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Proofs of Claim — When Should You File Them?

Creditors often contact us and inquire as to whether they should file a proof of claim in specific bankruptcy cases. Our response to these inquiries is almost always the same—the creditor should file a proof of claim.

In a Chapter 7 bankruptcy case, a creditor must file a proof of claim in order to receive any distribution from the bankruptcy estate for a pre-petition debt. The same rule applies with respect to Chapter 12 and Chapter 13 bankruptcy cases.

Not only must a proof of claim be filed, but it also must be filed in a timely manner. Bankruptcy Rule 3002(c) provides that in Chapter 7 and Chapter 13 bankruptcy cases, a proof of claim must be filed within 90 days after the first date set for a meeting of creditors. In some jurisdictions, such as the Western District of Kentucky, the 90-day time limit has been extended to the filing of proofs of claims in Chapter 12 cases pursuant to the local rules in those jurisdictions.

By order of the bankruptcy court, the aforementioned time limits may, and often are, altered. For example, a creditor may receive a notice or order from the bankruptcy court informing the creditor that no assets are available for distribution in the debtor's bankruptcy estate and that no proof of claim need be filed until further notice or order of the court. In such cases, if the trustee subsequently reports that no assets can be located for the debtor's estate, no proof of claim need ever be filed as there will be no distribution from the estate. On the other hand, if the trustee subsequently is able to locate property for the debtor's estate from which a distribution can be made, a notice will usually be sent out to the creditors advising them of this fact and requiring them to file their proofs of claims by a certain date referred to as a "bar date." If the creditor fails to file his proof of claim by the bar date, his claim may be disallowed.

Problems occasionally arise with respect to the above described practice in that creditors, upon receipt of an order from the bankruptcy court informing them that there are no assets and that they are not required to file proofs of claims at the time, may close their files with respect to those debtors. If assets are later discovered by the trustee and notice of this fact is provided to creditors, creditors may not reopen their files in order to file a proof of claim and may therefore miss out on an opportunity to share in a distribution from the estate.

For example, in one case, a creditor nearly missed out on an opportunity to recover nearly $45,000 from a debtor on a debt of approximately $90,000 simply because the creditor had previously received a notice advising him not to file a proof of claim.

The creditor closed his file and inadvertently failed to reopen the file when he received a notice that the trustee had located assets for distribution from the debtor's estate. Other creditors apparently acted in a similar manner and, as a result, although the trustee in the case had recovered approximately $100,000 in assets from the debtor's estate, the total claims filed by creditors against the debtor's estate amounted to only about $95,000.

Fortunately for the creditor, he was made aware of the amount of the assets in the debtor's estate prior to the distribution of those assets and requested permission of the bankruptcy court to file his proof of claim despite the fact that the bar date had expired. Because no one objected to the late filing, the proof of claim was allowed by the court. As a result, the creditor received nearly half of the $90,000 held by the trustee on his claim, which had previously been written off.

Although the foregoing story had a happy ending, at least for the creditor, creditors *should not rely on always being able to file their proofs*

of claims after the bar date. For this reason, creditors should nearly always file proofs of claims when they first learn of the bankruptcy despite any notices from the court that such filing is not necessary.

In Chapter 11 bankruptcy cases, a creditor is only required to file a proof of claim if the debtor fails to list the creditor's claim in the schedules to the bankruptcy petition or if the claim is listed on the schedules as a disputed, contin- gent or unliquidated claim. Creditors, however, should also be wary about relying on the fact that their claims have been listed in the debtor's schedules in Chapter 11 proceedings.

While the bankruptcy rules do not require a proof of claim to be filed if the claim is properly listed in the debtor's schedules, debtors-in-possession often include in their plans of reorganization provisions requiring all creditors to file proofs of claims by a specified date, and that any claims not evidenced by a timely filed proof of claim will be barred. Sometimes these provisions are hidden in the body of the plan and not readily noticeable to a creditor. In this way, a creditor who believes that his claim is properly scheduled may be surprised to find that his claim is disallowed because he failed to file a proof of claim as required in a confirmed plan of reorganization.

Again, this problem can be avoided if the creditor files a proof of claim when he first learns of the bankruptcy.

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