



NAVIGATING BANKRUPTCY WITHOUT SINKING THE SHIP

July 27, 2022

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TYPES OF BANKRUPTCY

● Chapter 13

● Chapter 7

● Chapter 11

● Others:

- Chapter 9
- Chapter 12
- Chapter 11, subchapter V

● Trustee vs. Debtor-in-Possession

● Involuntary ch. 7 or ch. 11

WHAT HAPPENS TO A LAWSUIT WHEN A DEFENDANT FILES FOR BANKRUPTCY

Section 362 (does not apply to non-debtor defendants)

- Operation and scope of the automatic stay
- Notable exceptions
- Obtaining relief from stay
- Repercussions for stay violations



WHAT HAPPENS TO A LAWSUIT WHEN A DEFENDANT FILES FOR BANKRUPTCY

Availability of D&O/liability insurance

- What is property of the estate?
(Bankruptcy Code § 541)
- Are insurance proceeds property of the estate?
 - D&O insurance
 - Liability insurance (casualty, collision, life, fire, etc.)
- How can litigants get access to insurance proceeds and proceed against the insurer in bankruptcy?

CREDITORS' COMMITTEES

- 1 Role in chapter 11 case
- 2 How creditors' committees are formed
- 3 Benefits of serving
- 4 Downside of serving



WHAT LITIGANTS CAN LEARN FROM THE BANKRUPTCY DOCKET



- No formal discovery needed
- PACER
- Sources of information include:
 - First Day Declaration and Motions (ch. 11)
 - 341 Meeting of Creditors
 - Schedules and Statement of Financial Affairs
 - Monthly Operating Reports
 - Other motions

2004 EXAM – USES AND LIMITATIONS ON USE IN LITIGATION

- Scope of examination - going on a “fishing expedition”
- The “pending proceeding” rule

- 1 What is a proof of claim?
- 2 Should you file a proof of claim?
- 3 What is a bar date?
- 4 What happens if you miss the bar date?

CREDITOR CLAIMS - BAR DATE/FILING PROOFS OF CLAIM/CLAIMS OBJECTIONS

WHICH FORUM WILL ULTIMATELY ADJUDICATE THE CLAIM

REMOVAL & REMAND

- Debtor's broad power to remove actions
- Timing for removal
- Factors considered in remand motion

RELIEF FROM STAY

- Stay relief in order to continue an action in non-bankruptcy forum

RESOLUTION/ CONCLUSION OF THE BANKRUPTCY

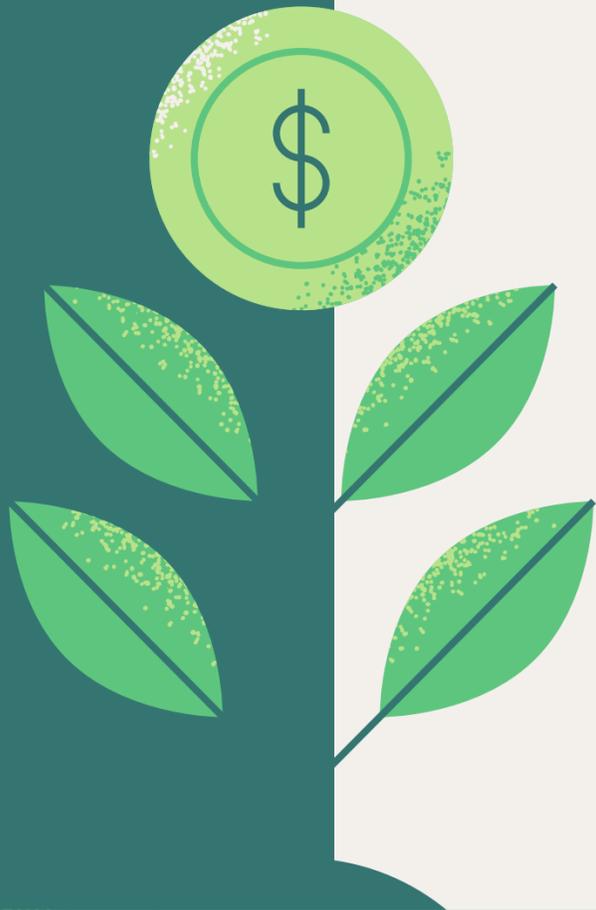


- Plan confirmation
- Effect of confirmation
 - Discharge of debts
 - Nondischargeable debts
 - Plan releases and exculpation
- Chapter 7 discharge
- Rule 9019 Settlements

TOP 5 TIPS

Tips/Insights in Appearing in Bankruptcy Court

- Expect the Bankruptcy Judge to be Very Prepared
- Keep in Mind the Bankruptcy Judge has Significant Discretion
- Be Ready to Move Quickly
- Cutting Deals is at the Core of Bankruptcy
- Most Bankruptcy Court Websites are Excellent Resources



THANK YOU!



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Sheppard Mullin

Michael Cooper, Esq.
ADR Services, Inc.

Jane Kim, Esq.
Keller Benvenuti
Kim LLP



MICHAEL COOPER, ESQ.

**NEUTRAL
ADR SERVICES, INC.**

After practicing law for 50 years, Mr. Cooper joined ADR Services, Inc., to focus on his mediation practice. Since 1995, he has mediated hundreds of complex bankruptcy, real estate, and commercial law matters. As a bankruptcy attorney, he represented debtors, creditors and trustees in cases involving all aspects of commercial, real estate and fiduciary law. This has allowed him to draw on his experience and knowledge to successfully resolve myriad bankruptcy and business-related matters. He was recently appointed by the Bankruptcy Court to mediate creditor claims filed in the PG&E bankruptcy case and successfully resolved disputes involving property damage, easements and land use, among others.





JANE KIM, ESQ.
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Jane Kim is a partner at Keller Benvenuti Kim, a San Francisco-based corporate bankruptcy and restructuring boutique law firm, where she represents debtors in possession, distressed companies, and other parties, in both in-court and out-of-court situations. Jane's recent engagements include representing In-Shape Health Clubs, LLC, a premium regional fitness club chain in California, and Ravn Air Group, Inc., a regional airline in Alaska, in each of their chapter 11 cases filed in Delaware. Jane also serves as bankruptcy co-counsel for Pacific Gas & Electric Company in its chapter 11 case, the largest chapter 11 filing in the Northern District of California in over a decade, which emerged from bankruptcy in July 2020 through a confirmed, largely-consensual plan of reorganization.





ORI KATZ, ESQ.

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Ori specializes in business bankruptcies and other aspects of insolvency law. He has represented debtors, individual creditors, creditors' committees, parties purchasing assets out of bankruptcy and parties involved in bankruptcy litigation. He has successfully reorganized companies in a wide range of industries, including real estate, retail, construction, biotech, telecommunications, media and the internet. He has also represented lenders in connection with receiverships, loan workouts, restructurings, foreclosures and borrower bankruptcies, and acted as receivership counsel in connection with various appointments. Ori is a frequent speaker on matters relating to bankruptcy and insolvency law.



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.

Part 1: 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?

No
 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

Number Street

City State ZIP Code
Contact phone _____
Contact email _____

Name

Number Street

City State ZIP Code
Contact phone _____
Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

No
 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?

No
 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 you use to identify the debtor?** No
 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:

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

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).

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).

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

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

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* 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: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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.

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 _____