

CREDITOR'S RIGHTS TOOLKIT

Should I — and How Do I — File a Claim Against a Debtor?

Properly asserting a claim in a bankruptcy case is key to a creditor preserving its interests against the debtor to ensure that the creditor does not waive its claims, may be entitled to a distribution on its claim, and is deemed a party in interest with certain rights in the case. Creditors can hold and assert claims against a debtor in multiple ways — a claim can be scheduled by a debtor, asserted by a creditor through a proof of claim, or asserted by a creditor through a motion filed with the bankruptcy court.

Key Issues

- **SCHEDULED CLAIMS**

When a debtor files for bankruptcy, it is required to complete and file schedules of assets and liabilities. As part of its schedules, a debtor will list all secured and unsecured claims against a debtor, based on the debtor's books and records. Claims are listed by creditor name, claim amount, and whether the debtor alleges the claim is contingent, unliquidated, or disputed. If a claim is listed as contingent, unliquidated, or disputed, the creditor must timely file a proof of claim in order to have a claim against the debtor. If a claim is scheduled but is not listed as either contingent, unliquidated, or disputed, and the creditor agrees with the claim amount scheduled, the creditor will be deemed to hold a valid allowed claim for the scheduled amount of the claim without having to file a separate proof of claim in the bankruptcy case.

- **DEADLINE TO FILE A CLAIM**

The deadline to file a claim is referred to as the bar date. Whether the debtor's case is pending under chapter 7 (liquidation) or chapter 11 (reorganization) of the Bankruptcy Code, creditors will receive a notice informing them of the bar date. If a claim is not filed on or before the bar date (and except for any claim amount the debtor has scheduled not contingent, unliquidated, or disputed), the creditor waives all rights to assert claims against the debtor for amounts that were incurred prior to the debtor's bankruptcy. It is crucial for proofs of claim to be timely filed so that they are received by the appropriate party (as discussed below) on or before the bar date. If a claim is filed even a few minutes after the bar date, it will be subject to disallowance and the creditor will lose the ability to further assert the claim or receive any distribution thereon.

- **COMPLETING PROOFS OF CLAIM**

Official Form 410 is the proof of claim form. While debtors may seek approval of a unique proof of claim form, claim forms are largely identical in all bankruptcy cases. The proof of claim form requires identification of (i) the debtor against which the creditor is asserting a claim; (ii) the creditor; (iii) the claim amount; (iv) the basis of the claim; and (v) whether the creditor asserts that the claim is entitled to secured or priority treatment. Proofs of claim should reasonably describe the basis of the claim, and creditors may attach additional pages as needed, including attaching any underlying documentation, invoices, or agreements (assuming there are no confidentiality restrictions) that support the claim asserted.

- **MULTIPLE DEBTOR CASES**

Oftentimes, multiple affiliated debtors may file bankruptcy petitions at the same time and their cases may be jointly administered for procedural purposes under a lead case number. When filing a proof of claim, it is imperative that a creditor asserts a claim against the correct debtor and case number. For instance, if a creditor has a contract with debtor X, the creditor's claim must properly identify debtor X and the creditor must file its claim under debtor X's bankruptcy case number. If the creditor were to file a claim against the affiliated but wrongly identified debtor Y instead, the creditor's claim will likely be challenged as an invalid claim against debtor Y and disallowed. In this situation, the creditor would not be afforded a second opportunity to re-file the claim against the correct debtor entity. If there is any doubt which debtor is liable on the claim, the best course of action is sometimes to assert the claim against all of the debtors out of an abundance of caution.

- **503(B)(9) PROOFS OF CLAIM**

Depending on the type of claim asserted by a creditor, the creditor — typically a vendor — may be able to assert a priority claim against the debtor under section 503(b)(9) of the Bankruptcy Code. Section 503(b)(9) gives creditors allowed administrative expense priority claims — which must be paid by a debtor in order to exit a chapter 11 case — for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.” When a creditor files a 503(b)(9) claim, the creditor is required to provide supplemental information in order to prove the additional elements of a 503(b)(9) claim, including proof of delivery of goods in the 20-day pre-petition window. This can be addressed by, for example, attaching the relevant bills of lading to the proof of claim.

- **FILING PROOFS OF CLAIM.**

Once a proof of claim is appropriately prepared, a creditor needs to properly file the claim on or before the bar date. In cases where a claims agent is not appointed, the clerk's office for the bankruptcy court where the case is pending will accept proofs of claim via the CM/ECF electronic filing system or mailing the original signed proof of claim to the clerk's office. In larger chapter 11 cases, a third-party claims agent may be appointed. In cases with claims agents, proofs of claim can be filed by mailing the original signed proof of claim to the claims agent. Additionally, claims agents typically also accept proofs of claims filed electronically on their websites. When a creditor receives notice of a bar date, the notice will also inform the creditor where to submit its claim. If a creditor is mailing a proof of claim to the clerk's office or claims agent, the creditor should ensure that (i) the claim is signed with an original wet signature; and (ii) the claim is mailed sufficiently in advance to be received on or before the bar date. Again, if a claim is received after the bar date (either when filing electronically or through the hard copy mail), the claim will be subject to disallowance.

Takeaway

Preparing and filing a proof of claim in a bankruptcy case may be straightforward for some creditors with small or simple claims. However, there are many potential pitfalls that a creditor can make — with the unfortunate outcome being that the creditor may lose its rights to assert a claim against the debtor. If a creditor is unfamiliar with bankruptcy, its claim is complicated, or its claim is of considerable value, the creditor should consider obtaining advice of bankruptcy counsel with respect to the proof of claim process to ensure that the creditor appropriately preserves its rights and optimizes its potential return.