

Concurrent Session

Where the Rubber Meets the Road: Proofs of Claim and Claims Objections

Caralyce M. Lassner, Moderator | Caralyce M. Lassner, JD, PC
Bingham Farms, Mich.

Elizabeth M. Abood-Carroll | Orans Associates P.C.; Troy, Mich.

Lisa K. Mullen | Chapter 13 Trustee Office; Southfield, Mich.

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By

Caralyce M. Lassner

Caralyce M. Lassner, J.D., P.C.

Bingham Farms

Elizabeth M. Abood-Carroll

Orlans Associates P.C.

Troy

Lisa K. Mullen

Office of the Chapter 13 Trustee – David Wm. Ruskin

Southfield

Where the Rubber Meets the Road: Proofs of Claim and Claim Objections

The Proposed Amendments to the Federal Rules of Bankruptcy Procedure-What They Are and What You Need to Know

Lisa K. Mullen

Office of the Chapter 13 Trustee – David Wm. Ruskin

I. INTRODUCTION

Amendments to the Bankruptcy Rules originate with the federal judiciary and the Judicial Conference of the United States. Congress has given the federal judiciary the authority to prescribe rules subject to the ultimate approval, denial or revision by Congress.¹ The process of rule making is supervised by the Committee on Rules of Practice and Procedure, referred to as the “Standing Committee” with the Standing Committee assisted by five (5) advisory committees on matters relating to appellate, bankruptcy, civil, criminal and evidence rules.²

A quick (and very simplified) overview of how the amendment process works:

1. There is initial consideration by the Advisory Committee of the proposed amendments and a decision is made whether to recommend the proposed amendments for publication and comment.
2. If approval is given, the rules are made public providing a notice period for comments and hearings on the proposed amendments. This process normally lasts 6 months.
3. The Advisory Committee reviews the timely submitted comments and testimony given at the public hearings and determines whether to submit the proposed amendments to the Standing Committee on Rules of Practice and Procedure for approval.
4. The Standing Committee may either accept, reject or modify the proposed amendments. If approved by the Standing Committee, the proposed amendments are submitted to the Judicial Conference for approval.
5. If approved by the Judicial Conference, the proposed amendments are submitted to the Supreme Court for approval.
6. If approved by the Supreme Court, the proposed amendments are submitted to Congress for review. Congress has at least 7 months by statute to act on any proposed rule amendments. If no action is taken by Congress during the statutory period, the rules take effect as a matter of law.³

¹ See Rules Enabling Act, 28 U.S.C. Sections 2071-2077.

² See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow “Rulemaking Process” hyperlink; then follow “A Summary for the Bench and Bar” hyperlink). Full citations are provided throughout these materials for ease in locating the documents.

³ *Id.*

II. PENDING BANKRUPTCY AMENDMENTS

There are several bankruptcy amendments pending with the Judicial Conference. Amendments to Rule 3001(c) and a new Rule 3002.1 as well as amendments to Official Form 10 have been submitted.

A. The Current Rule- Rule 3001

The Committee on Rules and Practice and Procedure has recommended several amendments to Federal Rule of Bankruptcy Procedure 3001(c). If approved, these amendments would take effect on December 1, 2011 and December 1, 2012.⁴

To completely understand the impact of the proposed rules, we need to start with the current rule.

Rule 3001(c) currently provides:

Proof of Claim

(c) **Claim based on a writing.** When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.⁵

The amendments published for comment in August, 2009, broke out subdivision (c) into several subsections. Initially, the new proposed Rule 3001(c)(1) required the creditor to file with the proof of claim, the last account statement sent to the debtor prior to the filing of the bankruptcy petition. Based upon substantial testimony and input, primarily involving objections from parties representing bulk purchasers of credit card debt, the Committee voted to withdraw the proposed revision. The Committee instead voted to recommend a new subdivision (c)(3) be published for public comment. Provision (c) of the current Rule has been re-designated as (c)(1) if final approval of the amendments is obtained.⁶ This new subsection will be discussed later in these materials.

⁴ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow “Rules Published for Comment” hyperlink).

⁵ See Rule 3001(c).

⁶ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow “Rules Published for Comment” hyperlink; then follow “Report of the Advisory Committee on Bankruptcy Rules” hyperlink).

B. The New Provisions of Rule 3001(c)(2)

The proposed amendments to Rule 3001(c) provide a new subsection-(c)(2), mandating what information is required to be attached to a proof of claim and the consequences of a party's failure to comply. Proposed Rule 3001(c)(2) provides:

(c)(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.⁷

The intent of the proposed amendments to subsection (c) appears to be to provide, in a clear fashion, what documentation is required to be attached to each proof of claim and provide sanctions for noncompliance.

⁷See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Pending Rules Amendments" hyperlink; then scroll down to "Amendments Approved By Judicial Conference (September2010)" hyperlink at Appendix B-p. 35-37).

Rule 3001(c)(2)(A) addresses the situation where the debtor is an individual and the holder of the claim is seeking an amount in excess of the principal amount, including interest, fees, expenses or other charges. With the proposed rule, the claim must attach an itemized statement of the charges stated with sufficient specificity so that the claim is clear as to the basis for the claimed amount.⁸

Subsection (B) of Rule 3001(c)(2) provides direction in the case where the debtor has defaulted pre-petition and the creditor's claim is secured by a security interest in the debtor's property. In these instances, the creditor is required to attach a statement specifying the amount to cure said default. The Committee has created a new form to be used when providing this information.⁹

Subsection (C) of Rule 3001(c)(2) requires the attachment "prescribed by the Official Form" to be filed with the proof of claim where the security interest is claimed in the debtor's principal residence. An example of this would be where the creditor is claiming a security interest in the debtor's residence pursuant to a validly executed note and mortgage. If the loan is escrowed, the holder is required to attach an escrow account statement showing the account balance and any amount owed, as of the date of filing of the petition. This required information is to be set forth in the new form created by the Committee.¹⁰

Subsection (D) of Rule 3001(c)(2) sets forth the sanctions that the court may impose when the creditor fails to provide the required information under subsection (c). This provision garnered the most attention during the public comment phase. The original draft of the rule precluded the creditor from presenting the omitted information even at a subsequent hearing on the matter. This provision was greatly criticized as being overly harsh, without basis and inconsistent with Section 502 of the Bankruptcy Code. Creditors further argued that the sanction provision targeted a problem which had not been evident to date. Due to the overwhelming comments on this proposed rule, the Committee revised and modified the sanction provision.¹¹

The revisions to Rule 3001(c)(2)(D) provides the court with an either/or choice in determining whether sanctions are appropriate and further keeps the door open for the creditor to present the omitted information at a later hearing on the matter. A mere failure to provide the required information does not, standing alone, constitute grounds for disallowance of the claim.¹² The

⁸ *Id.* at B-36.

⁹ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Federal Rules Published for Comment" hyperlink; then follow "Proposed Bankruptcy Rules and Forms Amendments" hyperlink at p. 15-Attachment A-part3 of Official Form 10).

¹⁰ *Id.* at 14-15-Attachment A-Parts 1-2.

¹¹ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Pending Rules Amendments" hyperlink; then scroll down to "Amendments Approved By Judicial Conference (September 2010)" hyperlink at Appendix B-p.B-9).

¹² *Id.* at B-12.

standard the court will apply is whether “the failure was substantially justified or is harmless.”¹³ How this will be measured remains to be seen, however, when litigation arises concerning whether a claim should be allowed when the creditor has failed to comply, the discretion lies with the court. The court may allow the information to be supplied (and any amendment to the proof of claim) or the court may refuse the creditor’s introduction of said evidence. This rule also leaves the door open for the court to impose a sanction that goes beyond the failure to allow the evidence or amendment to the proof of claim.¹⁴

WHAT YOU NEED TO KNOW IF THE AMENDMENTS TO RULE 3001 ARE PASSED:

1. If you are filing a claim that includes interest, fees, expenses or other pre-petition charges in addition to the principal amount, you are **REQUIRED** to file an itemized statement of these charges with your proof of claim. **THIS IS MANDATORY.**
2. If you are filing a claim that asserts a security interest in the debtor’s property, you are **REQUIRED** file a statement with your proof of claim stating the amount necessary to cure any default as of the petition date. **THIS IS MANDATORY.**¹⁵
3. If the claim you are filing asserts a security interest in the debtor’s principal residence, you are **REQUIRED** to file the appropriate Official Form as an attachment to your proof of claim. Further, if the loan is an escrowed loan, you are **REQUIRED** to attach to the proof of claim, an escrow account statement prepared as of the petition date. **THIS IS MANDATORY.**¹⁶

These rules, if approved, will take effect on **December 1, 2011**.

C. The New Provisions of Rule 3001(c)(3)

The Rules Committee has also published for public comment as of August, 2010, an additional amendment to Rule 3001(c). The Committee has recommended that a subsection (c)(3) be added to address claims based on open-end or revolving consumer credit agreements. For claims based on open-end or revolving consumer agreements, subsection (A) requires the creditor to file with the proof of claim, a statement containing the following information, as applicable:

¹³ *Id.* at B-37.

¹⁴ *Id.* at B-39.

¹⁵ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow “Federal Rules Published for Comment” hyperlink; then follow “Proposed Bankruptcy Rules and Forms Amendments” hyperlink at p. 15-Attachment A-Part 3 of Official Form 10).

¹⁶ *Id.* at 14- Attachment A-Parts 1-2; See also Proposed Rule 3001(c)(2)(A-D).

1. The name of the entity from whom the creditor purchased the account;
2. The name of the entity to whom the debt was owed at the time of the last transaction on the account by an account holder;
3. The date of the last transaction on the account by the account holder;
4. The date of the last payment on the account;
5. The date on which the account was charged to profit and loss.¹⁷

Subsection (B) of the amendments further provides that the holder of a claim based on an open-end or revolving consumer credit agreement shall provide a party in interest the documentation specified in paragraph (1) of Rule 3001(c) provided said request is in writing. The documents specified in paragraph (1) are the original or duplicate of the writing upon which an interest in property of the debtor has been obtained or a statement of circumstances of the loss or destruction of said writing.¹⁸

The intent of this amendment appears to be to assist the debtor in identifying the claim (usually for credit cards) for a past account owed by the debtor. The committee notes to this amendment discuss how claims are sold one or more times prior to the debtor's bankruptcy filing resulting in the debtor's inability to recognize the name of the claim holder. By requiring the creditor to disclose this information, the debtor will be able to "relate-back" the information to a known account. The information required by this amendment will also serve as a tool in determining the timeliness of the claim.¹⁹

If the amendment to Rule 3001(c)(3) obtains final approval, it will become effective **December 1, 2012**.

D. A New Provision - Rule 3002.1

The Committee has also recommended for final approval a new rule concerning claims secured by a security interest in the Debtor's principal residence. We mention it here as it relates to the major revisions to Official Form 10-the Proof of Claim form, that have been recommended for final approval and should become effective December, 2011.²⁰

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7.

¹⁹ See <http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview.aspx>, (follow "Standing Rules Committee Approved Proposed Rules and Forms Amendments:June2010" hyperlink at Committee Notes p.3).

²⁰ See <http://www.uscourts.gov/RuleandPolicies/FederalRulemaking/Overview.aspx>, (follow "Pending Rules Amendments" hyperlink; then scroll down to "Amendments Approved By Judicial Conference (September2010)" hyperlink at Appendix B-p. B-12).

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Briefly, proposed Rule 3002.1, as revised, applies when the creditor holds a claim secured by a security interest in the debtor's principal residence and the debtor's plan provides for treatment of the claim pursuant to 11 U.S.C. 1322(b)(5). The Rule requires the holder of a claim to provide at least 21 days notice of any changes post petition to the debtor's mortgage payment amount. This notice must be given to the debtor, debtor's counsel and the Trustee. The intent of this rule is to allow the debtor to keep track of and maintain mortgage payments during the bankruptcy case as permitted by Section 1322(b)(5) of the Bankruptcy Code.²¹

The Rule also requires the claim holder to file and serve an itemized notice of any post petition fees, expenses or other charges (i.e., inspection fees, late charges, attorney fees, etc.) that the claim holder asserts are recoverable from the debtor or against the debtor's principal residence within 180 days of incurrence.²² There are many other facets to this new proposed rule that are worth reviewing including sanction provisions similar to the ones set forth in Rule 3001(c)(2)(D).

In order to comply with these new requirements, Official Form 10 has been amended to provide Supplements 1 and 2.

1. Supplement 1

Supplement 1 is titled "Notice of Mortgage Payment Change" and implements Rule 3002.1(b). The form provides:

"If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to section 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1."²³

There are four (4) parts to the form:

1. Escrow Account Payment Adjustment;

²¹ *Id.*; See also <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Federal Rules Published For Comment" hyperlink; then follow "Report of the Advisory Committee on Bankruptcy Rules (May,2010) hyperlink at p. 4).

²² See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Pending Rules Amendments" hyperlink; then follow "Amendments Approved By Judicial Conference (September2010)" hyperlink at AppendixB-p.B-40.

²³ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Federal Rules Published for Comment" hyperlink; then follow "Proposed Bankruptcy Rules and Forms Amendments" hyperlink at p. 17-Supplement1 to Official Form 10).

2. Mortgage Payment Adjustment.
3. Other Payment Change;
4. Signature box.

The form requires the creditor to indicate the basis for the new payment amount and the date upon which the new payment amount will take effect. Part 1 of the form requires the holder to attach a copy of the escrow account statement if there will be a change in the debtor's escrow account payment.²⁴

In the event of a change in the debtor's principal and interest payment due to an adjustment to the interest rate in the debtor's variable-rate note, Part 2 of the form requires the holder to attach a copy of the rate change notice and state a basis for the change.²⁵

Part 3 is a "catch-all" provision for any other payment changes.²⁶

Part 4 of the form requires the filer of the form to indicate whether they are (1) the creditor or (2) the creditor's authorized agent. The signature of the filer also certifies the accuracy of the information contained in the proof of claim and acts as a certification that the standards under FRBP 9011(b) have been met.²⁷

It is important to note that this Notice must be filed as a *supplement to the proof of claim* and must be served on the debtor, debtor's counsel and the Trustee.²⁸

2. Supplement 2

Supplement 2 is titled "Notice of Postpetition Mortgage Fees, Expenses and Charges" and implements Rule 3002.1(c). The holder of a claim secured by a security interest in the debtor's principal residence must use this form to notify the debtor, debtor attorney and the Trustee, of all post petition fees, expenses or charges **within 180 days** after they are incurred. The form is required to be filed, *as an attachment to a proof of claim*.²⁹

²⁴ *Id.* at 17-18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 4. See also <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Pending Rules Amendments" hyperlink; then follow "Amendments Approved By Judicial Conference (September 2010)" hyperlink at Appendix B-p.45-48).

²⁹ See <http://www.uscourts.gov/RulesandPolicies/FederalRulemaking/Overview.aspx>, (follow "Federal Rules Published for Comment" hyperlink; then follow "Proposed Bankruptcy Rules and Forms Amendments" hyperlink at p. 20-22-Supplement 2 to Official Form 10).

The form provides:

“If you hold a claim secured by a security interest in the debtor’s principle residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor’s principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.”³⁰

The form does require the claim holder to affirmatively state whether the current notice supplements a prior notice for postpetition fees, expenses or charges and requires the holder to state the date of the prior notice. The form further requires the holder to itemize the following expenses, including the dates incurred and the amounts incurred for:

1. Late charges;
2. Non-sufficient funds (NSF) fees;
3. Attorney fees.
4. Filing fees and court costs;
5. Bankruptcy/Proof of claim fees;
6. Appraisal/Broker’s Price Opinion fees;
7. Property inspection fees;
8. Tax advances (non-escrow);
9. Insurance advances (non-escrow);
10. Property preservation expenses.

The form also puts the filer on notice that the debtor or Trustee may challenge whether the fees, expenses, and charges listed are required to be paid.³¹ As with Supplement 1 to Official Form 10, the form requires the filer of the form to indicate whether they are the creditor or the creditor’s authorized agent. The signature of the filer also certifies the accuracy of the information contained in the proof of claim and acts as a certification that the standards under FRBP 9011(b) have been met. Again, it is important to note that this Notice must be filed as a *supplement to the proof of claim* and must be served on the debtor, debtor’s counsel and the Trustee.³²

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Proposed Rule 3001.2 and the related supplements have many components and very specific requirements. It is worth reviewing as it appears that this Rule and the amendments to Form 10 (and related supplements) have a good chance of being approved.

E. Other Revisions to Official Form 10

The Committee has recommended that the revised version of Official Form 10 (including the Attachments and Supplements), be published for comment. Official Form 10, the Proof of Claim form, has been reformatted and amended to include the following:

1. A new section-3b- has been added to allow the creditor to list a uniform claim identifier. A claim identifier is a 24 character identification number used by some creditors to facilitate the processing of electronic funds transfers received from Chapter 13 Trustees. This number is optional.³³
2. Section 4 has been clarified to require the secured claim holder to disclose the annual interest rate in effect at the time the bankruptcy case was filed. Check boxes to indicate whether the interest rate is fixed or variable were added as well.³⁴
3. Section 7 clarifies and reinforces the requirement of Rule 3001(c) that any writings supporting a claim or evidence of security interest must be attached to the proof of claim and contain redacted information. The form requires the filer to provide an explanation if the documents are not available. The instructions for this section further clarify that summaries of supporting documents are not sufficient standing alone and can only be attached in addition to the documents themselves.³⁵
4. Section 8 revised the date and signature box to explain and reiterate the significance of the signing of the proof of claim form and the “duty of care” required. The instructions to the form further indicate that a signature in this section is a “certification that the claim meets the “requirements of FRBP 9011(b).” This section requires the individual signing the form to provide identifying information and to indicate whether the filer is the creditor or creditor’s agent. If the individual is the creditor’s agent, further identifying information is required.³⁶

³³ *Id.* at 13.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

III. CONCLUSION

The comment deadline for these amendments is February 16th, 2011. Any comments or suggestions may be submitted in an electronic format to Rules_Comments@ao.uscourts.gov or via hard copy to the Secretary of the Committee in Washington, D.C. Public hearings will also be held on the proposed amendments in January 2011. If you would like further information, please consult the court's website -www.uscourts.gov/rules.

B 10 (Official Form 10) (12/11) (08/10 publication draft)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor: _____		Case Number: _____
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		COURT USE ONLY
Name and address where notices should be sent: _____ Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): _____ Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). Amount entitled to priority: \$ _____ <input type="checkbox"/> Up to \$2,600* 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"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

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B 10 (Official Form 10) (12/11) (08/10 publication draft)

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7. Documents: Attached are 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. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted.")

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor. I am a guarantor, surety, indorser, or other codebtor.
(Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____

Title: _____

Company: _____

Address and telephone number (if different from notice address above): _____

(Signature)

(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a):

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

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.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS	INFORMATION
<p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>Creditor A creditor is a person, corporation, or other entity to whom the debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p>Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p> <p>Secured Claim Under 11 U.S.C. §506(a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p> <p>Claim Entitled to Priority Under 11 U.S.C. §507(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p> <p>Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>

DETROIT CONSUMER BANKRUPTCY CONFERENCE

B 10 (Attachment A) (12/11)

(08/10 publication draft)

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: _____ Case number: _____
 Name of creditor: _____ Last four digits of any number you use to identify the debtor's account: _____

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due		\$ _____		
2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	+ \$ _____
	Total interest due as of the petition date			\$ _____
			Copy total here ▶	+ \$ _____
3. Total principal and interest due				\$ _____

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred in connection with the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
Late charges	_____	\$ _____
Non-sufficient funds (NSF) fees	_____	\$ _____
Attorney's fees	_____	\$ _____
Filing fees and court costs	_____	\$ _____
Advertisement costs	_____	\$ _____
Sheriff/auctioneer fees	_____	\$ _____
Title costs	_____	\$ _____
Recording fees	_____	\$ _____
Appraisal/broker's price opinion fees	_____	\$ _____
Property inspection fees	_____	\$ _____
Tax advances (non-escrow)	_____	\$ _____
Insurance advances (non-escrow)	_____	\$ _____
Escrow shortage or deficiency (not included in payments due)	_____	\$ _____
Property preservation expenses. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	+ \$ _____
Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		\$ _____

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

- No
- Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	___/___/___
	Number of installment payments due	_____
2. Amount of installment payments due	_____ installments @	\$ _____
	_____ installments @	\$ _____
	_____ installments @	+ \$ _____

Total installment payments due as of the petition date \$ _____

Copy total here ► \$ _____

Add total prepetition fees, expenses, and charges

Copy total from Part 2 here ► + \$ _____

Subtract total of unapplied funds (funds received but not credited to account)

- \$ _____

Total amount necessary to cure default as of the petition date

\$ _____

Copy total onto Item 4 of Proof of Claim form

DETROIT CONSUMER BANKRUPTCY CONFERENCE

B 10 (Supplement 1) (12/11) (08/10 publication draft)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____
Debtor

Case No. _____

Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: _____ Court claim no. (if known): _____

Last four digits of any number
you use to identify the debtor's
account: _____

Date of payment change: _____ / ____ / ____
Must be at least 21 days after date
of this notice

New total payment: \$ _____
Principal, interest, and escrow, if
any

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- No
 Yes. Attach a copy of the escrow account statement, prepared according to applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: _____

Current escrow payment: \$ _____ New escrow payment: \$ _____

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- No
 Yes. Attach a copy of the rate change notice, prepared according to applicable nonbankruptcy law. Describe the basis for the change. If a notice is not attached, explain why: _____

Current interest rate: _____ % New interest rate: _____ %

Current principal and interest payment: \$ _____ New principal and interest payment: \$ _____

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- No
 Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____ New mortgage payment: \$ _____

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date / /
 Signature

Print: _____ Title _____
 First Name Middle Name Last Name

Company _____

Address _____
 Number Street
 City State ZIP Code

Contact phone (____) _____ - _____ Email _____

DETROIT CONSUMER BANKRUPTCY CONFERENCE

B 10 (Supplement 2) (12/11) (08/10 publication draft)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____
Debtor

Case No. _____

Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: _____

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No
 Yes. Date of the last notice: ____/____/____

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
Late charges	_____	\$ _____
Non-sufficient funds (NSF) fees	_____	\$ _____
Attorney fees	_____	\$ _____
Filing fees and court costs	_____	\$ _____
Bankruptcy/Proof of claim fees	_____	\$ _____
Appraisal/Broker's price opinion fees	_____	\$ _____
Property inspection fees	_____	\$ _____
Tax advances (non-escrow)	_____	\$ _____
Insurance advances (non-escrow)	_____	\$ _____
Property preservation expenses. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____
Other. Specify: _____	_____	\$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date / /
 Signature

Print: _____ Title _____
 First Name Middle Name Last Name

Company _____

Address _____
 Number Street
 City State ZIP Code

Contact phone (____) _____ Email _____

DETROIT CONSUMER BANKRUPTCY CONFERENCE

OFFICE OF THE CHAPTER 13 STANDING TRUSTEE - DETROIT David Wm Ruskin, Trustee

MORTGAGE CLAIM REVIEW CHECKLIST

CASE NAME:	CASE NUMBER:
CREDITOR NAME:	PACER NUMBER:
STAFF NAME:	DATE:

Check all that apply	ID	X	IDENTIFY INFORMATION
<input type="checkbox"/>			1 NAME(S) ON MORTGAGE ARE THE SAME AS DEBTOR(S) NAME(S)
<input type="checkbox"/>			2 ACCOUNT NUMBERS ARE STATED ON CLAIM
<input type="checkbox"/>			3 COLLATERAL IDENTIFIED
<input type="checkbox"/>			4 RECORDED MORTGAGE ATTACHED TO CLAIM
<input type="checkbox"/>			5 NOTE ATTACHED TO CLAIM
<input type="checkbox"/>			6 NAME OF ACTUAL CREDITOR HOLDING THE MORTGAGE APPEARS ON THE CLAIM
<input type="checkbox"/>			7 NAME OF CREDITOR ON CLAIM FACE IS SUPPORTED BY DOCUMENTS ATTACHED
NEGATIVE INFORMATION			
<input type="checkbox"/>			8 ARREARAGE IS ITEMIZED
<input type="checkbox"/>			9 AMOUNT OF ARREARS APPEARS REASONABLE
<input type="checkbox"/>			10 ARREARAGE FIGURE IS MATHEMATICALLY CORRECT
FEES			
<input type="checkbox"/>			11 FEES ARE REASONABLE AND DO NOT APPEAR TO BE EXCESSIVE
<input type="checkbox"/>			12 FEES ARE ITEMIZED
<input type="checkbox"/>			13 FEES/COSTS ARE ONLY THROUGH THE PETITION FILING DATE
CURRENT PAYMENTS			
<input type="checkbox"/>			14 CURRENT MONTHLY PAYMENT PROVIDED AND ITEMIZED
<input type="checkbox"/>			15 PRINCIPLE BALANCE IS STATED
<input type="checkbox"/>			16 INTEREST RATE IS STATED
PERSONALLY IDENTIFIABLE INFORMATION			
<input type="checkbox"/>			17 CLAIM DOES NOT DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION (Social Security Number other than last 4 digits; Taxpayer Identification Number other than last 4 digits; Date of Birth other than year only; Name of minor child; account number other than last 4 digits)

MORTGAGE CLAIM REVIEW CHECKLIST (rev. 7/09)

Where the Rubber Meets the Road: Proofs of Claim and Claims Objections

Filing and Objecting to Claims and the Exclusivity, or not, of 11 USC 502

Overview

The filing of, and objecting to, claims is a fundamental part of any Chapter 7 or Chapter 13 consumer practitioner's practice, and a working knowledge of how to file a proof of claim, drafting objections, what basis' for objections are permissible and proper, and where to find the answers are essential. The following materials provide a review of the basics for filing and objecting to claims in Chapter 7 and Chapter 13 consumer cases¹, followed by a more in-depth review and discussion of 11 USC 502.

Topics:

- Basics Review: Filing a Proof of Claim
- Basics Review: Drafting and Filing an Objection to Claim
- Is 11 USC 502 *the* Exclusive List of Allowable Objections?
- Additional Considerations and Perspectives

Exhibits:

- Official Forms: B10 (Proof of Claim), B20A (Notice of Motion or Objection), and B20B (Notice of Objection to Claim)
- Sample Objection to Claim, which includes the Proposed Order, Notice (as required in the Eastern District of Michigan), Proof of Service, and Certificate of No Response
- Local Form (ED MI): Notice of Hearing on Objection to Claim

Basics Review: Filing a Proof of Claim

Proof of Claims are governed by both the Bankruptcy Code as well as the Federal Rules of Bankruptcy Procedure.

¹ These materials are drafted as the subject matter pertains to consumer cases under Chapter 7 and Chapter 13. Additional or different requirements of Chapter 11 consumer cases are not addressed herein. Practitioners are advised to review the Bankruptcy Code, Federal Rules, and Local Bankruptcy Rules for differences in Chapter 11 cases.

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Under 11 USC 501, creditors are permitted to file proofs of claims and co-debtors, trustees, or debtors are also permitted to file claims on behalf of creditors. Generally speaking, co-debtors, trustees, or debtors will not file a proof of claim until such time as a creditor has failed to do so in a timely fashion, and subparagraphs (b) and (c) of Section 501 provides the circumstances under which they are permitted to do so.

Fed R Bankr P 3001² sets forth the pleading requirements of a proof of claim and provides the authority for creditors or their agents to file those claims. The rule states that “a proof of claim is a written statement setting forth [that] creditor's claim...” and that any claim filed must substantially conform to the official bankruptcy form³. The Rule further states that claims based on a writing must include evidence of that writing, or a statement regarding its absence, with the filed claim. Fed R Bankr P 3001(c), (d). In the case of a claim transferred, creditors must review Fed R Bankr P 3001(e). The filing of a proof of claim, which complies with Fed R Bankr P 3001, constitutes “prima facie evidence of the validity and amount of the claim.” Fed R Bankr P 3001(f). Despite Fed R Bankr P 3001(f), absent objection, claims filed under 11 USC 501 are deemed allowed, absence objection. 11 USC 502(a).

Fed R Bankr P 3002 establishes which types of creditors are required to file a proof of claim and when and where such claims must be filed.

Who: Rule 3002(a) states that “an unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.” There is a split of opinion on whether other secured creditors are required to file a proof of claim in order to receive payment on their claims⁴. Arguably, if a claim is not filed by the secured creditor in a Chapter 13 proceeding, that creditor must accept whatever treatment it is afforded under the terms of the confirmed plan.

When: In Chapter 7 and Chapter 13 cases, claims are timely filed when filed within the 90 days following the first date set for the meeting of creditors. Fed R Bankr P 3002(c). Exceptions to this deadline are set forth in the subparagraphs of Rule 3002(c). Practitioners in the Western District of Michigan must be aware of LBR 3002(b) (WD MI) as “claims are deemed filed on the date and time received by the Clerk unless the Court orders otherwise.” Note that in Chapter 7 cases, typically claims are not filed unless and until the Trustee notifies creditors to do so.

² As currently written.

³ Official forms can be found online at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>. Copies of the current official forms are included at the end of these materials.

⁴ See *In re Mehl*, 04-85570 (CD IL 2004), *In re Oslanci*, 05-80054 (ED MI 2006), *In re Baldrige*, 232 BR 394 (1999), *In re Macias*, 195 BR 659 (1996), *In re Dennis*, 230 BR 244 (1999), *In re Hudson*, 260 BR 421 (2001). Note that these cases are provided as relevant to the debate of whether a claim needs to be filed, not as relevant to on-going lien status of secured creditors absent a timely filed proof of claim.

Where: Subsection (b) of Fed R Bankr P 3002 states that claims must be filed in accordance with Fed R Bankr P 5005, which directs that all pleadings must be “filed with the clerk in the district where the case...is pending.”

Note that requirements for claims filed by trustees, debtors, co-debtors, or guarantors, are set forth in Fed R Bankr P 3004 and 3005.

Secured creditors with claims in the Eastern District of Michigan must also abide by LBR 3001-2 (ED MI) for periodic adjustment of their claims during the pendency of a Chapter 13 case. It does not appear that the Western District of Michigan has adopted a similar local rule.

In the Western District of Michigan, secured creditors entitled to adequate protection payments pursuant to 11 USC 1326(a)(1)(C) must file a proof of claim in order to receive said payments. LBR 3016(b)(3) (WD MI).

For further information and discussion on this topic, practitioners may wish to read “Proof of Claim: Whether to File, and If So, How to File” by Calton, Giunta, and Bruski; *The Michigan Business Law Journal* (Spring 2010).

Basics Review: Drafting and Filing an Objection to Claim

Fed R Bankr P 3007(a) governs the procedural aspects of objecting to claims and noticing requirements. Specifically, objections must be in writing and served on the creditor, debtor, and trustee, and the parties are entitled to at least 30 days notice of the objection. Fed R Bankr P 3007(b) prohibits an objection to claim from containing a request for relief enumerated in Fed R Bankr P 7001, such requests may only be sought through an adversary proceeding.

Eastern District of Michigan

LBR 3007-1 (ED MI) sets forth further requirements for the objection to claims process in the Eastern District of Michigan. A sample objection, including all attachments and a sample Certificate of No Response, can be found in the Exhibit section of these materials.

LBR 3007-1 (ED MI) requires that in addition to the requirements of Fed R Bankr P 3007, objections to claims must include local form “Notice of Hearing on Objection to Claim”.⁵ Further, objections must be served on the creditor and a certificate of service must be filed. LBR 3007-1 (ED MI).

To complete the Notice of Hearing, the objecting party must select a date and time for the hearing from the list of available dates on the Court’s website at least 30 days⁶ after service of the objection. These dates are found at www.mieb.uscourts.gov/courtDocket/objClaims.cfm.

⁵ Local forms for the Eastern District of Michigan may be found online at <http://www.mieb.uscourts.gov/rulesAndForms/localForms.html>.

⁶ The hearing must actually be scheduled 33 days after the date of service to account for mailing regardless of whether the creditor received electronic notice or not.

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In the event that no response to the objection is filed at least 7 days prior to the date set for hearing, the objecting party may file a Certificate of No Response and submit an order to the Court for entry without hearing. The Court may, at its discretion, still hold the hearing and, pursuant to LBR 3007-1(c), will notify the objecting party that the hearing will proceed as scheduled.

Is 11 USC 502 *the* Exclusive List of Allowable Objections?

Fed R Bankr P 3007 does not set forth the grounds for objecting to claims; for that, the practitioner must look to 11 USC 502 and, depending on the district, perhaps the Code and the Rules together.

For purposes of these materials, the discussion will be limited to an examination of Subsection (b) of 11 USC 502, which provides that:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if [an] objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

- (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
- (2) such claim is for unmatured interest;
- (3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
- (4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;
- (5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523 (a)(5) of this title;
- (6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—
 - (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
 - (i) the date of the filing of the petition; and
 - (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
 - (B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726 (a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

Upon reading this section of the Code, one may be under the impression that there are only nine grounds on which to objection to a creditor’s claim. However, the enumerated grounds may or may not address the issue of the objecting party. Therefore, a split of authority has evolved on whether or not the list enumerated in Section 502(b) serves as an exclusive list of permissible grounds for objecting to claims.

A perfect example and discussion of this issue originated in the United States Bankruptcy Court for the District of New Mexico in the case of Patricia M. Kirkland. Ms. Kirkland’s debts included an unsecured debt ultimately owed to B-Line, LLC. The creditor filed its proof of claim, but did not attach any supporting documentation. After several other administrative matters transpired, immaterial to this issue, the Trustee objected to the claim of B-Line, asserting that its proof of claim failed to comply with Fed R Bankr P 3001. Following a hearing, the Court disallowed the claim of B-Line, LLC, from which the creditor appealed to the 10th Circuit Bankruptcy Appellate Panel.

The 10th Circuit BAP, ruling that 11 USC 502 does contain the exclusive list of grounds to object to a proof of claim, identified the split of authority as that of an ‘exclusive view’ and ‘non-exclusive view’ and, following the ‘exclusive view’, reasoned that:

The Exclusive View gives effect to the plain language of the statute. Section 502 uses mandatory language, by providing that the court “shall” allow a claim

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“except to the extent that” one of nine exceptions apply. None of these exceptions recognize the failure to adhere to the requirements of the Rules. The list of exceptions is not preceded by the word “including,” which would have established a non-exclusive list.^{FN13} Thus, the statute speaks in absolute terms: the court “shall allow” a claim “except to the extent that” the claim falls into one or more of the enumerated categories of claims.

Footnote 13 references 11 USC 102, specifically: “In this title-- (3) ‘includes’ and ‘including’ are not limiting.”

B-Line, LLC v Kirkland (In re Kirkland), 379 BR 341, 354 (BAP 10th Cir 2007), *rev’d, In re Kirkland*, No 08-2017 (10th Cir 2009)

The Trustee appealed to the 10th Circuit Court of Appeals, which reversed the Bankruptcy Appellate Panel, and therefore adopted the ‘non-exclusive view’. The Court stated that the plain language of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure support the decision of the Bankruptcy Court. As the Court outlines:

The Bankruptcy Code provides that “[a] creditor . . . may file a proof of claim.” 11 USC § 501(a). Because the code does not define “proof of claim,” we look to the Federal Rules of Bankruptcy Procedure. “A proof of claim is a written statement setting forth a creditor’s claim. . . . [It] shall conform substantially to the appropriate Official Form.” Fed R Bankr P 3001(a). The relevant form is Official Form 10, which requires a claimant to “[a]ttach 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.” Fed R Bankr P Official Form 10. Form 10 also instructs a claimant that “[i]f the documents are not available, please explain.” *Id.* When a proof of claim is executed and filed in accordance with the provisions of Rule 3001 (including Official Form 10), it “constitutes prima facie evidence of the validity and amount of the claim.” Fed R Bankr P 3001(f).

In re Kirkland, No 08-2017 (10th Cir 2009)

While clearly the Court of Appeals decision binds in the 10th Circuit, the reasoning set forth in both the BAP and Court of Appeals decisions raise viable positions on both sides of the argument.

As referenced in the *Kirkland* 10th Cir BAP opinion, see also: *In re Heath*, 331 BR 424 (9th Cir BAP 2005); *In re Burkett*, 329 BR 820 (BankR SD Ohio 2005); *In re Kemmer*, 315 BR 706 (Bankr ED Tenn 2004); *In re Shaffner*, 320 BR 870 (Bankr WD Mich 2005) for decisions consistent with the ‘exclusive view’. For decisions following the ‘non-exclusive view’, see also: *In re Stoecker*, 5 F3d 1022 (7th Cir. 1993); *In re Tran*, 369 BR 312 (SD Tex 2007); *In re Armstrong*, 320 BR 97 (Bankr ND Tex 2005); *In re Jorczak*, 314 BR 474 (Bankr D Conn 2004).

See also “Filing a Proof of Claim: A Simple Procedure or a Complicated Mess?” by A. Swick; *ABI Journal*, Vol. XXVIII, No. 6, July/August 2009.

So, though there appears to be a split of authority on whether 11 USC 502(b) is an exclusive list of grounds on which one may object to a creditor's proof of claim, and no known binding authority has been established in the Eastern District of Michigan, a cursory review of local Court decisions may reveal an anticipated result if such an argument is raised against an objecting party. See *In re Senczyszyn*, Case 09-49868, ED MI (502(b) identifies nine separate grounds for the Court to disallow a claim.), *In re Chubb*, Case 09-60618, ED MI (502(b) sets forth nine separate grounds for disallowance of claims.), *In re Hughes*, Case 03-65944, ED MI (Failure to comply with FRBP 3001 is sufficient basis for objection to claim.)

Additional Considerations and Perspectives

Notwithstanding the grounds enumerated in 11 USC 502, depending on the interest of the party reviewing a claim, there are additional considerations to be made when evaluating the sufficiency of a proof of claim and deciding whether to object.

The Trustee

The Trustee typically reviews claims to determine if the claim complies with Fed R Bankr P 3001 and 3002 and applicable local rules; if attached documents support the claim as filed, such as mortgage proofs of claims; and whether or not the claim is duplicative. The Trustee's responsibility is to insure that he or she can administer the claim in accordance with the Bankruptcy Code, and in the case of a Chapter 13, in accordance with the confirmed plan.

Debtor's Counsel

Debtor's counsel must identify the ultimate objective of his or her client's case in determining whether an objection to claim is necessary or warranted. Generally, the evaluation of claims rises in the context of Chapter 13. And in that context, several different things can come into play in reviewing proofs of claims. Counsel must determine whether the claim as filed requires an amendment or modification of the plan, whether filing an objection is in the best interest of the client, and whether the claim as filed will prevent or hold up confirmation of the plan. As any of these issues can have a serious impact on the feasibility of the plan and, ultimately on the client's likelihood of achieving a discharge, it is best to review claims as they are filed and address each accordingly.

- a. ***Claim asserts variables at odds with the plan.*** An example of this issue can best be illustrated with a mortgage claim. Perhaps the plan provides for \$10,000.00 in Class 4 arrears to be paid over 36 months at \$277.78 per month, and will provide a dividend of 30% to Class 8 unsecured creditors. If the mortgage creditor's claim as filed asserts an arrearage of \$16,000.00, the plan payment must be increased to cure Class 4 over the original 36 months proposed (as the mortgage creditor must receive \$444.45 per month for that period), the dividend to the Class 8 unsecureds must be lowered if the Debtor wishes to simply reallocate a portion of his or her plan payment to address the arrearage, or some other change will be required. Failure to react to the discrepancy between the plan and the claim will result in the plan being underfunded. In this scenario, it is often times easier, depending on how early the mortgage claim is filed, to amend the plan. If

DETROIT CONSUMER BANKRUPTCY CONFERENCE

the claim is filed after confirmation, the practitioner may wish to object to the claim or file a plan modification to address the issue.

- b. **Objections vs economics.** Often times when an objectionable claim is filed, it may be less costly to the Debtor to “permit” the claim to be paid rather than to object. For instance, if the plan provides for a 10% dividend and a claim is filed asserting \$900.00, regardless of the grounds for objection, the practitioner is well advised to evaluate the attorneys costs associated with objecting to a claim that will ultimately only receive \$90.00. This evaluation is appropriate regardless of the proposed dividend to the Class 8 creditors as the real dollar benefit to the creditor will vary depending on the amount of the claim and the dividend to be paid to the General Unsecured Creditors.
- c. **Preventing or delaying confirmation.** When the plan proposes that the Debtor make certain payments directly to specific creditors, such as a mortgage or auto creditor, counsel must review those proofs of claims in particular, as they are filed. In the Eastern District of Michigan, if such a claim is filed and reflects an arrearage, the Chapter 13 Trustee may require the filing of an amended plan or an objection to claim in order to resolve outstanding issues to Confirmation, as the Trustee may not be able to properly administer only the arrearage portion of the claim while the Debtor maintains “direct payments”.

Conclusion

The filing of, and objecting to, Proof of Claims may not be a standard procedure in every office, but understanding the process, the Code sections, the applicable rules, and the arguments that may arise, is a necessity for every practitioner to handle this inevitable aspect of any consumer bankruptcy practice.

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: _____		Case Number: _____
NOTE: <i>This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____
Name and address where notices should be sent: _____		
Telephone number: _____		
Name and address where payment should be sent (if different from above): _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number: _____		
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* 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"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____ <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
2. Basis for Claim: _____ (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. 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. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction 7 and definition of "redacted" on reverse side.)</i> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: _____	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

DETROIT CONSUMER BANKRUPTCY CONFERENCE

B 10 (Official Form 10) (04/10) – Cont.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

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.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

DETROIT CONSUMER BANKRUPTCY CONFERENCE

Official Form 20B
(12/03)

United States Bankruptcy Court

_____ District Of _____

In re _____)
Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
_____) Chapter _____)
Employer's Tax Identification (EIN) No(s). *[if any]:* _____)
Last four digits of Social Security No(s): _____)

NOTICE OF OBJECTION TO CLAIM

_____ has filed an objection to your claim in this bankruptcy case.

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, then on or before (date), you or your lawyer must:

{If required by local rule or court order.}

[File with the court a written response to the objection, explaining your position, at:

{address of the bankruptcy clerk's office}

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above.

You must also mail a copy to:

{objector's attorney's name and address}

{names and addresses of others to be served}]

Attend the hearing on the objection, scheduled to be held on (date), (year), at _____ a.m./p.m. in Courtroom _____, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: _____

Signature: _____

Name:

Address:

SAMPLE OBJECTION TO CLAIM

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:
Debbie Debtor

Case No.
Chapter 13
Judge Bankruptcy

Debtor(s)

_____ /

DEBTOR'S OBJECTION TO THE PROOF OF CLAIM OF CONSUMER CREDITOR

NOW COME(S), Debtor(s) Debbie Debtor, by and through her attorney, Caralyce M. Lassner and in support of her objection to the Proof of Claim of Consumer Creditor, state(s):

1. Debtor(s) filed for Chapter 13 relief on September 1, 2010.
2. Consumer Creditor filed a Proof of Claim on September 14, 2010.
3. Consumer Creditor's Proof of Claim sets forth an arrearage in the amount of \$258.16.
4. Debtor(s) are current on her obligation to Consumer Creditor.

WHEREFORE, Debtor prays that this Honorable Court amend the Proof of Claim of Consumer Creditor and grant any further and other relief as this Court deems equitable and just.

CARALYCE M. LASSNER, JD, PC

Dated: October 8, 2010

/s/ Caralyce M. Lassner
Caralyce M. Lassner (P59245)
30150 Telegraph Rd., Ste. 444
Bingham Farms, MI 48025
(248) 723-6100
ecf@lassnerlaw.com

Sample

DETROIT CONSUMER BANKRUPTCY CONFERENCE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:
Debbie Debtor

Case No.
Chapter 13
Judge Bankruptcy

Debtor(s)

_____ /

ORDER AMENDING PROOF OF CLAIM OF CONSUMER CREDITOR

This matter come before the court upon the Objection to Proof of Claim filed by the Debtor pursuant to L.BR 3007-1 (E.D.M.), the Objection having been served with the Notice of Objection to Claim in accordance with the local bankruptcy rules, the requisite time for a response having passed, no response to the Objection having been timely filed and served or all objections having been withdrawn, and the Court being otherwise sufficiently advised in the premises;

IT IS HEREBY ORDERED that the Proof of Claim filed on behalf of Consumer Creditor on or about September 14, 2010 is amended to reflect no arrearage owing on the claim of Consumer Creditor.

IT IS FURTHER ORDERED that the Standing Chapter 13 Trustee is absolved of any duty to recoup payments previously made to Consumer Creditor.

U.S. BANKRUPTCY JUDGE

PROPOSED ORDER

Sample

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
Debbie Debtor

Case No.
Chapter 13
Judge Bankruptcy

Debtor(s)

_____ /

NOTICE OF OBJECTION TO CLAIM

Please take notice that the Debtor, by and through her attorney, Caralyce M. Lassner, has filed an objection to your claim in this bankruptcy case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to deny or change your claim, then on or before **<7 days prior to hearing date>**, you or your lawyer must:

1. File with the court a written response* to the objection, explaining your position, at:

U.S. Bankruptcy Court
211 W. Fort Street, Suite 1700
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so that the court will receive it on or before the date stated above.

You must also mail a copy to:

Caralyce M. Lassner, 30150 Telegraph Rd., Ste. 444, Bingham Farms, MI 48025

Chapter 13 Trustee, street address, etc.

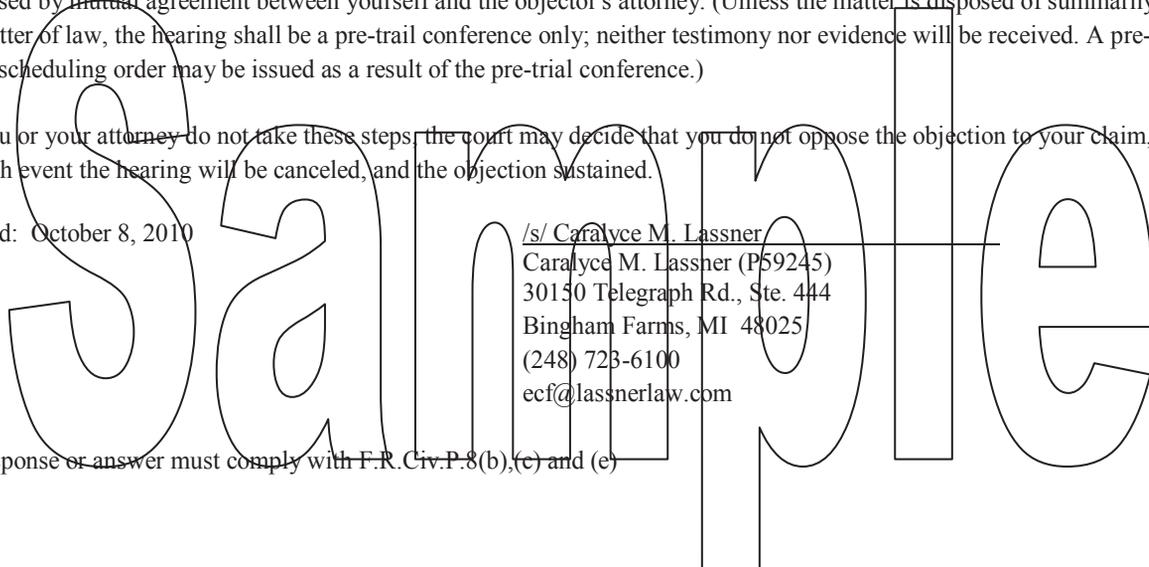
2. Attend the hearing on the objection, scheduled to be held on **<at least 30 day notice>** at **<enter time>** in the Courtroom of Judge **Bankruptcy, 211 W. Fort, Courtroom 1800, Detroit, MI 48226**, unless your attendance is excused by mutual agreement between yourself and the objector's attorney. (Unless the matter is disposed of summarily as a matter of law, the hearing shall be a pre-trial conference only; neither testimony nor evidence will be received. A pre-trial scheduling order may be issued as a result of the pre-trial conference.)

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim, in which event the hearing will be canceled, and the objection sustained.

Dated: October 8, 2010

/s/ Caralyce M. Lassner
Caralyce M. Lassner (P59245)
30150 Telegraph Rd., Ste. 444
Bingham Farms, MI 48025
(248) 723-6100
ecf@lassnerlaw.com

*Response or answer must comply with F.R.Civ.P.8(b),(c) and (e)



DETROIT CONSUMER BANKRUPTCY CONFERENCE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re: Case No.
Debbie Debtor Chapter 13
Judge Bankruptcy
Debtor(s)

PROOF OF SERVICE

Caralyce M. Lassner, being sworn, deposes and says that on October 8, 2010 she served a copy of Debtor's Objection To The Proof of Claim of Consumer Creditor, (Proposed) Order Granting Debtor's Objection To The Proof of Claim, Notice of Objection To Claim, and Proof of Service in said case upon the following parties by depositing said copies in the U.S. Mail, postage prepaid, properly addressed as follows:

TRUSTEE:

Chapter 13 Trustee, street address, etc.

CREDITOR:

Consumer Creditor, 123 Main Street, Southfield, MI 48037

Dated: October 8, 2010

/s/ Caralyce M. Lassner
Caralyce M. Lassner (P59245)
30150 Telegraph Rd., Ste. 444
Bingham Farms, MI 48025
(248) 723-6100
ecf@lassnerlaw.com

Sample

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:
Debbie Debtor

Case No.
Chapter 13
Judge Bankruptcy

Debtor(s)

_____ /

CERTIFICATE OF NO RESPONSE

This matter having come before the court on Debtor's objection to the Proof of Claim of Consumer Creditor filed on September 14, 2010 said Objection having been filed on September 15, 2010 and no timely or proper response has been filed with the Court, and the Court is fully advised in the premises.

CARALYCE M. LASSNER, JD, PC

/s/ Caralyce M. Lassner
Caralyce M. Lassner (P59245)
30150 Telegraph Rd., Ste. 444
Bingham Farms, MI 48025
(248) 723-6100
ecf@lassnerlaw.com

Sample

DETROIT CONSUMER BANKRUPTCY CONFERENCE

Form B20B (Official Form 20B)
(9/97)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN

In re: _____ **Chapter:** _____ **Proceeding**
Case No.: _____

Debtor. _____ **Judge:** _____

NOTICE OF OBJECTION TO CLAIM

_____ has filed an objection to your claim in this bankruptcy case.

Your claim may be reduced, modified, or denied. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to deny or change your claim, then on or before _____, you or your lawyer must:

1. File with the court a written response to the objection, explaining your position, at:

U.S. Bankruptcy Court
(Mail to correct Court Address
Detroit, Flint or Bay City)

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

{debtor's name and address}
{trustee's name and address}
{objector's attorney's name and address and telephone number}
{creditor's name and address if not represented by an attorney}

2. Attend the hearing on the objection, scheduled to be held on _____, at _____ a.m./p.m. in Courtroom _____, United States Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan, unless your attendance is excused by mutual agreement between yourself and the objector's attorney. (Unless the matter is disposed of summarily as a matter of law, the hearing shall be a pre-trial conference only; neither testimony nor other evidence will be received. A pre-trial scheduling order may be issued as a result of the pre-trial conference.)

If you or your attorney do not take these steps, the Court may deem that you do not oppose the objection to your claim, in which event the hearing will be canceled, and the objection sustained.

Date: _____

Signature: _____
Name:
Address:

WHERE THE RUBBER MEETS THE ROAD: PROOFS OF CLAIMS AND CLAIMS OBJECTIONS

Prima Facie Evidence of the Validity of the Claim, Burden of Proof, Burden of Persuasion, and Order of Proofs

A creditor who files a proof of claim has certain requirements to meet. See Fed.R.Bankr.P. 3001 and 3002. If those requirements are met, the proof of claim is considered to be prima facie valid unless an interested party objects. See Fed.R.Bankr.P 3001(f) which provides that a “proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” Likewise, 11 U.S.C. 502(a) states that a “claim or interest, proof of which is filed under section 501 of this title, is deemed allowed unless a party in interest . . . objects.”

If an interested party objects, how is the court to determine the validity of the claim? What does it mean that a properly filed claim is prima facie evidence of its validity? Who has the burden of proof and persuasion? Who presents their proofs first?

The concepts of burden of proof, burden production and burden persuasion can be confusing. Black’s Law Dictionary provides the following definitions:

Burden of persuasion. The onus on the party with the burden of proof to convince the trier of fact of all elements of his case.

Burden of producing evidence. The obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

Burden of proof. In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

Burden of proof is a term which describes two different concepts: first, the ‘burden of persuasion’, which under traditional view never shifts from one party to the other at any stage of the proceeding, and the second, the ‘burden of going forward with the evidence,’ which may shift back and forth between the parties as the trial progresses. [Black’s Law Dictionary 102 (abridged 5th ed. 1983)(emphasis added).

The Bankruptcy Rules are silent in terms of setting forth who has the burden of proof when it comes to determining the validity of claims. *Raleigh v. Illinois Department of Revenue*, 530 U.S.

DETROIT CONSUMER BANKRUPTCY CONFERENCE

15, 120, S. Ct. 1951, 147 L. Ed. 2d 13 (2000)(holding that if there is state law that dictates who has the burden of proof, the state law must be followed for purposes of determining the validity of a claim). Moreover, this author did not find any binding precedent in the Sixth Circuit. However, there is case law that provides guidance on the subject.

In *In re Salem*, 465 F.3d 767, 779 (7th Cir. 2006), the Seventh Circuit Court of Appeals framed the question as follows:

The allocation of the burden of proof has been the subject of some debate. *Federal Rule of Bankruptcy Procedure 3001(f)* makes a proper proof of claim with the accompanying documents "prima facie evidence of the validity and amount of the claim." The Supreme Court observed in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, 120 S. Ct. 1951, 147 L. Ed. 2d 13 (2000), that "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Id. at 21*. "The legislative history indicates that the burden of proof on the issue of establishing claims was left to the Rules of Bankruptcy Procedure." *Id. at 22 n.2*. The Court observed that the rules are "silent on the burden of proof for claims"; although *Rule 3001(f)* provides that the claim itself is *prima facie* evidence, the Rules are silent as to what to do when a trustee, or in this case the debtor, "disputes a claim." *Id.* This open question has two obvious potential answers. One is that the submission of the claim itself, with proper supporting documentation, shifts the burden of production to the debtor to provide evidence why the claim is invalid, leaving the burden of persuasion with the creditor. The alternate is that once the claim is filed, both the burdens of production and persuasion shift to the debtor. [*Id.* (emphasis added).]

According to the *Salem* court, there are two ways to handle an objection to a claim. One way is to place the burden on the objecting party to show why the claim is invalid but still leave the burden of persuasion with the creditor. The other way is to put both the burden of production and persuasion on the objecting party. The case law indicates that a majority of courts have adopted the first approach.

First Option: Once a creditor properly executes and files a proof of claim, the burden of production shifts to the objecting party to show why the claim is not valid but the burden of persuasion remains with the creditor.

In *Lundell v. Anchor Construction Specialist, Inc. (In re Lundell)*, 223 F.3d 1035(9th Cir. 2000), the Ninth Circuit chose the first option. In *Lundell*, the individual debtor had invested and had become a partner in a construction company which eventually failed. A creditor of the construction company filed a claim in the individual debtor's bankruptcy case. The debtor objected to the claim by arguing that he did not owe the debt. The debtor's main argument was

that he should be allowed to disavow the partnership because he did not realize he had signed a partnership agreement when he was lending money to the construction company. The bankruptcy court conducted an evidentiary hearing and found the debtor's testimony to lack credibility. When it ruled in favor of the creditor, the bankruptcy court stated that the debtor failed to meet his burden of proof. The debtor appealed by arguing that the bankruptcy court improperly placed the burden of proof on him. The district court ruled that the bankruptcy court had improperly required the debtor to prove he did not have the requisite intent to enter into the partnership. The claimants appealed.

The United States Court of Appeals for the Ninth Circuit established the rules on how to proceed as follows:

Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991)); see also *Ashford v. Consolidated Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (Bankr. 9th Cir. 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996). To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.' *In re Holm*, 931 F.2d at 623.

* * *

'If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.' *In re Consol. Pioneer*, 178 B.R. at 226 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). The ultimate burden of persuasion remains at all times upon the claimant. See *In re Holm*, 931 F.2d at 623. [*Lundell* at 1039 (emphasis added).]

The *Lundell* Court found that although the bankruptcy court had caused unnecessary confusion by using the term "burden of proof" it had not erred. To go forward, the debtor was required to produce evidence that would negate the prima facie validity of the claim. *Lundell* at 1040. Here, the claim included evidence of the existence of the partnership agreement. Although the debtor's testimony attempted to negate the existence of the partnership agreement, his testimony was not credible. Therefore, the debtor failed to negate an essential element of the claim. The Ninth Circuit explained:

It was not improper for the bankruptcy court to evaluate the credibility of *Lundell's* testimony. Courts have noted that 'in practice, the objector must produce evidence which, if believed, would refute at least one of the allegations' that is the basis of the proof of claim. See *In re Consol. Pioneer*, 178

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B.R. at 226 (quoting *In re Allegheny*, 954 F.2d at 173-74); *In re Holm*, 931 F.2d at 623. However, such language does not translate into a command that the trial court accept as true all evidence submitted by the objector, especially if presented in an evidentiary hearing in which both parties are provided with ample opportunity to present evidence. [*Lundell*, n.2 at 1040 (emphasis added).]

The *Lundell* court held that a party objecting to a proof of claim must produce evidence that negates an essential element of the claim. A trial court is permitted to weigh the credibility of the objector's evidence against the evidence that supports the claim itself. If the objector fails to produce evidence that negates an element of the claim, the claimant has no burden to provide additional proof to establish the validity of the claim. *Lundell* at 1041.

In *In re Hughes*, 313 B.R. 205 (Bankr. E.D. Mich. 2004)(Judge McIvor), the bankruptcy court also seemed to use the first approach. In *Hughes*, the debtor objected to two unsecured claims filed by eCast. The debtor argued that the claims failed to establish that eCast was an agent or assignee of the original creditor. The bankruptcy court explained:

During the claims allowance process, the burden of proof shifts between the parties. Initially, a creditor bears the burden of establishing its claim. See *Fed. R. Bankr. P. 3001(f)*. If a claim is based on a writing, a copy of the writing is to be filed along with the proof of claim. *Fed. R. Bankr. P.3001(c)*. Once a creditor properly executes and files a proof of claim in accordance with the Federal Rules of Bankruptcy Procedure, its proof of claim is considered 'prima facie evidence of the validity and amount of the claim.' *Fed. R. Bankr. P. 3001(f)*; *In re Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993); *Ashford v. Consolidated Pioneer Mortgage*, (*In re Consolidated Pioneer Mortgage*), 178 BR. 222 (B.A.P. 9th Cir. 1995). Generally, courts have held that when a proof of claim fails to comply with the requirements of *Rule 3001(c)*, the claim will not be considered *prima facie* valid as to the claim or amount. See *In re Henry*, 311 B.R. 813, 817 (Bankr. W.D. Wash. 2004) (citations omitted).

If a party objects to the claim, the objecting party carries the burden of going forward with evidence to overcome the *prima facie* validity and amount of the claim. See *In re Dow Corning Corp.*, 250 BR. 298, 321 (Bankr. E.D. Mich. 2000) (citing *Juniper Dev. Group, Etc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993) and *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). If the objecting party produces evidence to refute at least one of the allegations essential to the claim's legal sufficiency, the burden of persuasion shifts back to the claimant. Id. (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). The claimant ultimately bears the burden of proving the validity of the claim by a preponderance of the evidence. Id.; accord *In re Hollars*, 198 BR. 270, 271 (Bankr. S.D. Ohio 1996). [*Hughes* at 208-209 (emphasis added).]

Although the *Hughes* court mentioned that the burden of persuasion shifts back to the claimant, the court relied on the case of *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992) for this proposition and the *Allegheny* case explicitly stated that "[t]he burden of persuasion is always on the claimant." *Allegheny* at 174.

Both the *Lundell* and *Hughes* courts recognized that once a creditor properly executes and files a proof of claim, the burden of production shifts to an interested party to show why the claim is not valid. It is not sufficient for the objecting party merely to raise an objection. Rather, the objecting party must produce evidence that sufficiently challenges at least one essential element of the claim. If the objecting party meets this burden, the court then looks to the claimant to either produce more evidence and/or persuade the court that the claim is valid.

Second Approach: Once a creditor properly executes and files a proof of claim, the burden of production and the burden of persuasion shift to the objecting party to show why the claim is not valid.

The difference between the first and second approach rests on who has the burden of persuasion. While no case law was found that explicitly said the burden of persuasion shifts to the objecting party, the concepts can easily overlap. Black's Law Dictionary defines the "burden of persuasion" as being the onus on the party with the burden of proof to convince the court of all elements of the case. Black's Law Dictionary 102 (abridged 5th ed. 1983). This definition suggests that the burden of persuasion rests with the party who has the burden of proof. Likewise, the definition of "burden of proof" includes the "burden of production." *Id.*

As set forth above, the objecting party has a burden of production when a properly filed claim is being challenged. To meet the burden, the objecting party must produce evidence that is sufficient to challenge an essential element of the claim. The sufficiency of that evidence may be at issue and may require the objecting party to try persuade the court as it weighs the evidence. See *Lundell* where the court found the testimony of the objecting party not to be credible and therefore insufficient to challenge the validity of the claim. Accordingly, there may be times when the objecting party must persuade the court that it has met its burden of production in order for the court to shift the burden of proof back to the claimant to defend the claim.