other professional persons in a bankruptcy case need court approval before they can represent their clients in Chapter 11 proceedings. While retention may not be the most exciting aspect of Chapter 11 practice, professionals will not last long in bankruptcy practice if they do not understand how to get retained and paid. This webinar explains the process for getting retained as a professional in a Chapter 11 case and discusses the requirements for obtaining court approval, the requirements for disclosing connections, and the rules regarding conflicts of interest.

About This Series

The Nuts & Bolts Of Bankruptcy Law (SERIES II)

During the past few years, companies across a broad spectrum of industries have faced challenges stemming from the COVID-19 pandemic, supply chain interruptions, labor shortages, and inflation, among others things. Many businesses have been crippled by decreased revenues, increased debt, uncertain prospects and vaporized equity. Sometimes companies in distress cannot heal on their own and are forced to check into the hospital of Chapter 11 . . . or arrive at the door of the emergency room before negotiating a cure. If you need to understand Chapter 11 – whether to avoid it or learn how to harness its power – this program is for you. Designed for the corporate attorney, litigator, business consultant, executive and others not already experienced in Chapter 11, each episode in this Financial Poise webinar series takes a deep dive into one aspect of a Chapter 11 bankruptcy case at a level that can be understood by the non-expert.

Episodes In This Series

1. The Nuts & Bolts of a 363 Motion

Premiere date: 5/20/2025

2. The Nuts & Bolts of Retention

Premiere date: 6/24/2025

#2: Nuts & Bolts of Retention

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Requirements for Retention of General Bankruptcy Counsel and Other Bankruptcy Professionals

- Section 327(a) of the Bankruptcy Code governs the retention of professionals that represent the bankruptcy estate.
- General bankruptcy counsel and other bankruptcy professionals retained by the debtor-in-possession:
 - Must be *disinterested persons* and
 - *Cannot hold or represent any interest adverse* to the estate.

Requirements for Retention of General Bankruptcy Counsel and Other Bankruptcy Professionals *(cont'd)*

Additional implied requirements:

- Professionals must disclose all facts that might bear on the professional's qualifications for retention.
 - ☐ Must be disclosed at time of original retention application
 - ☐ Must supplement disclosures on an ongoing basis
- Professionals must satisfy requirements under applicable professional codes of conduct on a continuous basis.

Professionals Who Must be Retained under Section 327(a)

Categories of Professionals

- General bankruptcy counsel
- Other attorneys
- Accountants
- Appraisers
- Auctioneers
- Other Professionals



Professionals Who Must be Retained under Section 327(a) *(cont'd)*

The Bankruptcy Code does not define the “other professionals” that fall within section 327(a).

- The term generally includes professionals that either play a central role in the administration of the estate or are allowed to exercise judgment and autonomy in matters concerning estate administration.

Retention of Special Purpose Non-Bankruptcy Professionals

- Section 327(e) of the Bankruptcy Code governs the postpetition retention of attorneys that represented the debtor prepetition on non-bankruptcy matters.
- Special counsel cannot handle bankruptcy-related tasks that should be handled by general bankruptcy counsel.
- Special counsel retained under section 327(e) of the Bankruptcy Code must not hold or represent an adverse interest to the debtor or the estate for the representation that it has been hired to undertake.
 - More limited disinterestedness requirement than retention under section 327 (a).

Retention of Ordinary Course Professionals

- Ordinary course professionals are professionals retained by the debtor to handle business or legal matters that relate primarily to debtor's day-to-day operations and do not have a material effect on the bankruptcy case.
- Debtors-in-possession seek court approval of procedures for retaining and paying ordinary course professionals.
 - Not required to comply with retention and compensation requirements of sections 327, 328, or 330 of the Bankruptcy Code

Contents of the Retention Application

- Federal Rule of Bankruptcy Procedure 2014 requires that requests for employment of professionals to the estate be made via an application.
- Retention application is comprised of:
 - ☐ An application
 - ☐ A verified statement disclosing connections
 - ☐ Proposed order
 - ☐ In certain cases, additional verified statements required by the United States Trustee's Appendix B Guidelines

The Application

- Debtors-in-possession file the applications, not the proposed professionals.
- Retention applications frequently seek retroactive (nunc pro tunc) approval dating back to the petition date.
- Application must state:
 - ☐ Facts showing necessity for employment of the professional
 - ☐ Name of the person or firm to be employed
 - ☐ Reasons for the selection of the particular professional person or firm
 - ☐ Description of the professional services to be rendered
 - ☐ Proposed compensation rates and arrangements

The Verified Statement

Application must be accompanied by a verified statement that discloses all of the applicant's connections with:

- The debtor
- Creditors of the debtor
- Parties in interest
- The attorneys and accountants for the debtor, creditors of the debtor, and parties in interest
- The United States Trustee (or any person employed in the office of the UST)

Verified Statement Required by UST

Appendix B Guidelines

- Appendix B Guidelines apply to chapter 11 cases where the petition lists \$50 million or more in assets and \$50 million or more in liabilities, aggregated for jointly administered cases.
- UST Appendix B Guidelines require additional disclosures by verified statements submitted by the applicant firm and a representative of the debtor-in-possession.
 - Disclosures by law firm must include:
 - ✓ Any variations in customary billing rates and terms and rates for the geographic location of the case
 - ✓ The blended hourly rate for the firm's non-bankruptcy attorneys for purposes of comparison to bankruptcy attorneys' blended hourly rate
 - ✓ Prepetition billing rates and terms and an explanation for any post petition change
 - ✓ Whether the DIP has approved a budget and staffing plan

Verified Statement Required by UST

Appendix B Guidelines *(cont'd)*

- Disclosures by the debtor-in-possession representative include:
 - ☐ Description of the process and decision to retain proposed counsel
 - ☐ Explanation of the process for managing proposed counsel's fees and expenses.

Notice and Process

- Federal Rule of Bankruptcy Procedure 6003 prohibits the court from granting applications to employ professionals during the first 21 days of the case except to the extent necessary to avoid immediate and irreparable harm.
- Local rules may set deadlines for filing retention applications.
- Applications must be filed with the court and served on United States Trustee.
 - Applications are also generally served on key creditors.

Counsel for Creditors' Committee

- Employment governed by 11 U.S.C. §1103(b), which provides in part:

“An attorney . . . employed to represent a [creditors’] committee . . . may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case.
- There is no requirement that counsel be “disinterested.” *See, e.g., Bingham Greenbaum Doll, LLP v. Glenview Health Care Facility, Inc.*, 620 B.R. 582 (6th Cir. B.A.P. 2020).
- Employment application required

Chief Restructuring Officer

- Professional dedicated to navigating chapter 11
- Easy way to address conduct by management that might result in the appointment of a trustee
- Employment under 11 U.S.C. §327 or 11 U.S.C. §363(b)?
- Triggers heightened scrutiny by UST in some jurisdictions

Statutory Bases and Rules for Getting Retained

- 11 U.S.C. § 327
- 11 U.S.C. § 101(14)
- 11 U.S.C. § 328
- Federal Rule of Bankruptcy Procedure 2014
- Federal Rule of Bankruptcy Procedure 6003
- Applicable local rules

11 U.S.C. § 327 States:

- (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.
- (b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

11 U.S.C. § 327 States *(cont'd)*

- (c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.
- (d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.
- (e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.
- (f) The trustee may not employ a person that has served as an examiner in the case.

11 U.S.C. § 101(14) States:

The term “disinterested person” means a person that—

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 328 Provides:

- (a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.
- (b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.
- (c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

Federal Rule of Civil Procedure 2014

(a) Application for and Order of Employment. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to §327, §1103, or §1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(b) Services Rendered by Member or Associate of Firm of Attorneys or Accountants. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.

Federal Rule of Bankruptcy Procedure 6003 states:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following:

- (a) an application under Rule 2014;
- (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or
- (c) a motion to assume or assign an executory contract or unexpired lease in accordance with §365.

Questions or Comments?

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Meet The Faculty

Matthew T. Christensen – mtc@johnsonmaylaw.com



Matt Christensen joined Angstman Johnson (now known as Johnson May) in 2008 as an associate attorney. Now the managing partner of the firm, Matt has a civil litigation practice involving commercial law (finance & secured transactions), bankruptcy, real property, & business matters. He also has a transactional practice involving real estate, finance, & business matters. Matt frequently represents bankruptcy trustees & other fiduciaries in recovering assets & administering estates. In addition to practicing law, Matt is an adjunct professor at the University of Idaho College of Law.

Matt earned his J.D. & LL.M in International & Comparative Law degrees from Duke University School of Law in 2005. In addition to practicing law & teaching, Matt also enjoys spending as much time as possible with his wife, five children & one grandchild & expanding his ever-growing library of books. [Read More](#)

Doug Flahaut - df@echoparklegal.com



Doug Flahaut is the founder of Echo Park Legal, APC a boutique business bankruptcy firm in Los Angeles. He is a Subchapter V Trustee for the Central District of California and specializes in business bankruptcies, workouts, and receivership matters. He graduated from UCLA School of Law in 2006.

Jonathan Friedland – jfriedland@muchlaw.com



Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a “Super Lawyer” in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a “Leading Lawyer” by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, [Commercial Bankruptcy Litigation](#) & [Strategic Alternatives for and Against Distressed Businesses](#) (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. [Read More](#)

Matt Grimshaw - matt@grimshawlawgroup.com



Matt represents parties in all aspects of bankruptcy matters, restructuring, and out of court workouts. He has 20 years of experience in litigation and advising clients on issues resulting from the debtor-creditor relationship, including the enforcement of notes and guarantees, writs of attachment, receiverships, wrongful foreclosures, mortgage elimination scams, and injunctions.

Education & Qualifications

Matt received his Bachelor of Arts in Economics from Brigham Young University. Following this, he attended Willamette University College of Law, where he graduated with honors. During his time there, he served as the Editor-In-Chief of the university's Journal of International Law and Dispute Resolution. [Read More](#)

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[Strategic Alternatives For And Against Distressed Businesses, 2025 ed.](#) is one of a kind. It is the only resource that provides comprehensive state-by-state comparisons of assignments for the benefit of creditors & receiverships. This alone makes the book a must-have for every insolvency professional.