

BEING A CREDITOR IN A BANKRUPTCY CASE

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These are unprecedented times. While virtually nothing is certain, one thing that most people agree on is that there will be a wave of bankruptcies. What should you do if a company you deal with files? Here are a few things to know.

1. **The Automatic Stay.** As soon as a company files for bankruptcy (it is called a debtor or debtor-in-possession), any collection efforts against it (whether it is a demand letter, a lawsuit or anything else) must immediately stop. The purpose of the automatic stay is to give the company breathing space to figure out what it is going to do. The automatic stay is most likely the main reason why companies will file. As a creditor, you can ask the court to grant relief from the stay. There is a better likelihood that you will be granted relief if you are a secured creditor. While unsecured creditors can get relief, it is more the exception, rather than the rule.

2. **First Day Motions.** As soon as a company starts the bankruptcy case, it files motions known as “first day motions.” These are motions that will let the company continue to operate, by paying wages owed to employees just before the filing, permitting the company to utilize cash to pay its post filing bills and so forth. Even though you will get formal notice of the filing, that will not happen for a few weeks. By then, the first day motions have already been ruled on. If you hear a rumor that a company you deal with has filed, contact your lawyer immediately. Your attorney will be able to go onto the federal court dockets to see whether the case was filed. Why is this important? There are a number of reasons. For example, if you are what is known as a “critical vendor,” you may be able to get paid what you were owed when the case was filed. The standard to be a “critical vendor” is high, but if the company files that kind of a motion, you should try and have your business included.

3. **Cash Collateral.** If a company borrows money before bankruptcy, the lender will insist on some type of security. This security normally will include,

among other things, liens on real estate and accounts receivable. Once the company files for bankruptcy, it can only use cash either with permission of the lender or with the approval of the court. One of the first day motions will be a request to use cash collateral. The motion will include a budget. You should have your lawyer ask the debtor's attorney to see the budget, to see if the debtor intends to pay you going forward.

4. File a Request for Notices. It is difficult for a non-lawyer to monitor a bankruptcy case. If your lawyer files a request for notices, they will receive everything filed in the case via email.

5. Schedules. Early on in the case, a debtor must file what are called its Schedules. The Schedules are a listing of what a debtor owns and what it believes it owes. It is very important for your attorney to review the Schedules to make sure (1) your claim is included and (2) it is for the right amount. If the amount your company is owed is either not included or included for the wrong amount and you do nothing, what the debtor says in the Schedules will form the basis for the amount you will receive. There is also a Schedule listing all of the debtor's contracts. The debtor gets to decide if it wants to keep or reject the contract. While that happens later in the case, under certain circumstances, you can ask the court to require the debtor decide earlier. There are specific rules (and timing) for leases of non-residential real property.

6. Proof of Claim. In order for you to tell the debtor how much you believe you are owed, you will need to file a proof of claim. This is not something that has to be done immediately and you will receive formal notice of the deadline of when to file, as well as how it is filed.

7. Reclamation. **IF THIS APPLIES TO YOUR COMPANY IT IS IMPORTANT BECAUSE THERE IS A NARROW WINDOW.** Reclamation refers to the right of a seller to reclaim goods sold to a debtor while the debtor was insolvent. The Bankruptcy Code sets out the specific process and timing that has to be followed in order to be able to reclaim your goods. If your company is in this position, it is important that you notify your attorney immediately of the bankruptcy.

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