

Bankruptcy and Creditors Rights Primer – NCRA 2024

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Recent Chapter 11 'Utility' Cases



ROCKDALE



TALEN
ENERGY



CHESAPEAKE
ENERGY



REPSOL

Tilden Marcellus, LLC

Relevant Bankruptcy Issues

- Automatic Stay
- Proofs of Claim
- Sales
- Preferences

Bankruptcy Overview

Chapters of Bankruptcy Code:

- 7 – Consumer and Corporate Liquidation
- 9 – Municipalities (eg. City of Chester, PA)
- 11 – Corporate Reorganization
- 12 – Farmers
- 13 – Consumer Reorganization
- 15 – Cross Border Insolvencies

Bankruptcy Overview

- Process
 - The Petition
 - Commences bankruptcy proceedings and invokes automatic stay.
 - Creates bankruptcy estate comprised of all assets as of petition date – wherever located and by whomever held.
 - The Plan
 - In chapter 7, the “Plan” entails the trustee liquidating all assets and distributing proceeds to creditors.
 - In chapter 11, the “Plan” can be a reorganization, a liquidation, or a sale, which must be voted on by creditors and approved by Court.

Bankruptcy Overview

- Claims
 - Bar date
 - Objections
 - Priority of claims = administrative, priority, unsecured, equity
- Assets of the Estate
 - Avoidance actions, including preferences
 - Claims against third parties
 - Liquidate hard assets
- Distributions
 - Payments to creditors after confirmation of plan

Bankruptcy Overview

- Access to documents
 - Pacer/ECF (Account Required)
 - Claims agent (Epiq, KCC, EQ/Donlin Recano) (free)
- Pleadings
 - Notice of bankruptcy filing
 - Notice of proof of claim bar date
 - Notice of meeting of creditors (aka 341 meeting)
 - Sale Motions
 - Disclosure Statement/Plan
 - Chapter 11 plan ballot
 - Objections to Claims

Automatic Stay



Automatic Stay

- Automatic Stay (§ 362)
 - 362(a) “a petition. . . operates as a stay, applicable to all entities of:
 - **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the [debtor](#) that was or could have been commenced before the commencement of the case under this title, or to recover a [claim](#) against the [debtor](#) that arose before the commencement of the case under this title;
 - **(2)** the enforcement, against the [debtor](#) or against property of the estate, of a judgment obtained before the commencement of the case under this title;
 - **(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
 - **(6)** any act to collect, assess, or recover a [claim](#) against the [debtor](#) that arose before the commencement of the case under this title;

Relevant Bankruptcy Issues

- Automatic Stay (§ 362) (cont'd)
 - Designed to provide debtor with “breathing spell” to attempt to reorganize.
 - Prevents creditors from taking any action to collect on pre-petition obligations.
 - Prohibition includes sending invoices with prepetition amounts reflected.

Relevant Bankruptcy Issues

- Automatic Stay (§ 362) (cont'd)
 - Violation - § 362(k)(1) an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.”
 - “Willful” = knowing violation
 - Practical Tip: Assign a “point person” for bankruptcy matters. As soon as a notice of bankruptcy is received, send to the point person to “flag” the account and ensure all efforts to collect outstanding amounts due cease. Thereafter, separately account for any post-petition goods supplied.

Pre and Post petition



Pre and Post petition

- Pre-petition

- Amounts due **as of** the petition date
- Accounting must track separately
- Automatic stay prohibits collection
- Debtor cannot pay
- File claim
- Paid pursuant to Plan

- Post-petition

- Amounts due **after** the petition date
- Administrative Priority
- Court can enforce prompt payment

Proofs of Claim

- Burden of Proof: Claim establishes prima facie evidence of creditor's claim and amount, which debtor must rebut if it disagrees with amount or class of claim
- Bar date notice will identify where and when to file claim:
 - Chapter 7 – typically with the court
 - Chapter 11 – sometimes file with noticing agent that is employed by the Court to administer claims in larger cases

Official Form 410

Proof of Claim

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached 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. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Identify the Claim

1. Who is the current creditor?		Name of the current creditor (the person or entity to be paid for this claim) _____	
		Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?		<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?		Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)		Name _____	Name _____
		Number _____ Street _____	Number _____ Street _____
		City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
		Contact phone _____	Contact phone _____
		Contact email _____	Contact email _____
		Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	
4. Does this claim amend one already filed?		<input type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?		<input type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number No you use to identify the debtor? Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

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

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No Yes. Check one:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* 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"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3:

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that 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.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
 MM/DD/YYYY

Signature _____

Print the name of the person who is completing and signing this claim:

Name _____
 First name Middle name Last name

Title _____

Company _____
 Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
 Number Street

City _____ State _____ ZIP Code _____

Contact phone _____ Email _____

Print

Save As...

Add Attachment

Reset

Proofs of Claim

- Must be filed by applicable bar date
 - In chapter 7 cases, bar date usually established by separate notice once trustee determines there are assets available for distribution.
 - In chapter 11 cases, bar date may be established in notice of bankruptcy or by separate bar date order.
 - Only have to file if claim (a) not scheduled by debtor, (b) schedule in wrong class or amount, or (c) schedule as contingent, non-liquidated, or disputed.
 - Safer to file no matter what.
 - Late claims are paid after all timely filed unsecured claims.

Proofs of Claim

- The trustee or debtor will object to any filed claim to which it disagrees, as to amount or class.
 - 30 days notice of deadline to file response to objection.
 - Must file written response, but some trustees/debtors will negotiate a resolution informally with the claimant or counsel not admitted in that specific jurisdiction.
 - Practical Tip: Point person must carefully note the objections. Failure to respond timely will result in the claim being expunged.

363 Sales

- 11 U.S. Code § 363 - Use, sale, or lease of property
- Court approval required – Debtor must demonstrate a “substantial business justification”
- Marketing of assets
- Approval of bid procedures
- Stalking horse

363 Sales

- Due diligence
- Auction
- Asset Purchase Agreement
- Assumption of contracts/cure
- Sale Hearing/Closing

Preferences

- § 547 of the Bankruptcy Code gives the Trustee/Debtor the power to recover certain payments made to creditors **prior** to the bankruptcy filing.
- This right is intended to ensure certain creditors do not receive preferential treatment from the debtor as it is sliding into bankruptcy, to the detriment of all other creditors.
- Practical Tip: Watch for customers who extend their usual payment/fall behind on terms/pay by different means/dramatically decrease or increase purchase orders and amounts.

Preferences

- The Trustee may avoid all payments, and certain security interests, made to non-insider creditors 90 days prior to the bankruptcy filing.
- Defenses
 - Ordinary Course
 - New Value
- The Trustee must file an adversary proceeding (which is a separate proceeding related to the bankruptcy) to avoid preferential payments.