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Bankruptcy Claims

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Types of Bankruptcy Claims

- Secured
- Priority unsecured
- General unsecured
- Equity interests

Secured Claims

- 11 U.S.C. § 506(a)(1) :
 - An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Secured Claims Cont'd ...

- Undersecured creditor's claim is bifurcated into a secured claim equal to value of its collateral and an unsecured claim equal to difference between amount of the allowed claim and the collateral value (i.e. the deficiency)
 - Example
 - secured creditor is owed \$10,000,000
 - its collateral (which is property in the debtor's estates) is worth \$8,000,000
 - it has a secured claim of \$8,000,000 and an unsecured (i.e. deficiency) claim of \$2,000,000

11 U.S.C. § 506(b)

- To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.
- Oversecured creditor gets interest, attorneys' fees and other fees and costs added to its secured claim up to value of its collateral.

11 U.S.C. § 506(b) example

- Example
 - Secured creditor is owed \$8,000,000
 - Its collateral is worth \$10,000,000
 - It can accrue interest, fees and costs of another \$2,000,000 to add to its secured claim

Valuation of Secured Creditor's Claim

- Bankruptcy Rule 3012
 - The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.
- Time of valuation
 - Petition date
 - Plan confirmation

Sources of Valuation Evidence

- Appraisers
- Brokers
- Debtor's owners
- Schedules of Assets and Liabilities
- Public filings

Attorneys' fees

- Must be reasonable
- Less detailed showing required than for allowance of attorneys' fees to debtor's attorneys (who must file detailed fee petitions)

Priority Unsecured Claims

- Superpriority claims
- Priority claims
 - 11 U.S.C. § 507(a)

Super Priority Claims

Examples:

- 11 U.S.C. § 507(b): Grants a secured creditor a superpriority claim if the adequate protection granted for use of its collateral proves *inadequate*.
- 11 U.S.C. § 364: Court may permit the debtor to obtain outside-the-ordinary course credit which receives administrative expense priority under section 503. If the debtor is unable to find a lender willing to provide credit in exchange for administrative expense status, the debtor may seek authorization for financing under section 364(c), which allows for superpriority status.
- 7 U.S.C. § 499: The Perishable Agricultural Commodities Act (PACA) protects payment to the sellers of fresh fruits and vegetables. A PACA claim imposes a trust on the proceeds from the sale of the qualifying product as well as a fiduciary responsibility on the debtor to repay the seller. A properly asserted PACA claim will give the seller a superpriority claim against the debtor's assets.

Priority Claims – 11 U.S.C. § 507(a)

In order of priority:

1. Domestic support obligations.
2. Administrative expenses of a bankruptcy trustee.
3. **11 U.S.C. § 503(b) administrative expenses.**
4. Claims in an involuntary case arising from the filing date to the order for relief.
5. Up to \$12,475 for wages/ benefits earned within 180 days before the filing or cessation of debtor's business.

Priority Claims Cont.

6. Employee benefit plan contributions within 180 days before the filing or cessation of debtor's business.
7. Claims for unpaid grain from grain producers or unpaid fish from a fisherman for up to \$6,150 each.
8. Consumer layaway deposits of up to \$2,775 each.
9. Pre-petition taxes.
10. The Debtor's commitments to a Federal depository to maintain the institution's capital.
11. Claims for death or personal injury from a motor vehicle accident that occurred while the debtor was legally intoxicated.

Priority Claims – Section 503 Administrative Claims

- a. Necessary costs of preserving the estate, including wages for services rendered after the filing.
- b. Post-petition taxes.
- c. Expenses incurred by creditors: (i) filing an involuntary petition, (ii) recovering assets concealed by the debtor, (iii) prosecuting a criminal offense relating to the debtor, (iv) making a substantial contribution to a chapter 9 or 11 case, (v) serving as a custodian, and (vi) acting as a member of committee.
- d. Professional services offered by attorneys, accountants and other professionals.

Section 503 Administrative Claims Cont.

- e. Services rendered by an indenture trustee in a chapter 9 or 11 case.
- f. Witness mileage fees.
- g. Obligations due on commercial real estate leases assumed and subsequently rejected (for amount due for the period of 2 years following the later of the rejection date or the date of actual turnover).
- h. Expenses of closing a health care business.
- i. **Section 503(b)(9) claims: The value of goods received by the debtor in the ordinary course of business within 20 days before the bankruptcy.**

General Unsecured Claims

- Trade claims
- Unsecured notes
- The lender's deficiency claim
- Unsecured claims may include post-petition attorneys' fees

Claims of Landlords Under Rejected Pre-Petition Leases

- 11 U.S.C. § 502(b)(6)
 - If such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds –
 - (A) The rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of –
 - (i) The date of the filing of the petition; and
 - (ii) The date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
 - (B) Any unpaid rent due under such lease, without acceleration, on the earlier of such dates

Claims of Landlords Under Rejected Pre-Petition Leases

- Hypothetical
 - Lease has 5 years remaining. Rent is \$1,000 per month. The claim amount would be the greater of the following:
 - One year's rent: $\$1,000 \times 12 = \$12,000$ or
 - 15%: $\$1,000 \times 60 \times .15 = \$9,000$
 - Claim: \$12,000

Equity Interests

- Preferred shareholders
- Common shareholders

Inter-Creditor Agreements

- Priority of distributions
- Right to vote on bankruptcy plan
- Right to file a claim

Asserting Claims

- Claims are scheduled by the debtor in its Schedules of Assets and Liabilities. Note that claims may be scheduled as contingent, unliquidated (cannot yet be calculated) and/or disputed.
- Only creditors whose claims are not scheduled or are scheduled as contingent, unliquidated or disputed must file a claim in chapter 9 and 11 cases.
- In chapter 7, 12 and 13 cases, proofs of claim must be filed within 90 days after the first date set for the meeting of creditors. In chapter 9 and 11 cases, the court sets the deadline.
- Official Form 10. Under oath. Documentation required. Client should sign.

Name of Debtor:

Case Number:

NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

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Name and address where notices should be sent:

Check this box if this claim amends a previously filed claim.

Telephone number:

email:

Court Claim Number: _____
(if known)

Filed on: _____

Name and address where payment should be sent (if different from above):

Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Telephone number:

email:

1. Amount of Claim as of Date Case Filed: \$ _____

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: _____

(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as:

(See instruction #3a)

3b. Uniform Claim Identifier (optional):

(See instruction #3b)

4. Secured Claim (See instruction #4)

Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other
Describe: _____

Value of Property: \$ _____

Annual Interest Rate _____ % Fixed or Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:

\$ _____

Basis for perfection: _____

Amount of Secured Claim: \$ _____

Amount Unsecured: \$ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).

Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

\$ _____

Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).

*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3003.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____

Title: _____

Company: _____

Address and telephone number (if different from notice address above): _____

(Signature)

(Date)

Telephone number: _____

email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Objections to Claims

- Claim objections are filed and noticed for hearing.
- General types of claim objections:
 - Wrongly asserted claims, claims for incorrect amounts or claims lacking documentation;
 - Duplicate claims;
 - Claims amended by subsequently-filed claims;
 - Untimely claims;
 - Satisfied or released claims; and
 - Claims asserting an improper secured status or priority.
- Claim objections are often settled prior to court adjudication.



Burden of Proof on Claim Objections

- Once a proof of claim is filed or a claim is scheduled, the claim is deemed *prima facie* valid and allowed unless a party in interest objects. The debtor, a trustee or creditors can object.
- A claim scheduled as contingent, unliquidated or disputed in the Schedules of Assets and Liabilities does not get a presumption of validity.
- If the objecting party can produce evidence sufficient to rebut the prima facie validity of the claim, the claimant then bears the burden of proof to establish the validity of the claim.

Estimating Claims

- 11 U.S.C. § 502(c)
 - There shall be estimated for the purpose of allowance under this section –
 - (1) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or
 - (2) Any right to payment arising from a right to an equitable remedy for breach of performance

Claims Subject to Disallowance

- 11 U.S.C. § 502(d)
 - Recipients of avoidable transfers that have not been repaid to the debtor's estate
 - Ex, preference recipients
 - Claimants who ultimately repay avoidable transfers get a pre-petition claim equal to the amount repaid – 11 U.S.C. § 502(h)

Claim Trading

- Market of hundreds of billions per year.
- Not explicitly regulated by the Bankruptcy Code.
- Can pose difficulties in proving claim if it is the subject of an objection.
- Bankruptcy Rule 3001(e) sets forth procedural requirements:
 - No requirement to disclose consideration paid.
 - No requirement to notify debtor of the transfer.
 - When the claim is traded prior to filing a proof of claim, the transferee files proof of claim.
 - When the claim transfers after a proof of claim is filed, the filing transferor is given 20 days' notice to object to the transfer.