



Important Issues and Developments When Filing a Proof of Claim

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In some cases, the filing of a [proof of claim](#) by a creditor may not be prudent. Before filing a proof of claim, the creditor should carefully consider the potential effects on the creditor.

Generally, proofs of claim are not required in a [chapter 11](#) bankruptcy case if:

1. the [debtor](#) has scheduled the [claim](#) in its bankruptcy schedules of liabilities
2. the creditor agrees with the amount listed, and
3. the debtor has not scheduled the claim as disputed, contingent, or unliquidated.

In such cases, the schedule of liabilities is *prima facie* evidence of the validity and amount of the claim listed and the scheduled claim is deemed allowed unless a party in interests objects. Notably, the creditor should be aware the debtor may subsequently amend its [schedules](#) to modify the amount or designation of its scheduled claim, which might necessitate the filing of a proof of claim by the creditor.

Consent to Bankruptcy Court Jurisdiction, Waiver of Jury Trial Rights, and Other Potential Effects

In cases where the creditor's claim is not appropriately scheduled by the debtor, commonly, the creditor should file a proof of claim.¹ However, it is well-established that, by [filing a proof of claim](#), the creditor is deemed to have consented to adjudication in the [bankruptcy court](#).² Supreme Court precedent supports the conclusion that, by opting into the bankruptcy case by filing a proof of claim, the creditor has submitted to the bankruptcy court's equitable jurisdiction not just for the claim that it filed, but also for any counterclaims or defenses that the debtor might assert in response, insofar as those counterclaims would necessarily be resolved in the claims allowance process.

Filing a proof of claim may also constitute a waiver of a creditor's Seventh Amendment right to a jury trial.³ Even if a claimant is entitled to a jury trial on a particular action outside of the bankruptcy court, the pursuit of a distribution from the debtor's estate may change the nature of litigation affecting the claim.⁴ While some of the issues are complex, it seems clear that a creditor will be deemed to waive its right to a jury trial in avoidance actions if the creditor files a proof of claim.



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the efficient liquidation of the Debtor's bankruptcy estate."⁵

Once a proof of claim has been filed, the creditor cannot try to withdraw the claim as an improper strategic means to undo the bankruptcy court's jurisdiction.⁶

Conditional Claims and Other Strategic Filings

Because of the potential effects on jurisdictional and jury trial issues, some creditors attempt to avoid or mitigate such effects by (i) styling the document wherein the claim against the debtor is asserted as something other than a proof of claim – like a “Reservation of Rights,” “Conditional Statement,” “Stipulation,” or “Notice” – and (ii) including in said documents, reservations of rights, disclaimers, *etc.* that allegedly avoid the effects of filing the proof of claim. Commonly, bankruptcy courts do not view such reservations of rights, disclaimers, and other similar provisions as binding on the bankruptcy court.⁷

Lastly, it should be noted that, notwithstanding the potential or anticipated effects of filing a proof of claim, the creditor may have some other mechanisms to try to have a forum other than the bankruptcy court to resolve the matter. For instance, depending on the applicable circumstances, the creditor could move the bankruptcy court to abstain from hearing the matter to allow a state court proceeding to resolve the claims, or move the district court to withdraw the reference to the bankruptcy court. For some creditors, it could be

the case they can have the matter arbitrated pursuant to a prepetition arbitration provision in the applicable agreement between the parties. Thus, an arbitrator would liquidate the creditor's claim, instead of the bankruptcy court.⁸

The foregoing brief discussion highlights that in some cases [a creditor's decision to file a proof of claim](#) entails more than reviewing what the expected recovery is in the case under a plan. Depending on the creditor's situation, a myriad of important issues and risks may also have to be considered in order for the creditor to determine its optimal strategy.

[Editors' Note: To learn more about this and related topics, you may want to attend the following on-demand webinars (which you can listen to at your leisure and each include a comprehensive customer PowerPoint about the topic):

- [Bankruptcy Claims Trading](#)
- [The Nuts & Bolts of a Chapter 11 Plan](#)
- [Interplay With District Court Litigation\]](#)

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that creditor. *See, e.g., Tucker Plastics, Inc. v. Pay 'N Pak Stores, Inc. (In re PNP Holdings Corp.)*, 99 F.3d 910, 911 (9th Cir. 1996) (per curiam) (the lower courts “correctly held that Tucker [a Canadian corporation] consented to the bankruptcy court’s exercise of personal jurisdiction by filing a proof of claim”). ↩

2. *See, e.g., Langenkamp v. Culp*, 498 U.S. 42, 45 (1990). ↩

3. Personal injury and wrongful death claims cannot be tried in bankruptcy court (28 U.S.C. sec. 157(b) (5)), and federal law preserves the right to a jury in personal injury cases. Thus, the filing of a proof of claim will not result in a waiver of that jury trial right, nor will it be deemed consent by the claimant to adjudication of its claims in the bankruptcy court. ↩

4. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989); *Langenkamp v. Culp*, 498 U.S. 42 (1990). ↩

5. *Hassell Constr. Co. v. Hassell (In re Hassell)*, No. 19-30694, 2020 WL 728890, at *4 (Bankr. S.D. Tex. Jan. 7, 2020) (denying remand and abstention). ↩

6. *See, e.g., In re GYPC, Inc.*, 2021 Bankr. LEXIS 3013 (Bankr. S.D. Ohio Oct. 25, 2021) (on a motion to withdraw proof of claim, the withdrawal of a proof of claim to restore movant’s jury trial rights was not permitted because movant filed a proof of claim with full knowledge of the adversary proceeding against him, and, by filing proof of claim after the adversary proceeding was commenced, movant impliedly consented to the court’s equitable jurisdiction, and the adversary proceeding became part of

the claims allowance process of the bankruptcy estate; “Cummings’ choice to submit to this court’s equitable jurisdiction cannot be undone.”) ↵

7. See, e.g., *In re China Fishery Grp. Ltd. (Cayman)*, 2017 Bankr. LEXIS 2017 (Bank. S.D. N.Y. July 19, 2017) (ruling bankruptcy court had jurisdiction because of creditor’s proofs of claim, notwithstanding the reservation of rights therein: “This Proof of Claim is filed to protect the Claimant from forfeiture of the Claim. The filing of this Proof of Claim is not: (a) a waiver or release of the Claimant’s rights against any person, entity or property; (b) a consent by the Claimant to the jurisdiction of the Bankruptcy Court with respect to the subject matter of the Claim or any objection or other proceeding commenced in this case against or otherwise involving the Claimant; (c) a waiver of the right to move to withdraw the reference or otherwise to challenge the jurisdiction of this reference or otherwise challenge the jurisdiction of the Bankruptcy Court; (d) an election of remedy; (e) a waiver of any rights or claims the Claimant has against the Debtor or any person or entity with respect to any pending or future litigation or to any matters related to such litigation; or (f) a waiver of past, present or future defaults or events of default.”); *Schmidt v. AAF Players, LLC (In re Legendary Field Exhibitions, LLC)*, No. 19-50900, 2020 WL 211409, at *3-4 (Bankr. W.D. Tex. Jan. 10, 2020) (reservation of jury trial rights in a proof of claim does not bind the bankruptcy court); *Medallic Art Co., LLC v. Calvert (In re Northwest Terr. Mint, LLC)*, 2017 U.S. Dist. LEXIS 20068 (W.D. Wash. Feb. 13, 2017) (“Plaintiff argued there was no waiver because Plaintiff (1) expressly stated it intended to preserve its jury trial rights in its proof of claim, and (2) did not list a dollar amount on the claim form.... Plaintiff is mistaken. The rule in *Granfinanciera* turns on whether a proof of claim is filed against a bankruptcy estate. 492 U.S. at 41. Plaintiff provides no authority showing that it can evade this rule by including specific phrases in, or by omitting dollar amounts from, the proof of claim. The Court declines to adopt such a rule.”); *Buena Vista TV v. Adelphia Commc’ns Corp. (In re Adelphia Commc’ns Corp.)*, 307 B.R. 404, 412 & n.7 (Bankr. S.D.N.Y. 2004) (“[i]t may be, as stated in [the reservation of rights] paragraph, that the Copyright Owners did not ‘intend,’ by filing the Proof of Claim, to consent to the jurisdiction of the Bankruptcy Code or to waive the right to a jury trial, but under the holdings of many



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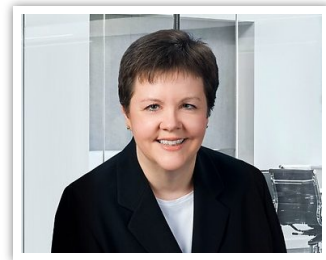


should be arbitrated pursuant to prepetition contracts, despite creditor having filed a proof of claim).



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Laura Davis Jones is a named and managing partner of Pachulski Stang Ziehl & Jones LLP, a national law firm specializing in restructurings. Laura began her career as a law clerk in the Bankruptcy Court (D. Del.), and has been very active representing debtors, creditors’ committees, noteholder groups, purchasers, and other substantial parties in national...



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