Obtaining Approval of Employment: Step 1 for Getting Paid for Your Services to a Debtor-in-Possession or Trustee in Bankruptcy Court

(Or, how to avoid becoming a Turnaround *Volunteer*)

© By Catherine Peek McEwen

Presented to
Turnaround Management Association
Second Annual SE Regional Conference
May 31-June 1, 2007
Myrtle Beach, S.C.

Step 1: Getting retained

Prior **court approval of your employment is a condition of payment**

As the King in Alice in Wonderland said, "[b]egin at the beginning…." That simple sentiment is important to a subject that is dear to all professionals working for the estate in a bankruptcy case: getting paid for what you do. For starters, the Bankruptcy Code, as interpreted by the courts, requires that a professional's employment must be approved by the court before he or she may be paid. So simply sending a bill upon completion of your work, without prior approval, will not get you paid. Secondly, if the application seeking approval of your employment is not filed on or before the day you begin work, you risk not getting paid for the period of time preceding the date the application is filed.

Accordingly, if you are counsel for the debtor in possession ("DIP") or trustee, then coincident with the filing of the petition, which is the paper that begins the case, you should file an application for approval of your retention. If you are another type of professional – for example, special counsel, accountant, appraiser, or auctioneer – who expects to work with the DIP or trustee in the case, then *before* you do anything in the case, begin at the beginning with a request to counsel for the DIP or trustee to file an application on your behalf, and do not lift a finger – unless exigent circumstances exist – until you confirm the application is filed.

One reason for the seemingly harsh prerequisite of prior court approval is to permit the court to control the bankruptcy estate's administrative expenses. To allow latecomers to pile on expenses makes it difficult for the court to control costs as the case progresses. Furthermore, depending on the timing, allowing additional expenses may be prejudicial to creditors with a lower-ranking priority who have already voted for a plan of reorganization. *In re Fortune Natural Resources Corp.*, 2007 WL 1112043, *5 (Bankr. E.D. La.).

Another reason for prior court approval of the employment of professionals is that professionals must meet stringent tests ensuring loyalty, impartiality and absence of any conflict with the estate and creditors. *Id*. at *6. These tests are found in section 327(a) of the Bankruptcy Code* and are discussed below (see Limits on who may be employed).

Who or what is a professional?

The requirement for court approval of employment of professional persons by a DIP or trustee is found in section 327(a), and it applies to "attorneys, accountants, appraisers, auctioneers, or other professional persons." Section

* The Bankruptcy Code is title 11 of the United States Code, and all references to a "section" hereafter are to the Bankruptcy Code unless otherwise noted.

101 defines "accountant" and "attorney" using traditional descriptions of those professions but does not define what "other professional persons" means. That interpretation has been left to the courts on a case-by-case basis.

The inquiry into who is a professional focuses on whether the person "play[s] an intimate role in the reorganization of a debtor's estate." *In re Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986). Mere membership in a profession is not the test, but rather how the person acting as a professional affected the administration of the case. *Id*. at 620. Stated more expansively:

> Whether services rendered are sufficiently "professional" in nature does not turn solely on the type of educational degree that one possesses. Nor should services rendered be automatically precluded from compensation because certain of the tasks performed are ministerial in nature. Rather … services of a "professional" nature are manifested by workmanship based on sound knowledge and conscientiousness. This sound knowledge can be acquired through the results of education, training or experience. The term "professional" also encompasses extreme competence. Further, it is the sum total of the services rendered that is relevant and not the individual tasks performed, for even accountants and attorneys engage in "ministerial" tasks when rendering their services. In the bankruptcy context, the pertinent test to be applied is whether a specialized service was performed which benefited [sic] the estate.

In re Interstate Restaurant Systems, Inc., 61 B.R. 945, 949 (S.D. Fla. 1986).

Also relevant is the case of *In re First Merchants Acceptance Corp.*, 1997 WL 873551 (D. Del.), in which the court compiled and distilled from reported cases a nonexclusive list of six factors for consideration:

> (1) whether the employee controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization, (2) whether the employee is involved in negotiating the terms of a Plan of Reorganization, (3) whether the employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations; (4) whether the employee is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate, i.e. the qualitative approach, (5) the extent of the employee's involvement in the administration of the debtor's estate, i.e. the quantitative approach; and (6) whether the employee's services involve some degree of special knowledge or skill, such that the employee can be considered a "professional" within the ordinary meaning of the term.

Id. at *3 (footnotes omitted). The *First Merchants* court noted that no single factor controls the inquiry, but rather the factors must be weighed against each other.

Given the guidance of *Interstate Restaurant* and *First Merchants*, it is without much dispute that turnaround and work-out professionals are professionals within the meaning of section 327. *See In re Marion Carefree Ltd. P'ship,* 171 B.R. 584 (Bankr. N.D. Ohio 1994); *In re Madison Mgmt. Group, Inc.*, 137 B.R. 375 (Bankr. N.D. Ill. 1992); *In re Bartley Lindsay Co.*¸137 B.R. 305 (D. Minn. 1991); *In re DOLA Int'l Corp.*, 88 B.R. 950 (Bankr. D. Minn. 1988). *But see In re Phoenix Steel Corp.*, 110 B.R. 141 (Bankr. D. Del. 1989) (workout specialists not a professional whose compensation is subject to court approval despite the fact that they made the decisions and took no orders as to direction of the company).

Salaried employee/officer or professional?

An exception to the requirement for approval of a professional's employment is applicable when the debtor regularly employs the professional on salary or replaces such a person with another person on salary. *See Park Terrace Townhouses v. Wilds*, 852 F.2d 1019 (7th Cir. 1988) (construing section 327(b)). However, some decisions hold that a chief executive officer employed pre-petition is a professional, but these cases seem to turn on the scope of the officer's duties in relation to the bankruptcy administration. *See Madison Mgmt. Group*, *supra* (CEO hired to liquidate assets is a professional); *In re Florida Airlines, Inc*., 110 B.R. 570 (M.D. Fla. 1990) (president of debtor "play[ed] central role in administration of the debtor proceeding").

A list of questions relevant to the mere officer vs. professional determination may be found in *In re Bartley Lindsay*, 120 B.R. 507 (Bankr. D. Minn. 1990):

> (1) What duties are being performed by the individual officer? Is the officer performing traditional executive functions of the office held or is the officer performing services in the way of advice and consulting services for the debtor which is beyond the traditional function of the office held or both?
>
> (2) Is former management still employed by the company or have one or more executives left, leaving a gap in management?
>
> (3) Is the officer, in fact, making those executive decisions traditional of the office held and directing others or are others actually making the decisions based on the advice from the officer?
>
> (4) Is the officer's primary employment the provision of consulting workout or other insolvency services to distressed businesses or is the officer a corporate executive by training and profession?

(5) Is compensation for the officer's services paid directly to the officer or is it paid to another legal entity by which the officer is also employed?

(6) Does the officer receive fringe benefits and other perquisites of the office held consistent with the treatment of other similarly situated and former officers and employees?

(7) Are income and employment taxes withheld from the officer's compensation or is the amount of gross compensation paid to the officer or to some other entity?

(8) Is the compensation of the officer consistent with compensation paid to predecessors and with others employed by the debtor? In other words, is the compensation so large and out of proportion to other compensation being paid by the debtor that such payment would be considered to be outside the ordinary course of the debtor's business?

(9) Has the officer been employed specifically to work through and try and solve the debtor's financial problems or is the employment permanent or intended as indefinite?

(10) Does the officer's employment antedate the commencement of the bankruptcy case or is it contemporaneous with or follow commencement of the bankruptcy case?

(11) Is the officer working full time for the debtor or is the officer allowed to perform services for other business as well?

(12) Is the officer or the officer's firm paid a retainer?

Consequences of not beginning at the beginning and a possible cure

Though not an express requirement of the Bankruptcy Code, courts nearly uniformly hold that a professional person who provides services to a debtor without prior court approval is tantamount to a volunteer, meaning that the professional is not entitled to be paid. *See, e.g., In re Keller Fin. Svcs. of Fla., Inc.*, 248 B.R. 859 (Bankr. M.D. Fla. 2000) ("[c]ourt approval of the employment of counsel for a debtor in possession is the sine qua non to counsel getting paid."); *DOLA,* 88 B.R. at 954 ("[t]he consequences to a 'professional person' who renders services to a debtor without…prior approval is denial of compensation"). This means that if you never seek approval you forfeit your compensation, and if you seek approval after you commence work, you may not get paid for any work predating the application, unless you can show excusable circumstances for the delay in obtaining court approval. If you can make the required showing, then courts may use their discretion to approve your

application *nunc pro tunc*, which means "now for then" or *post facto*, meaning "after the fact."

As with other parts of the who-may-be-employed-and-paid analyses, courts have developed a non-exclusive set of factors for determining what is forgivable and what is unforgivable when it comes to late-filed applications seeking approval of employment. Here is a list of factors that you should endeavor to argue, if applicable, if you are a late applicant for approval of your employment:

- the applicant provided a good faith benefit to the estate by rendering valuable services
- the applicant was unfamiliar with the bankruptcy rules/requirements (lack of sophistication)
- hardship to the applicant cause by another party's inaction
- the applicant's justifiable reliance on another party to prepare the employment application, i.e., the applicant is not responsible for obtaining approval
- circumstances requiring services be rendered before court approval or the applicant was otherwise under time pressure to begin service without approval
- amount of delay after applicant learned that initial approval had not been sought
- extent to which compensation to applicant will prejudice innocent third parties

3 Collier on Bankruptcy ¶327.03[3] (15th ed. 2007).

A case in which the court assessed nine specific factors and denied *nunc pro tunc* approval is instructional: *In re Twinton Properties Partnership*, 27 B.R. 817 (Bankr. M.D. Tenn. 1983). In that case, the court required an affirmative showing of *each* of the following factors:

> 1. The debtor, trustee or committee expressly contracted with the professional person to perform the services which were thereafter rendered;
>
> 2. The party for whom the work was performed approves the entry of the nunc pro tunc order;

> 3. The applicant has provided notice of the application to creditors and parties in interest and has provided an opportunity for filing objections;
>
> 4. No creditor or party in interest offers reasonable objection to the entry of the nunc pro tunc order;
>
> 5. The professional satisfied all the criteria for employment pursuant to [section 327(a)] and … the Federal Rules of Bankruptcy Procedure at or before the time services were actually commenced and remained qualified during the period for which services were provided;
>
> 6. The work was performed properly, efficiently, and to a high standard of quality;
>
> 7. No actual or potential prejudice will inure to the estate or other parties in interest;
>
> 8. The applicant's failure to seek pre-employment approval is satisfactorily explained; and
>
> 9. The applicant exhibits no pattern of inattention or negligence in soliciting judicial approval for the employment of professionals.

Id. at 819-20. Based on the failure of the applicant to address each issue and to provide notice as required by factor number 3 above, the application was denied.

Another instructional case in which approval of the applicant's employment was denied based on an untimely application – four months late – is *In re Fleming Companies, Inc.*, 305 B.R. 389 (Bankr. D. Del. 2004). In that case, the applicant was unable to show an acceptable excuse for the tardy application. The applicant argued that it was unsophisticated and under time pressure. The court made short work of the first excuse, noting that, based on the applicant's own website, the applicant was "one of the world's leading global business consulting firms that has worked with more than 2,500 clients in virtually every industry since its founding." *Id*. at 395. Furthermore, the court found that both before and after the bankruptcy filing the applicant had worked closely with debtors' law firm and bankruptcy advisory firm, both of which were experienced and well aware of the prior approval requirement, and the debtor offered no explanation for the four-month delay in filing the application. As to the second excuse, the court observed that the alleged time pressures existed for only a few days.

Consequently, the lessons a professional should draw from this section of the materials are: 1. File your application for employment before beginning work. 2. If you don't file your application before beginning work, then (i) try to hit as many of the excusable excuses as you can in your demonstration of facts

supporting a *nunc pro tunc* application for approval of employment; (ii) if you are not debtor's counsel but are some other type of professional, lean on debtor's counsel early and often to get the application in (and keep a paper trail of your requests); and (iii) do not claim to be unsophisticated if your website claims otherwise.

Limits on who may be employed

A survey of the requirements for a professional's obtaining approval of employment would not be complete without a discussion of the limits on who may be employed. Section 327 provides that professionals who are employed by the trustee, which term includes DIPs, may not "hold or represent an interest adverse to the estate" and must be "disinterested…." Accordingly, to be deemed conflict-free and unbiased the professional must meet a threefold test:

1. The professional may not hold an adverse interest against the debtor;

2. The professional may not represent an interest adverse to the estate, such as representing a creditor; and

3. The professional must be disinterested, which term itself comprises three tests under the Bankruptcy Code's definition of "disinterested" in section 101(14):

    - The person must not be "a creditor, an equity security holder, or an insider," which itself is a defined term in section 101(31) (see Appendix);

    - The person must not be now or have been within the past two years prior to the petition date, "a director, officer, or employee of the debtor;" and

    - The person "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."

Translation of legalese into normal language: you cannot have any connection with the debtor that would put you in a position of influence or adversity with respect to the debtor.

Nondisqualifying exceptions

There are three exceptions to the strict requirements of no adverse interest and disinterestedness. These are found in sections 327(c)-(e):

1. Except for Chapter 13 cases, a person who represents a creditor is not disqualified absent an objection, in which case the person is disqualified only if there is an actual conflict.

2. A trustee may also be employed as attorney or accountant.

3. An attorney who is special counsel (for a specified purpose) may be employed if the attorney previously represented the debtor and even if the attorney holds or represents an interest adverse to the estate so long as the adverse interest does not relate to the matter on which the attorney is to be employed.

With respect to the last exception, "if special counsel's interest and the estate's interests are identical with respect to the matter for which the attorney was retained," then there is no adverse interest. *In re Tri-State Ethanol Co. LLC*, 2007 WL 1174182, *8 (Bankr. D.S.D.). An example is when special counsel holds a claim against the estate, in which case the two have a common interest since any money recovered for the estate by the special counsel will benefit both entities. *See In re Elias*, 2005 WL 4705220 (Bankr. D. Idaho). Likewise even one step removed – where special counsel represented a creditor of the estate, both the estate and creditor stand to benefit from a recovery created by the attorney's work; therefore, the attorney does not represent an adverse interest. *See Stoumbos v. Kilimnik*, 988 F.2d 949 (9th Cir. 1993).

Consequences of less than full disclosure of adverse interests/interestedness *from the beginning*

Less than full candor and accuracy in disclosing connections with the debtor and creditors may be fatal to the prospect of a professional's money-making in a bankruptcy case. Under section 328(c), except for the few limited exceptions discussed above, the court may deny compensation to any professional whose employment was approved under section 327 but whom, in fact, holds or represents an interest adverse to the estate with respect to the matter on which the person is employed or who is not disinterested. This means that incomplete disclosures – whether the product of intent or mistake – can result in forfeiture of compensation and even disgorgement of already paid compensation.

Reported decisions are abundant with horror stories concerning lack of full disclosure from the outset and the consequences visited upon the non-disclosing professional. This is but a sampling:

A law firm initially and allegedly inadvertently failed to disclose its past role as estate planning counsel for debtor and spouse, during which time the debtor transferred significant assets to his spouse, the firm's representation of the spouse in litigation as well as the debtor's corporation. The firm was denied all fees and expenses and was required to disgorge any fees and expenses the firm had already received, notwithstanding that the firm had filed two amended

applications making most of the disclosure. *In re Prince*, 40 F.3d 356 (11th Cir. 1994).

A trustee who fails to disclose a side agreement for payment of fees by a secured creditor creates a fraud on the court even where no intent to deceive is found. Requests for punitive damages and attorneys fees are reserved for determination at a later date. *In re M.T.G., Inc.*, 2007 WL 1119672 (Bankr. E.D. Mich.).

Accounting firm was pre-petition creditor and thus denied all compensation. *In re Gray*, 64 B.R. 505 (Bankr. E.D. Mich. 1986).

Inaccurate disclosure by DIP counsel of compensation earned the year prior to bankruptcy, the ultimate source of the retainer, and the degree of connections with the DIP's management and advisors led to order requiring disgorgement of $1,305,419 bankruptcy retainer. *Keller, supra*.

Editorial comment: Ouch.

Conclusion

If you follow and meet the requirements of section 327(a) from the outset, you will be in a position to go to Step 2: applying for and being awarded compensation in a reasonable amount for necessary services and for costs incurred, either on an interim basis or at the conclusion of your work. *See* sections 328 - 331 (see Appendix).

APPENDIX

RELEVANT STATUTES CONCERNING PAYMENT OF PROFESSIONALS

§ 327. Employment of professional persons

(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.

(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.

§ 328. Limitation on compensation of professional persons

(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.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred--
(A) would have been property of the estate; or
(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
(2) the entity that made such payment.

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--

> **(A)** reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> **(B)** reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

(A) the time spent on such services;
(B) the rates charged for such services;
(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in **subparagraph** (B), the court shall not allow compensation for--

> **(i)** unnecessary duplication of services; or
> **(ii)** services that were not--
> > **(I)** reasonably likely to benefit the debtor's estate; or
> > **(II)** necessary to the administration of the case.
>
> **(B)** In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

(b)(1) There shall be paid from the filing fee in a case under chapter 7 of this title $45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States--

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay $15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such $15 shall be paid in addition to the amount paid under paragraph (1).

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than $5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

---

§ 331. Interim compensation

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

§ 101. Definitions

In this title the following definitions shall apply:

(31) The term "insider" includes*--

(A) if the debtor is an individual--

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation--

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership--

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

* The word “includes” means that the list is not exclusive and that other types of relationships may make one an insider.