

What Are the Pros and Cons of Selling My Claim?

Creditor's Rights Toolkit

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This article summarizes the advantages and disadvantages of selling a claim in a bankruptcy case.

If you have ever filed a claim in a bankruptcy case, you have also probably received an offer from a third-party claims purchaser to purchase your claim. Before deciding to sell the claim, there are pros and cons that must be carefully considered.

KEY ISSUES

There are several advantages to selling your claim:

RECEIVE IMMEDIATE PAYMENT

While the deadline to file claims occurs early in a bankruptcy case, it can take months if not years, before you will know when and how much you will be paid on account of your claim. By selling your claim, you are able to receive an immediate payment on account of your claim. Before agreeing to any sale, you should speak to several different purchasers to ensure you are getting the best price for your claim, and carefully review the claim sale document to ensure that it provides for immediate payment to you.

ENSURE PAYMENT IN CASH

By selling your claim, you can ensure that you will receive cash for your claim rather than other forms of distributions such as stock in the reorganized entity or a promissory note.

GUARANTEED AMOUNT

If your claim has been “allowed” in the bankruptcy case, by selling your claim, you can eliminate the uncertainty regarding how much you will receive on account of your claim. For example, distributions to creditors can be based on litigation recoveries, which are hard to predict. By selling your allowed claim, you are guaranteed a certain amount on account of your claim.

NO NEED TO MONITOR THE BANKRUPTCY CASE

By selling your allowed claim, you can eliminate the time and expense of monitoring the bankruptcy case to ensure your rights are not affected, including the cost of hiring an attorney to do so. Rather than worrying about

the bankruptcy case, you are free to focus on running your business. If your claim has not yet been allowed, then even after selling your claim you will have to monitor the bankruptcy case for any objections to your claim.

There are several disadvantages to selling your claim:

REDUCED RECOVERIES

By selling your claim now, you may get less than you would have received if you had waited for distributions to be made via the bankruptcy case. To assess this risk, you should review documents that get filed in the bankruptcy case, which will provide you with some insight into what your claim might be worth. Examples of things to review include the first day declaration (which provides an overview of the assets and liabilities of the company), any sale motion (which will help you understand the funds that might be available to pay creditors), and any disclosure statement (which discusses projected recoveries to creditors).

PAYBACK OBLIGATIONS

If your claim has not yet been allowed in the bankruptcy case, you face special risks in selling your claim. Most claim purchase agreements provide that the purchaser is entitled to a proportional refund, and perhaps an additional penalty, if the claim is reduced or disallowed. To assess this risk, it is important to understand whether the debtor agrees with your claim. You should review the schedules to determine if the amount listed by the debtor matches the amount you claim is owed, and to see if the debtor listed your claim as contingent, unliquidated, or disputed. CUD claims are the most risky as the debtor has already indicated that there is a disagreement or other unknown regarding the claim.

LOSS OF SETOFF AND RECOUPMENT

To the extent that the debtor has claims against you, you will lose your setoff and recoupment rights as a result of selling the claim since you will no longer be the holder of such claim.

INABILITY TO SERVE ON THE CREDITORS' COMMITTEE

If you sit on a creditors' committee, you should not agree to sell your claim without first consulting your in-house or outside counsel, as there may be restrictions on your ability to sell the claim. Once the claim is sold, the creditor is no longer a creditor in the case and the general rule is that the creditor must resign from the committee.

TAKEAWAY

Before deciding to sell your claim, it is important to carefully consider the pros and cons of doing so and to engage with experienced bankruptcy counsel who can guide you through this process.

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