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HOW TO COMPLETE A PROOF OF CLAIM FOR NON-BANKRUPTCY PRACTITIONERS

On Tuesday, April 7, 2009 from 12:00 p.m.-1:30 p.m. (CST), the Panel will explore the 5 W's of Proof of Claims: What is a Proof of Claim? Who may file a Proof of Claim? When must a proof of claim be filed? Why does a Proof of Claim need to be filed? How to file a Proof of Claim and accompanying exhibits? Bankruptcy practitioners will also share their knowledge on common errors made in filing Proofs of Claim and successful methods to remedy those errors. The program will be directed to both Non-Bankruptcy practitioners and Bankruptcy practitioners alike.

Frequently asked Questions of Non-Bankruptcy Practitioners

What is a Proof of Claim?

A proof of claim is a written statement, usually filed by a creditor, describing the reason for and amount of the debt allegedly owed by the debtor to the creditor. Most bankruptcy courts attach the official form, Form B10, used in completing a proof of claim to its website. 11 U.S.C. §§ 501 and 502 and the Federal Rules of Bankruptcy Procedure ("FRBP" or "Bankruptcy Rules") 3001, 3002, 3003, 3005, 3006, 3007 and 3008 govern the manner in which creditors and equity security holders present their claims or interest to the bankruptcy court. There are varying rules depending on the respective chapter in which the debtor seeks protection. The different rules for filing, allowance and disallowance will be highlighted to reflect the different bankruptcy chapters: Chapter 7 (liquidation); Chapter 9 (Municipality debt adjustment); Chapter 11 (reorganization); Chapter 12 (family farmer's debt adjustment); and Chapter 13 (individual debt adjustment), respectively.

Who May a file a Proof of Claim?

11 U.S.C. § 501 and FRBP 3001 generally governs who may file a proof of claim. Usually, creditors file proof of claims against the debtor. However, § 501 of the Bankruptcy Code, does allow for any entity liable to the creditor for the debt owed by the debtor to file a proof of claim if the creditor fails to do so.

In a Chapter 7 or 13 case, an unsecured creditor must file a proof of claim in order to participate in the claims adjudication process. In a Chapter 9 or 11 case, any creditor or equity security holder whose claim or interest is not scheduled by the debtor or is scheduled as disputed, contingent, or unliquidated, must file a proof of claim within the time set by the court. FRBP 3003.

When must a proof of Claim be Filed?

In cases under Chapter 7, 12, and 13, a proof of claim must be filed within ninety days after the first date set for the meeting of creditors called under § 341(a) of the Bankruptcy Code. FRBP 3002(c). There are certain specifically defined exceptions to this Rule 3002(c), such as a governmental unit provision and claims resulting from the rejection of executory contracts and unexpired leases.

In a case under Chapter 9 and 11, a proof of claim must be filed by the time set by the court. FRBP 3003(c)(3). The court sets the time upon a debtor's motion or motion of another party in interest.

Once granted, the debtors will send a Notice of Bar Dates, which is a notice to all creditors and parties in interest of the last day to timely file a proof of claim.

Where do I file my Proof of Claim?

One should generally review the Notice of Bar Dates. A Notice of Bar Dates may instruct a creditor to send the proof of claim to a bankruptcy claims agent or may simply require the proof of claim be filed electronically via ECF filing with the respective bankruptcy courts. Additionally, a Notice of Bar Date will provide what address to send the proof of claim to if one is using regular mail or an overnight courier. Generally, fax copies of proof of claims are not allowed.

Why should I file a Proof of Claim?

A proof of claim should be filed in order to assert and preserve a creditor's right to share in the debtor's distribution of its assets after confirmation. It is important to note, however, that when a proof of claim is filed, that entity has submitted itself to the bankruptcy's court jurisdiction, and it waives the creditor's right to a jury trial. *In the Matter of Ha-Lo Industries*, 326 B.R. 116 (Bankr. N.D. Ill. 2005) (the filings of any claim against the estate makes any litigation against the claimant part of the claims allowance process, thereby subjecting itself to the bankruptcy court's equitable powers and waiving its right to a jury trial). If that entity is a governmental unit, it has waived its right to assert a sovereign immunity defense as an objection to the claim. 11 U.S.C. §106(b).

How do I Complete the Proof of Claim Form?

First, review the official form for a proof of claim. The definitions and instructions may also be found on the respective court's website. Review the following suggestions regarding completing Proof of Claim forms. The numbers correspond to the numbers on the attached sample official claim form.

Complete the name of the court where the case is pending, the name of the debtor, box (1) and the case number, box (2). Please note, however, it is extremely important to review the Notice of Bar Dates. The Notice of Bar Dates will provide instruction as to whether a proof of claim must be filed against every debtor, as well as provide the respective case numbers for each of the debtors. Usually, when a debtor files for bankruptcy, its respective related entities also file bankruptcy petitions. The cases are usually consolidated for administrative purposes, however, in most instances, proofs of claims are still required to be filed in each of the debtor's respective

cases. Some practitioners err on the side of caution and file a Proof of Claim against every debtor unless it is known that a particular debtor is absolutely not liable to the creditor.

Next, complete the name of the Creditor, box (3) and complete box (4) where notices should be sent. If the payment address differs from the notice address complete box (5). It is important to note however that if an unliquidated claim is filed, be sure to check the respective box (6) when you amend that claim by filing a liquidated claim.

State the total amount owed to the creditor as of the petition date in box (7). The total amount should include both unsecured and secured amounts. The instructions attached to the official proof of claim form provide excellent guidance on the completion of box (8). Consider including "see attachment" or "see exhibit" to allow you to further describe the basis for your claim in the exhibit attached to the proof of claim. If an account number is available include that in its respective box (9), however that box can be left blank as ample identifying information will be present in the exhibit to the proof of claim.

The Instructions attached to the official proof of claim form contain definitions for Unsecured Priority, and Secured Claims. A claim is secured, box (10), if it is entitled to be paid before any other creditor in bankruptcy, i.e. secured by a lien. The most common types of claims that are entitled to priority are included in box (11).

How do I Complete the Exhibit to the Proof of Claim?

Identify the name of the entity filing the proof of claim and the name of the debtor.

Identify the relationship between the creditor and the debtor by specifically identifying the contract or agreement from which the debt arose.

Be sure to include the date the debt was incurred. If a judgment was entered provide a brief description of the underlying case and the date which judgment was entered. Also, include the court's order as an additional attachment.

Expressly reserve the right to amend and supplement the Proof of Claim. Expressly reserve your right to "Setoff," to protect the creditor if the debtors later assert a claim against the creditor.

The Exhibit to the Proof of Claim is the section to include any other information that relates to or is important in identifying and estimating the creditor's claim against the debtor. If the documents are too voluminous in nature, state that in the Exhibit, and also state the documents are available upon request.

Remember, the more information provided to identify your proof of claim, the more information the debtors will have in deciding whether to allow, disallow, or object to your proof of claim. It is important to review the local rules for the court where the debtor's case is pending, the Notice of Bar Dates, if applicable, and the definitions attached to Form B10 when completing a proof of claim.

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: (1)		Case Number: (2)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): (3)		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known)
Name and address where notices should be sent:		
Telephone number: (4)		Filed on: _____ (6)
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number: (5)		
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. (7)		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(): _____ Amount entitled to priority: \$ _____ (11) *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: _____ (8) (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (9) (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ (10)		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date:	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	FOR COURT USE ONLY

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, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located 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 the delivery of 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 the trustee or another party in interest files an objection to your 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:

Use this space to 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.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

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

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) 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 to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001 (c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents; as attachments may be destroyed after scanning.

Date and Signature:

The person filing 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. 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. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

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

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001 (c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.