



Don't Be Late—Filing Proofs of Claims in a Bankruptcy Case

When a creditor is notified that a debtor has filed for bankruptcy, the creditor should be careful to determine whether it needs to file a Proof of Claim in the case to preserve its rights to receive payments from the bankrupt estate. This article goes over the importance of a creditor acting in a timely and proper fashion and preserving its rights in the bankruptcy process.

Cases Under Chapter 7 and 13

In these types of cases, the creditor will not share in any distribution of funds from the bankruptcy estate unless it has filed a timely Proof of Claim. Cases that are originally filed under Chapters 11 and 13, but are later converted to Chapter 7, are subject to the setting of a new bar date, i.e., the deadline for the filing of claims, which will be a reasonable amount of time (usually around 90 days) after the celebration of the creditor's meeting with the newly assigned liquidation Trustee.

Cases Under Chapter 11—Important Difference

In these types cases, a very important wrinkle is added that creditors need to be on the lookout for. Generally, is not necessary to file a claim if the creditor agrees

with the amount the debtor has listed as due in its Schedules and the debtor has not listed the debt as disputed, contingent or unliquidated. However, if the creditor believes it is owed more money than indicated by the debtor, or its claim is listed as disputed, contingent or unliquidated, the creditor must file a claim for the full amount owed, or risk losing all of its rights as to the subject debt.

How Filed

The clerk of the Bankruptcy Court will generally send creditors a blank form to complete. First, the creditor needs to make sure it marks its claim in the proper classification section, such as secured, general unsecured or priority unsecured. Next, it must state the amount owed, and if there are any documents to support the claim, such as a note, deed of trust, judgment lien, etc., these documents should be attached to the claim and submitted to the court with the claim. If the claim is based on several charges (e.g., interest, attorney's fees, late fees), an itemization of those charges should also be attached to the claim. The completed claim must be filed in the debtor's case pending in the Bankruptcy Court. Debts based on sensitive information, such as confidential settlement agreements, can be filed under seal or through other procedures depending on that particular court. In these instances, supporting affidavits can be used and are recommendable. The use of counsel to assist in this process is recommended, particularly in instances involving debts that are of a secured nature.

Late Filed Claims and the Pioneer Standard

Claims that are timely filed are considered as prima facie valid in the amount claimed. Claims that are not timely filed run the risk of being rendered invalid. Therefore, when a creditor first receives notice of a bankruptcy filing, it should also determine what the deadline is for filing the claim, i.e., the bar date. The creditor may file a claim after the bar date, but must be prepared to argue that its failure to file a timely claim was due to excusable neglect. The Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 389 (1993) enumerated four factors to determine whether neglectful late filings of claims are excusable: (1) whether allowing



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the late claim will prejudice the debtor; (2) the length of the delay in filing the claim and the resulting potential impact on the judicial proceedings; (3) the reason for the delay, including whether the delay was within the reasonable control of the creditor filing the claim; and (4) whether the creditor that filed the claim acted in good faith.

When balancing the *Pioneer* factors, courts have placed the greatest weight on whether any prejudice to the debtor will occur by allowing the late claim. The party seeking to file a late claim bears the burden of proving a lack of prejudice to the debtor. Courts considering a tardy filing have all examined the relationship between the length of the delay and the creditor's control over the circumstances causing the delay in order to determine its reasonableness. For example, if the debtor did not list the creditor in the debtor's Schedules, and the creditor did not find out about the bankruptcy filing until after the bar date for filing claims, its late filing may be excused under the doctrine of excusable neglect. On the other hand, if the creditor knew about the bankruptcy case but failed to file a timely claim, even if the debtor did not list the creditor on the debtor's Schedules, its claim may be denied.

If the creditor did not file a timely proof of claim, but did file other pleadings in the

debtor's case, the court may consider those pleadings as "informal" proof of claims, which can then be amended after the bar date by the filing of a formal proof of claim. Whether an informal proof of claim should be allowed is an equitable determination made within the sound discretion of the bankruptcy judge. The factors the courts consider in determining whether the prior pleading constitutes informal claims include: whether the pleading was in writing and filed in the debtor's bankruptcy case; was a demand by the creditor on the debtor's estate; expressed the intent to hold the debtor liable for the debt; and, finally, whether it would be equitable under the circumstances of the case to allow the filing of formal proof of claim. For example, the filing of an objection to the debtor's discharge, may be considered an informal proof of claim if it contains all the information stated above. However, if the complaint does not contain a demand on the debtor's estate, it may not be considered an informal proof of claim.

Right of Debtor or Trustee to Object to a Claim

Even if the creditor filed a timely claim, the claim may not be allowed by the court if the debtor or the Trustee files an objection to the claim and that objection is sustained. Once an objection to the claim is filed, the

burden of proof shifts to the creditor to prove that the claim is valid. There are many reasons a debtor or the trustee appointed to administer the estate may object to a claim, including disputing the amount of the claim, the validity of the claim, or the classification of the claim as secured or priority when the debtor believes it should have been classified as a general unsecured claim.

Rule of Thumb

It is recommended that a creditor file a timely proof of claim in all cases, prior to the passage of the bar date. This will preserve the rights of the creditor to be paid in the case and not subject them to having to satisfy the *Pioneer* standard in order to be able to file their claim tardily. In Chapter 11 matters, special care should be paid to the debtor's schedules and how the debt in dispute is classified therein, as this will determine the proper way to proceed. ■

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