

## Proof of Claims in Bankruptcy: Covering Your Client

By Robert Gainer

When your client calls and tells you that they are owed money by an entity that has filed for bankruptcy, how best do you protect your client's rights? You can protect your client's rights by determining whether you need to file a proof of claim in that entity's bankruptcy proceedings. A *proof of claim* is a written statement of a creditor's claim.

### Should I file a proof of claim?

To determine whether you should file a proof of claim on behalf of your client in another entity's bankruptcy proceedings, you should first obtain a copy of the bankruptcy schedules and determine if obligations due to your client are listed—and listed correctly. Some practitioners subscribe to the safe rule that a proof of claim should always be filed if there is debt outstanding. However, upon filing a proof of claim, your client submits to the jurisdiction of the bankruptcy court and waives the right to a jury trial. A proof of claim only should be filed if some purpose would be served. A proof of claim may not be necessary if the correct amount owed your client is listed on the bankruptcy schedules; properly classified as the type of obligation due; and not listed as contingent, disputed, or unliquidated. If this is not the case, a proof of claim should be filed (unless the case is a "no-asset" Chapter 7 case).

### How do I file a proof of claim?

A proof of claim must be filed with the clerk of the court in which bankruptcy cases are pending. In bankruptcy cases filed as Chapter 7, 12, or 13, a proof of claim must be filed within ninety days of the First Meeting of Creditors (pursuant to 11 U.S.C. § 341) to participate in the claims adjudication process. In those bankruptcy cases filed as Chapter 9 or 11, the deadlines for filing a proof of claim are set by courts. Courts will notice these "bar dates," and your client should receive notice if accurately listed in the schedules. If "bar dates" pass without a proof of claim filed, the Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 389 (1993), has articulated four factors on which excusable neglect (of late filed claims) will be examined. Claims that are not timely filed may be disregarded by courts based on the *Pioneer* analysis.

The proper form for a proof of claim that creditors should file is Official Form B10, which can be found at [www.uscourts.gov/bkforms/bankruptcy\\_forms.html](http://www.uscourts.gov/bkforms/bankruptcy_forms.html). When a proof of claim is executed and filed according to the Federal Rules of Bankruptcy Procedure 3001, that proof constitutes *prima facie* evidence of the validity and the amount of the claim.

To properly fill out the proof of claim form, you should redact certain personally identifiable information to comply with Fed. R. Bankr. Pro. 9037. Generally, information listed on Official Form B10 should include: (1) jurisdictional information; (2) the name of your client and address to which correspondence should be sent; (3) the manner in which the obligation arose; (4) account information (if available) in redacted form; and (5) classification of the obligation owed and whether such obligation is secured or unsecured and constitutes a priority claim or administrative expense claim (as defined by the federal Bankruptcy Code at 11 U.S.C. §§ 503, 507). You should attach to the proof of claim documentation identifying and supporting your client's claim. If these documents are voluminous, you should provide a summary document and indicate that examination of the underlying documents is available upon request.

### I've filed a proof of claim, what's next?

Once a proof of claim is filed, the debtor or trustee may object to it. If an objection is raised, it will either initiate a contested matter or, if the objection is joined with a counterclaim seeking relief identified at Fed. R. Bankr. Pro. 7001, an adversary proceeding will ensue. Upon objection, the burden of proof shifts to the creditor to prove the validity of the claim.

This general overview of proofs of claim should allow you to timely and properly initially protect your client's rights once bankruptcy by another entity is filed.

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