

2011 ABA Section of Dispute Resolution Spring Conference

WHEN THE GLASS IS HALF FULL OF EMPTINESS: TIPS FOR MEDIATORS AND LITIGATORS WHEN INSOLVENCY OR BANKRUPTCY BECOME ISSUES IN A MEDIATION

[What every litigant, attorney and mediator needs to know about the threat of bankruptcy before entering into a potential settlement, spending money on a fight for a punitive damages award, the enforceability of attorney's fee provisions in bankruptcy, and the hidden risks associated with contingent fee arrangements!]

Topics to be discussed include:

- understanding what insolvency is and identifying common insolvency dispute scenarios
- distinguishing insolvency from bankruptcy
- anticipating insolvency: questions to ask / anticipate
- avoiding or navigating through impasse created by insolvency
- avoiding false failure or decisional errors in the face of insolvency
- bankruptcy basics and common issues raised in the negotiation when bankruptcy is threatened or planned
- bankruptcy primer re the ramifications on the dispute if one party files bankruptcy

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1. Overview

For the past three years we have lived through economically trying times. Virtually every sector has been hit: our national economy, our state economies, Wall Street, financial giants, small businesses, banks, the public sector, the private sector, blue collar workers, and white collar workers. Even if we have not experienced a financial setback personally, we probably know someone who has and most certainly the communities in which we live have been affected at many levels. As a result, some level of financial distress is evident in just about every aspect of our daily lives. In the context of mediating the litigated case, it should come as no surprise that insolvency, the threat of bankruptcy or the actual filing of a bankruptcy by one or more parties to the dispute are frequently among the topics that need to be discussed during the mediation.

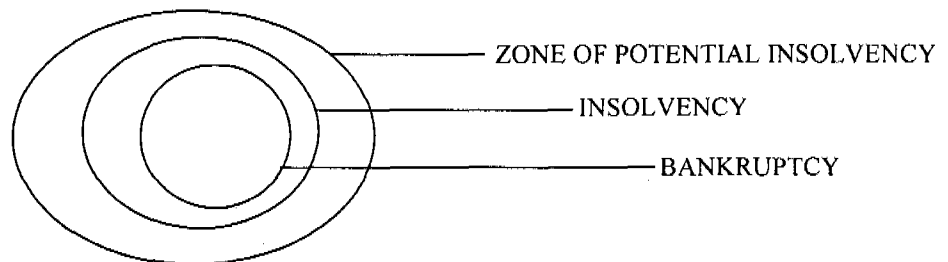
As mediation has become an accepted part of the civil litigation process, preparation has become the norm and not the exception. Preparation for mediation includes anticipating new information or changed circumstances and having a negotiation game plan that is flexible enough to make necessary adjustments. The prospect of insolvency or bankruptcy is a negative circumstance that has its own set of challenges, risks and uncertainties, apart from and in addition to those associated with the litigation dispute at hand. The purpose of this program is to provide some tips, tools and perspectives on how to anticipate and prepare for mediations in which insolvency or the threat of bankruptcy are placed on the table for discussion as part of the negotiations regarding settlement of a discrete dispute.

2. Insolvency Basics

A. What is insolvency?

Simply stated, insolvency is a financial condition where there is *not enough money* for what one wants, needs or is otherwise obligated to pay. From a *cash flow* point of view, insolvency occurs when there is not enough money to pay debts as they come due in the ordinary course. This perspective looks at the profit and loss statement and frequently involves a freeze or reduction of credit availability, an unanticipated expense and/or an unanticipated loss. From a *balance sheet* perspective, insolvency occurs when total liabilities exceed the fair market value of total assets, and frequently involves overstatement of value of assets, non-liquid assets and/or

understatement of liabilities. When a party is in bankruptcy, it is insolvent from one or both points of view. However, a party can be insolvent or potentially insolvent and not be in bankruptcy or even close to filing for relief in bankruptcy.



B. Does the distinction between insolvency and bankruptcy matter?

As discussed in greater detail in Section 3, below, the filing of a bankruptcy is a federal court process in which the party seeking bankruptcy relief must file a petition accompanied by very detailed paperwork concerning the party's current and historical affairs.¹ That paperwork includes a set of schedules that identifies all real and personal property assets, all creditors holding secured and unsecured claims even if contingent, unliquidated or disputed, all executory contracts (e.g., leases, licenses), and all co-obligors or guarantors for any debt. See, Attachment 1. That paperwork also includes a detailed questionnaire that asks for information about historical transactions and events, such as historical income from operations, historical income from other sources, payments made to creditors during the 90-day period preceding the bankruptcy filing and any payments made to creditors defined as "insiders" under the Bankruptcy Code within one-year prior to the bankruptcy filing, property that has been repossessed, sold through a deed in lieu or returned to the seller within the one-year period preceding the bankruptcy filing, lawsuits in which the debtor is or was a party within one-year prior to the bankruptcy filing, and the identities of all officers, directors, shareholders, and custodians of the debtor's business records. See Attachment 2. As a result of the due diligence that is generally undertaken before making the decision to file for relief in bankruptcy, the party who has gone through this process generally has a better understanding about the cause of their

¹ The complete packages of official forms and instructions for bankruptcy filings under Chapters 7, 11 and 13 can be found at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx> and at the website of most bankruptcy courts.

distressed financial condition, as well as readily available documents and information concerning that condition, as compared to a party who had not. If shared, this information can help the mediator and other side gain an understanding of the nature and scope of the insolvency problem and how it relates (if at all) to the discussion of how the litigation dispute might be resolved.

People or businesses who are struggling with cash flow or who have recently been confronted with a reversal, but have not taken the step of exploring bankruptcy, are usually struggling to get their arms around the problem at the same time as they are trying to keep up with the press of business and the demands of the litigation. As such, they may not have fully analyzed the cause or degree of their financial distress problem, may be in denial, may not have gone through the exercise of compiling current and historical financials, may not have assessed the administrative costs and time burdens associated with seeking relief in bankruptcy, etc. This lack of understanding and information can make it both difficult and challenging to find a starting point for incorporating one party's insolvency (or potential insolvency) into the discussion about how a discrete dispute might be resolved. In this situation, mediation may be the time and place where that effort begins in order to incorporate one party's insolvency, potential insolvency or potential bankruptcy into the discussion about how to resolve the dispute at hand.

C. When might insolvency become an issue in mediation?

There are a number of litigation scenarios that might may raise the specter of insolvency. The following are a few of the more common:

- **Monetary Recovery Disputes.** In a dispute where significant dollars are being sought as general, special or punitive damages, the potential insolvency of one of both parties may be an issue. E.g., personal injury, damage to property, failed business deal, breach of contract / warranty, breach of a duty, fraud, conversion, business torts, violation of statutory duties. For the plaintiff, a financial recovery through litigation might be that which he / she / it needs to avoid or repair an insolvent condition. A plaintiff must take into consideration the fact that a threatened bankruptcy of a defendant may substantially lessen the likelihood of the imposition of punitive damages since, by definition, the assessment of punitive damages includes an analysis of the defendant's ability to pay and the deterrent

effect of imposing such damages.² For the defendant, the creation of a judgment liability may create balance sheet insolvency and the enforcement of such judgment could result in cash flow insolvency.

- Ownership / Entitlement Disputes. Insolvency may be an issue where ownership or entitlement to property is disputed. E.g., quiet title disputes, marital dissolutions, business dissolutions, ownership of intellectual property / trade secrets, judicial foreclosure, eminent domain, unlawful detainer. Here, the outcome of the litigation might move an asset from one balance sheet and onto another and, in the process, might affect cash flow by removing the income generated by that asset. Alternatively, such disputes might result in the property being forced to sale, which could impair the market value of the asset (thereby reducing or eliminating the return paid to the owner) and, at the same time, trigger a taxable event (thereby creating a new, current liability). Both scenarios could invite crippling tax ramifications to the parties.
- Responsibility / Secondary Liability Disputes. In a dispute that seeks to shift the risk of loss or responsibility, insolvency may become an issue. E.g., guarantees, respondeat superior, express indemnification, implied / equitable indemnification, comparative fault, alter ego, scope of work and agent / principal. This situation invites a dilemma that is almost opposite to that encountered in ownership disputes: namely, the outcome of the litigation might *add* an unanticipated / unplanned liability onto the balance sheet as a liquidated debt and thereby instantly move the company or individual from being in “the black” to being in “the red.” In this area, it is not uncommon for parties to understand that certain transactions or activities include an element of risk (a contingent liability) which may not be quantified or fully understood at the time of undertaking.
- Costs of Litigation. Any dispute, including all of the above situations, where the costs associated with the prosecution or defense of the litigation impairs a party’s cash flow or creates the potential for insolvency as assets are liquidated or encumbered or revenue is diverted to pay the fees and costs associated with accessing the court / arbitral process.

In any of the above scenarios, the threat or existence of insolvency is important information in a mediation. For one thing, it prompts a broader discussion that goes beyond assessing the collectability of any judgment. Once a party points to an existing or anticipated insolvent condition as a reason for its settlement position, that can serve as the *beginning* of a discussion aimed at examining the nature and extent of the insolvent condition, the prospects of

² Moreover, penalty claims such as punitive damages and statutory treble damages are *subordinated* to general unsecured creditor claims in a Chapter 7 case. See, 11 U.S.C. § 109(a).

reversing that condition, the interests or needs of the insolvent party to avoid or reverse the condition, and the realities of the situation to the other party in terms of receiving less than full satisfaction on any judgment victory achieved at trial. Moreover, in the event of the filing of a voluntary or involuntary petition for relief under the Bankruptcy Code *after* the entry of a judgment following mediation in which property is transferred or a claim is resolved, such transfer or claim resolution may become the subject of an avoidance action by the estate of one of the parties to the mediation (generally termed a “fraudulent conveyance” because the transfer of property or release of claims was for less than fair market value while the debtor was insolvent or rendered the debtor insolvent), or a preference action (transfers made within 90 days prior to the bankruptcy filing that resulted in the recipient receiving more than he/she/it would have received in a Chapter 7 liquidation). It is important to note that even if a debtor was in favor of a settlement pre-petition and did not raise the specter of insolvency or bankruptcy during the negotiation process, a bankruptcy may nevertheless ensue and a bankruptcy trustee, creditors committee or other representative of the bankruptcy estate may move the bankruptcy court to unwind the deal. For this reason alone, mediation parties should consider the ramifications of a bankruptcy even if it is not raised and, if a bankruptcy is filed by one of the parties to the settlement, should be prepared to give immediate consideration to seeking a “comfort order” from the bankruptcy court approving or acknowledging the settlement.

D. Who are the potential stakeholders when insolvency becomes an issue in mediation?

Just as misery loves company, so does insolvency. When insolvency is an issue, a Party A versus Party B dispute can be transformed into something more complex in terms of the parties to be dealt with, interests to be accommodated and issues to be resolved in order to achieve a negotiated resolution. The following are a few of the more common additional stakeholders that may need to “weigh in” and possibly be included in the settlement negotiations when insolvency becomes an issue:

- **Other Creditors.** As part of structuring a durable settlement, the rights and interests of *other* creditors may need to be accommodated or preferred. In some situations, other creditors may need to compromise their claims or subordinate their rights in order for an accord to be reached. In those cases, such other creditors must at some point in time be brought to the negotiating table. Careful consideration needs to be given as to *when*

other creditors should be invited to the negotiations: at the start of the mediation, at the start of the negotiations, or at the end of the negotiations when all other aspects of a settlement have been agreed to between the parties to the dispute at hand.

- Employees, Customers and Vendors. Where a settlement requires payments over time and is based on the assumption that a business will continue to operate, the company's relationships with its employees, customers and vendors may need to be evaluated. For example, are there *key* employees, customers or vendors who are critical to the company's continued operations? If so, it may be necessary to obtain a commitment from those parties in order to reach an accord, in which case, such interested parties may need to be included in some way in the negotiation process. Careful consideration needs to be given as to how and when to obtain the commitments necessary for the settlement at hand.
- Family / Friends. For individuals, it goes without saying that the needs and interests of the parties' respective families may be threatened and / or their relationships with friends / partners may be strained as a result of the dispute (or litigation over the dispute). These outsiders may need to weigh in on and approve any settlement. They may also have interest or needs that need to be considered and accommodated in for settlement to be achieved in the dispute at hand.
- Other Responsible Parties. Insolvency causes everyone to look for additional sources of money and to bring those parties to the table. E.g., insurance, co-obligors, guarantors, joint tortfeasors, fiduciaries and other persons in control.

E. Concluding Remarks

The prospect or existence of an insolvent condition prompts an information-gathering dialogue that needs to take place before the parties can move forward with their negotiations. Among the many possible questions to be asked, answered and discussed are the following:

- How did this happen? Was the financial reversal anticipated or a surprise? Was it avoidable or inevitable? Who or what is responsible? Was it caused by wrongful conduct by another? E.g., embezzlement, looting, breach of fiduciary duty by insiders. Was the negligence or mistake of another the cause of the situation?
- Is it a cash flow problem? If so, how bad is it? Is it temporary (i.e., slow paying customer(s))? Is it permanent (i.e., loss of a good customer)? Can it be fixed? If so, what will the "fix" cost in terms of time and money?

- Is it a balance sheet problem? If so, how bad is it? What assets have lost value and why? What liabilities have increased and why? Is there insurance to cover any of the losses? Are there others who are responsible or share liability? Can the problem be fixed? If so, what will the “fix” cost in terms of time and money?
- Is there money available to resolve the dispute at hand and/or the insolvency situation? Are there any assets that can be sold or refinanced to bring money to the table today? Will equity holders infuse additional capital? If so, on what terms? Is credit available from outside sources? If so, how much and on what terms? Are there friends, family or other stakeholders who might be willing to help / invest / lend?
- For the operating business: Is all or some aspect of the business worth saving? If so, what will it cost in terms of time, money and allocation of resources to close down the nonprofitable operations? To salvage the profitable operations? Are the owners / key employees / key managers willing to continue working – especially if the debt they are working to repay is otherwise not their responsibility (i.e., no guarantees)?
- For the individual: What are his/her future prospects in terms of earning capacity? Inheritance? Appreciation of currently held assets? Future money making opportunities? Willingness to seek relief in bankruptcy?
- What does the insolvent party hope to accomplish through bankruptcy or closure? Debt discharge? Orderly liquidation? Novation of pre-petition liabilities? Structured repayment over time? Compromised amount and structured repayment of debt?
- Re the “debtor” hurdles: Can the prospective debtor afford the cost of a bankruptcy? Can the debtor satisfy the Bankruptcy Code criteria for obtaining relief? Are there any timing issues?
- Re the “creditor” hurdles: Can the creditor satisfy the Bankruptcy Code criteria for having its claim “allowed” for purposes of payment or exception from discharge? Is the likely forum for the bankruptcy case convenient or inconvenient for the creditor and, if inconvenient, what costs attach? Can the creditor afford the cost of participating in a bankruptcy?

It would be the highly unusual case where the answers to the above questions would not prompt some level of re-evaluation of the parties’ litigation positions. Where insolvency or the prospect of insolvency is an issue, there generally is a lot to talk about!

3. **Bankruptcy Basics**

A. **What is bankruptcy?**

Bankruptcy is a legally declared inability or impairment of ability by a person or entity to pay its creditors. However, in the United States it is not a requirement that the debtor be insolvent as a prerequisite to filing a petition in bankruptcy. Just about anyone and anything can be a debtor in bankruptcy.³ The key to eligibility is that the proposed debtor must reside or have a domicile, place of business or property in the United States.⁴ For example, a Chinese company that owns golf courses in the United States can file or be put into bankruptcy involuntarily in the United States. Likewise, a person who lives in California but whose primary assets are real estate holdings in Wyoming can file or be put into bankruptcy involuntarily in Wyoming or California. What this means in the context of mediation is that virtually anyone involved in an effort to mediate a dispute may be a prospective debtor in bankruptcy, and that the party on the other side of the dispute may be a prospective creditor in bankruptcy. Thus, some knowledge and understanding of bankruptcy law will be key to assisting the parties in evaluating the settlement value of the case and developing settlement options/proposals once the threat of bankruptcy becomes a factor in the negotiations.

B. **Isn't bankruptcy limited to "the poor"?**

Insolvency can happen to *anyone* for a broad variety of reasons, and has been known to strike the wealthy and famous. Some examples:

- Kim Bassinger, a former "Bond Girl" and ex-wife of Alex Baldwin, filed for personal bankruptcy in 1993. Her financial troubles were the result of an improvident investment. In 1989 – at the recommendation of family members – Bassinger bought the small town of Braselton, Georgia for \$20 Million hoping to establish it as a tourist attraction. That failed. Her financial difficulties were exacerbated when she pulled out of the controversial film "Boxing Helena," resulting in a lawsuit with the studio who won an \$8 Million judgment against her. Bassinger appealed the jury decision to a higher court and won. A settlement was thereafter achieved with the studio accepting a lesser amount.

³ 11 U.S.C. § 101(13), (40) and (41).

⁴ 11 U.S.C. § 109(a).

- Francis Ford Coppola, legendary film director, producer and screenwriter, filed for personal bankruptcy in 1999. His financial problems were the result of two film disasters whose costs of production greatly exceeded what they grossed at the box office. *Apocalypse Now* and *One from the Heart*. Coppola borrowed \$8.5 Million from a Canadian real estate mogul to produce *One from the Heart*. The film cost \$30 Million to make but only grossed \$636,000. When the real estate mogul sued to collect on his debt, Coppola filed bankruptcy in order to obtain a debt discharge.
- Antoine Walker, former NBA star, filed for personal bankruptcy in May 2010. He was a forward with the Boston Celtics and Miami Heat and made more than \$110 Million during his 12-year NBA career. Prior to filing bankruptcy, Walker and his family spent an average of \$78,000 per month. At the time he filed bankruptcy, Walker owed creditors \$12.7 Million, while only possessing assets worth about \$4.3 Million, including his 2006 NBA Championship ring. Walker's bankruptcy filing came shortly after being served with a \$2.3 Million foreclosure lawsuit on a suburban mansion that he bought for his mother.

The bottom line is that insolvency is not reserved for "the poor." It can be a temporary condition – a hiccup encountered on the road called "Life." It very much is something that deserves attention and discussion so as to avoid the time, expense, disruption, stigma and administrative expense associated with bankruptcy (as discussed below).

C. What is the difference between liquidation and reorganization through bankruptcy?

While the news media publishes stories about "reorganizations" and "restructurings" achieved through Chapter 11 of the Bankruptcy Code, the reality is that most bankruptcies – even ones filed under Chapter 11 – are *liquidation proceedings* where creditors receive pennies on the dollar (if they receive anything at all).

According to the Administrative Office of the U.S. Courts, there were 6,185,775 bankruptcy filings during five-year period ending March 31, 2009, of which 4,366,460 (over 70%) were liquidation proceedings under Chapter 7 of the Bankruptcy Code.⁵ The vast majority of these bankruptcies were filed by individuals. For example, during the same five year period,

⁵ See, News Release, *Bankruptcy Filings Continue to Rise*, http://www.uscourts.gov/Press_Releases/2009/BankruptcyFilingsMar2009.cfm.

6,016,739 of the total bankruptcy filings (approximately 97%) were filed by individuals.⁶ Business filings were not a large percentage of total filings, but there were a very large number of businesses that liquidated and wound up their affairs in bankruptcy: approximately 170,000.⁷

Chapter 7. When a bankruptcy estate is liquidated under Chapter 7 of the Bankruptcy Code, a trustee is appointed by the court to handle the marshalling and sale of assets and the payment of creditors. In these cases, the debtor loses control and decision making authority over the assets of his/her/its estate immediately after the petition is filed. The appointment process and the trustee's rights and duties after appointment are defined by statute,⁸ and involve a fairly rigid and routine set of procedures whereby the bankruptcy trustee assumes total responsibility for the estate,⁹ including whether or not to object to the plaintiff creditor's claim or to pursue claims or offsets against said plaintiff creditor. What this means in the context of mediating a litigated dispute is that once a bankruptcy is filed, the dispute will no longer be an "A-B dispute." It may involve the bankruptcy trustee, a new set of procedures defined by the Bankruptcy Code and a new forum (i.e., the bankruptcy court). These potential circumstances introduce a whole host of unknowns that make the outcome of the dispute somewhat unpredictable.

Where the party filing bankruptcy is the defendant in the lawsuit, the bankruptcy provides a *summary procedure* for liquidating the amount of the plaintiff creditor's monetary claim in the debtor's estate. All the plaintiff has to do is file a proof of claim with appropriate supporting documentation and the claim is presumed valid as stated.¹⁰ See Attachment 3. As discussed in greater detail in Section 3(G), the pre-bankruptcy litigation proceedings will be automatically stayed,¹¹ and any dispute about the validity or amount of the plaintiff's claim will most likely be resolved in the bankruptcy court through a "claim objection" that operates much like a law and

⁶ Id.

⁷ Id.

⁸ 11 U.S.C. §§ 701-704.

⁹ 11 U.S.C. § 726.

¹⁰ Section 502(a) of the Bankruptcy Code provides that upon filing of a proof of claim or interest, that claim or interest "is deemed allowed, unless a party in interest . . . objects." Additionally, Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that a proof of claim executed and filed in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim."

¹¹ 11 U.S.C. § 362(a).

motion proceeding.¹² In terms of payment rights, like-situated creditors are paid on a pro rata basis in bankruptcy in order of their priority status under the Bankruptcy Code.¹³ In the context of a negotiation in mediation, once the threat of bankruptcy is raised, the existence of competing creditors becomes highly relevant because they are the plaintiff creditor's "constituency" with whom the plaintiff creditor will share pro rata in any distribution made to general unsecured creditors. For example, if the plaintiff creditor believes it has a \$500,000 claim and there are ten other creditors who are asserting claims of similar value, there are potentially \$5.5 Million of like-situated creditors to be paid in bankruptcy. If the highest and best estimated value of the defendant debtor's unencumbered assets, net of administration expenses, is \$1 Million, then the pro rata sharing among the aforementioned creditor group will amount to about 18 cents on the dollar. This is a meaningful and necessary exercise when evaluating the defendant debtor's proposals against the backdrop of the alternative treatment the plaintiff creditor may receive in bankruptcy if a negotiated resolution is not achieved.

As a side note, when the plaintiff in the lawsuit is the prospective debtor in bankruptcy, control and settlement authority over the action will cede to the bankruptcy trustee.¹⁴ This raises the prospect that the trustee may not continue with prosecution of the action, may sell it to the highest bidder (if the claims are assignable), or may accept a defendant's low-ball offer in order to bring cash into the estate without a large outflow of money to pay litigation expenses.

Chapter 11. When a bankruptcy petition is filed under Chapter 11 of the Bankruptcy Code, the debtor remains in control of his/her/its estate as a "debtor-in-possession." The rights and duties of the debtor-in-possession are statutorily defined and are basically the same as those ascribed to a bankruptcy trustee – meaning that the debtor-in-possession is a fiduciary charged with responsibility for administering his/her/its estate for the benefit of creditors.¹⁵

¹² Section 502(b) of the Bankruptcy Code provides that the bankruptcy court determine the amount of any claim as to which an objection is made, with certain enumerated exceptions. Rule 3007(a) of the Federal Rules of Bankruptcy Procedure provides that any objection to the allowance of a claim must be in writing and filed with the bankruptcy court and must be served on the claimant at least 30 days prior to the date scheduled for the hearing on such objection. Rule 3007(b) of the Federal Rules of Bankruptcy Procedure provides that to the extent the objecting party is affirmative relief against the claimant (e.g., offset of a counterclaim), that relief must be asserted and prosecuted as an adversary proceeding.

¹³ 11 U.S.C. § 507.

¹⁴ 11 U.S.C. §§ 544 and 704; Fed. R. Bank. P. 9019.

¹⁵ 11 U.S.C. §§ 1107 and 1116.

In a Chapter 11 proceeding one or more committees may be formed to serve as a counter-balance to the debtor-in-possession. Creditor committees are staffed by interested/representative creditors who then oversee the debtor's reorganization efforts and facilitate communication between the debtor the general creditor body on various matters, including but not limited to the negotiation of the treatment of that creditor class under any proposed plan of reorganization.¹⁶ The members of the committee are fiduciaries for the body of creditor class they represent (usually general unsecured creditors) and, in the name of the committee, have standing to weigh in on each aspect of the debtor's case.

The whole idea behind filing a Chapter 11 petition is to confirm a *plan of reorganization* which restructures the terms and conditions of the debtor's pre-petition payment obligations to his/her/its creditors. The standards for confirming a plan are defined by statute.¹⁷ For entities that confirm a plan of reorganization, they can receive a debt discharge in the form of a novation – meaning that the debtor's pre-petition liabilities are superseded and replaced by the obligations assumed under the plan – if they emerge from bankruptcy as an operating business.¹⁸ There is no debt discharge where a business simply liquidates through Chapter 11.

Bottom Line. There are very few bankruptcies involving surplus estates where creditors are paid in full and the debtor retains his/her/its equity investment. Most bankruptcies are ones where only a fractional recovery is paid/received and the business is closed and liquidated – a lose / lose for all concerned. There are exceptions, but they are few and far between. That is important to understand and analyze at the front end because bankruptcy, a federal court proceeding, adds another layer of expense to the dispute resolution process and thus affects all disputants, particularly the net return to creditors.

¹⁶ 11 U.S.C. §§ 1102-1103.

¹⁷ 11 U.S.C. §§ 1122-1129.

¹⁸ 11 U.S.C. § 1141.

D. How is a bankruptcy case commenced?

Bankruptcy is a federal court proceeding and is commenced by filing a *petition* with the bankruptcy court. Such a filing may be *voluntary* – meaning that it is filed by the person or entity who is to be the debtor in the proceedings.¹⁹ However, the commencement of a bankruptcy case can also be *involuntary* – meaning that it is filed by the creditors of the person or entity who is the proposed debtor.²⁰

In an involuntary bankruptcy case, the case does not officially begin until an *order for relief* is entered, which may be delayed if the proposed debtor contests the petition. Like regular civil litigation, the debtor may respond to an involuntary complaint with a *motion to dismiss* that challenges the facial requirements, such as whether the petitioning creditor requirements have been met.²¹ Alternatively, the proposed debtor may file an *answer* to the petition which denies that the statutory requirements have been met for forcing the debtor into bankruptcy, in which case there will be an evidentiary hearing on those issues.²² Sometimes during the course of mediating a litigated case, one party may threaten to force the other side into bankruptcy by filing an involuntary petition. At a minimum, it is important to understand and appreciate that the mere filing of such a petition does not force the proposed debtor into bankruptcy; that that issue may be contested and become the subject of a separate litigation dispute. It is also important to appreciate that filing an involuntary petition is a big deal and carries with it some severe penalties if the petition is dismissed. Dismissal exposes the petitioning creditors to liability for costs and reasonable attorney's fees if the petition is dismissed.²³ Dismissal may also expose the petitioning creditors to liability for compensatory and punitive damages if the Bankruptcy Court finds that the petition was filed in "bad faith."²⁴

The commencement of a voluntary or involuntary bankruptcy involves the completion and filing of a simple, standard form "petition." The filing of that piece of paper is quite significant because it sets in motion a whole host of proceedings and commences a court

¹⁹ 11 U.S.C. § 301.

²⁰ 11 U.S.C. § 303.

²¹ 11 U.S.C. § 303(b).

²² 11 U.S.C. § 303(h).

²³ 11 U.S.C. § 303(i)(1).

²⁴ 11 U.S.C. § 303(i)(2).

proceeding that cannot be dismissed without application to and permission from the Bankruptcy Court.

E. What is property of the estate?

A key concept in bankruptcy is *property of the estate* because it delimits the pool of assets that will be available to satisfy creditors' claims in bankruptcy. The commencement of a bankruptcy case operates to create an *estate*.²⁵ Section 541(a) of the Bankruptcy Code defines property of the estate quite broadly to include all of the debtor's legal or equitable interests, wherever located, including all real and personal property a of the date the bankruptcy petition is filed. In general, all of the debtor's property as of the commencement of the bankruptcy case becomes property of the estate, except for certain assets expressly excluded by the Bankruptcy Code²⁶ and certain assets that individual debtors are allowed to claim as exempt.²⁷ A potential estate asset is not outside the scope of that definition merely because it is novel or contingent or because enjoyment must be postponed.²⁸

In the context of mediation, the threat or prospect of bankruptcy has the effect of putting the debtor's balance sheet on the table to look at both the asset/plus side of the ledger, as well as the liability/minus side. A key question for the plaintiff creditor is whether or not the prospective debtor has *working assets* that either generate income or have equity that can be realized through sale or refinancing. If so, there is a dialogue to be had with respect to what will happen to those assets and the revenue they will generate in a bankruptcy, and what the debtor presently is doing with the income/potential value of those assets. If the debtor defendant has no working assets or assets with equity, then the key question raised is whether or not there is any value to the plaintiff creditor's claim beyond obtaining a piece of paper called a judgment. This is important in mediating the litigated dispute because it pertains directly to WATNA analysis (discussed in greater detail in Section 4): namely, that the plaintiff spends a lot of time and money going to trial against the defendant (potential debtor) and obtains a whopping judgment

²⁵ 11 U.S.C. § 541.

²⁶ 11 U.S.C. § 541(b).

²⁷ 11 U.S.C. § 522.

²⁸ See, *Segal v. Rochelle*, 382 U.S. 375 (1966).

against the defendant, only to discover that that judgment has zero value in terms of collectability.

As mentioned in Section 3(C), when the plaintiff in the lawsuit is the prospective debtor in bankruptcy, a key consideration for both parties is what will happen to the lawsuit in a bankruptcy case. In a Chapter 11 case, the plaintiff debtor will retain control, *but* that control will be subject to the oversight of any creditors who may question and take issue with the expenditure of estate funds on litigation. In a Chapter 7 case, control and settlement authority over the action will cede to the bankruptcy trustee,²⁹ which raises the prospect that the trustee may not continue with prosecution of the action, may sell it to the highest bidder (if the claims are assignable), or may accept a defendant's low-ball offer in order to bring cash into the estate without a large outflow of money to pay litigation expenses.

F. What is the automatic stay?

Another key concept of bankruptcy is the "automatic stay" that takes effect immediately upon the filing of a bankruptcy petition.³⁰ The purpose of the stay is to maintain the status quo as of the day before the filing, effectively freezing time for the estate of the debtor, to give the debtor or trustee (whichever is in control of the estate) the breathing room needed to evaluate the assets and liabilities of the estate and to make critical decisions about how best to administer the estate in terms of producing a return to creditors (e.g., liquidation or reorganization). That stay is directed against the commencement or continuation of a variety of acts affecting the debtor, property of the debtor and property of the estate, including but not limited to the commencement or continuation of a lawsuit to collect sums owed, to enforce any judgment against the debtor, or

²⁹ 11 U.S.C. §§ 544 and 704; Fed. R. Bank. P. 9019.

³⁰ *In re Johns-Manville Corp.*, 57 B.R. 680 (Bankr. S.D.N.Y. 1986); *In re Schleier*, 290 B.R. 45 (Bankr. S.D.N.Y. 2003). The automatic stay remains in effect unless or until the stay is lifted by court order under 11 U.S.C. § 362(d) or the case is closed or dismissed under 11 U.S.C. § 362(c). As to an individual debtor, the stay remains in effect until his / her discharge is granted or denied. 11 U.S.C. § 362(c).

to repossess or foreclose on any property of the debtor.³¹ Any action taken in violation of the stay is *void ab initio* – not merely voidable.³²

Where bankruptcy is threatened, a common issue raised for discussion in mediation is what impact the automatic stay will have on the pending litigation. Generally speaking, the automatic stay protects *only the debtor*. As such, when the debtor is one of several defendants in a pending lawsuit, the automatic stay does not apply to the other parties and the plaintiff can proceed as to the remaining defendants.³³ This circumstance may serve as leverage against the other, non-debtor defendants, especially if the claims involve joint liability with the prospective debtor defendant.

Another point frequently overlooked or misunderstood by the parties when bankruptcy is threatened is that while the litigation against the debtor is stayed, the stay does not prohibit parties from taking discovery from the debtor on matters relating to the claims against the other defendants.³⁴ Additionally, while the automatic stay enjoins pre-petition litigation pending in the state or federal courts, it does not enjoin the commencement or prosecution of a lawsuit *in the bankruptcy court* where the debtor's case is pending.³⁵ Where the dispute concerns interests in property, equitable claims and disputes which involve more than just a monetary claim against the debtor, the filing of the bankruptcy may not stop the litigation. It may simply move it to another forum (i.e., the bankruptcy court).

In the context of negotiation discussions, the automatic stay invites post-filing litigation over process, which in turn spells additional cost to the parties. It may also invite the filing of additional litigation proceedings in the bankruptcy court, which is a “federal case” and generally adds a layer of expense, complexity and pretrial/trial procedures to that found in state court

³¹ 11 U.S.C. § 362(a); *Far Out Productions, Inc. v. Oskar*, 247 F.3d 986 (9th Cir. 2001); *Contractors' State License Bd. v. Dunbar (In re Dunbar)*, 245 F.3d 1058 (9th Cir. 2001).

³² *Far Out Productions, Inc. v. Oskar*, supra, 247 F.3d 986; *Contractors' State License Bd. v. Dunbar (In re Dunbar)*, supra, 245 F.3d 1058. This is true whether or not the violation was willful. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992).

³³ *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir. 1983).

³⁴ *Groner v. Miller (In re Miller)*, 262 B.R. 499 (9th Cir. BAP 2001).

³⁵ *Rein v. Providian Fin. Corp.*, 270 F.3d 895 (9th Cir. 2001); *Civic Center Square, Inc. v. Ford (In re Roxford Foods)*, 12 F.3d 875 (9th Cir. 1993).

proceedings. In short, the automatic stay invites consideration of possible post-bankruptcy filing activities and expense.

G. What is debt discharge in bankruptcy?

In the case of an individual, the filing of a bankruptcy signals the end of one financial life and the beginning of another.³⁶ As negative as bankruptcy may be in terms of stigma and loss of assets, it provides individual debtors “relief” in the form of a “discharge” from liability for pre-petition debts,³⁷ a “stay” of any collection activity while the bankruptcy case is open,³⁸ and a “permanent injunction” against creditors taking any action to resume collection activity against the debtor for pre-petition debts after the bankruptcy case is closed.³⁹ This means that individuals can exit bankruptcy leaving their debts behind, using their future earnings, income and inheritance to pay future expenses and after-acquired debt, *unless* the bankruptcy court determines (typically on motion of a creditor) that the debtor should not be entitled to discharge at all or for a particular debt based upon the debtor’s conduct, among other things.⁴⁰

Non-individuals such as corporations and other business entities are not eligible for debt discharge relief under Chapter 7.⁴¹ In order for a corporation or other business entity to receive a debt discharge in bankruptcy, it must confirm a plan of reorganization.⁴² As discussed above, there are a large number of businesses that wind up their affairs under Chapter 7 of the Bankruptcy Code each year. A business may resort to bankruptcy for liquidation, as opposed to winding down its affairs under general corporate law and procedure, in order to avoid risk to those who are owners or serve in the capacity as directors of a struggling company in making decisions or engaging in transactions which may be challenged by the company’s shareholders or creditors as a breach of fiduciary duty, fraud, fraudulent conveyance or the like, if approved or

³⁶ 11 U.S.C. § 524(a).

³⁷ 11 U.S.C. § 727(a). It should be noted, however, that this “discharge relief” is available only once every 8 years. 11 U.S.C. § 727(a)(8).

³⁸ 11 U.S.C. § 362(a).

³⁹ 11 U.S.C. § 524(a).

⁴⁰ 11 U.S.C. § 523; *see* Section 3(G), *infra*.

⁴¹ 11 U.S.C. § 727(a)(1).

⁴² 11 U.S.C. § 1141. Chapter 11 practice is quite complicated and is thus far beyond the scope of these materials.

undertaken during the period that the company operated while insolvent.⁴³ A bankruptcy filing provides “relief” by transferring to a bankruptcy trustee the responsibility and expense associated with the wind up of the company’s affairs and it assures that the liquidation of the company’s assets and the payments to creditors will be done in a controlled manner and with full/public accountability in the bankruptcy court record.

The bottom line is that the pros and cons of bankruptcy “relief” in the form of debt discharge (for the individual) or responsibility (for the business owner/manager) is a rich topic that offers the parties a lot to talk about, including whether or not resolution of the litigation dispute will avoid the bankruptcy filing or whether there are other things going on that also need to be resolved if the bankruptcy outcome is to be avoided. As to this latter topic, the parties are provided an opportunity to discuss what is necessary to achieve not just a settlement, but an agreement that has a realistic chance of being fully performed.

H. What are nondischargeable claims?

As discussed in Section 3(G), the primary reason individuals file bankruptcy is to obtain a “discharge” of their liability for payment of prepetition debts because, once obtained, the bankruptcy discharge operates as an injunction that permanently restrains the collection of a debt or the enforcement of a judgment against the debtor.⁴⁴ So the discussion about *nondischargeable claims* pertains to individuals who might become debtors in bankruptcy.

Not all debts are eligible for discharge. Certain types of claims are excepted from discharge by express statutory provision,⁴⁵ so that the filing of a bankruptcy will not relieve the debtor from liability for these claims. For example, domestic support obligations;⁴⁶ student loan obligations;⁴⁷ obligations arising from the death or injury of another caused by operating a

⁴³ The modern common-law notion that the directors of a financially distressed corporation owe a duty of care to its creditors finds its genesis in *Credit Lyonnais Bank Nederland N.V. v. Pathe Communications Corp.* 1991 WL 277613, 1991 Del. Ch. Lexis 215 (Del. Ch. Dec. 30, 1991). Similarly, *Pepper v. Litton*, 308 U.S. 295, 307 (1939) is the seminal case that established, among other things, that controlling shareholders, like directors, owe fiduciary duties that are “designed for the protection of the entire community of interests in the corporation-creditors as well as stockholders.”

⁴⁴ 11 U.S.C. § 524(a)(2); *Ruvacalba v. Munoz (In re Munoz)*, 287 B.R. 546 (9th Cir. BAP 2002).

⁴⁵ 11 U.S.C. § 523(a).

⁴⁶ 11 U.S.C. § 523(a)(5).

⁴⁷ 11 U.S.C. § 523(a)(8).

vehicle while intoxicated;⁴⁸ civil and criminal fines, penalties and forfeitures payable to and for the benefit of a governmental unit;⁴⁹ and certain unsecured tax liabilities⁵⁰ survive the debtor's bankruptcy and are enforceable against the debtor's post-petition earnings and after-acquired assets as a matter of law (i.e., without any type of legal proceeding or order of the bankruptcy court). If the claims under negotiation qualify for automatic exception from discharge by statute, then that plaintiff creditor who holds such claim(s) has a powerful club in the negotiations that will need to be reckoned with.

For claims arising out of a transaction or dispute involving civil fraud, fiduciary defalcation or intentional tort, those liabilities are not automatically excepted from discharge. Rather, the creditor who is owed such a debt must initiate proceedings in the bankruptcy court⁵¹ and must do so within 60 days of the date first set for the first meeting of creditors in the bankruptcy case.⁵² If the creditor does not timely file such a complaint, the debt will be discharged even though it may have been the product of fraud.

Having a debt judicially determined to be nondischargeable is quite significant because such debts "are forever barred from discharge in subsequent cases."⁵³ So, even though the Bankruptcy Code allows individuals to file for bankruptcy more than once and to receive a discharge every eight years,⁵⁴ a determination in one bankruptcy case that a debt is nondischargeable will allow that obligation to survive all subsequent filings by the defendant/obligor. In the situation where a debtor has the capacity or need to be a "high earner" or the prospect of inheriting wealth in the future, having a debt deemed nondischageable provides is a significant event/prospect and will most certainly invite discussion during the mediation of claims that may be eligible for exception from discharge.

⁴⁸ 11 U.S.C. § 523(a)(9).

⁴⁹ 11 U.S.C. § 523(a)(7).

⁵⁰ 11 U.S.C. § 523(a)(1).

⁵¹ 28 U.S.C. §§ 157 and 1334(b); *In re Green*, 198 B.R. 564, 566 (9th Cir. BAP 1996); *Pelletier v. Donald (In re Donald)*, 240 B.R. 141, 146 (1st Cir. BAP 1999).

⁵² 11 U.S.C. §§ 523(a)(2), (4) and (6); 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).

⁵³ See, 3 *Norton Bankruptcy Law & Practice*, § 47:57 (2d ed. 2002); see also, *In re Tranter*, 245 B.R. 419, 420 (Bankr.S.D.Fla. 2000), citing *Royal American Oil and Gas Co. v. Szfranski*, 147 B.R. 976, 988 (Bankr.N.D.Okla. 1992).

⁵⁴ 11 U.S.C. § 727(a)(8).

Talking about debt discharge in the context of a pre-bankruptcy settlement raises the issue of contracting around the debt discharge. As a general rule, an agreement in which the debtor purports to *waive* the benefits of a bankruptcy discharge is *void as against public policy*.⁵⁵ The same holds true with a state court stipulated judgment because the *res judicata* doctrine will not be applied to foreclose litigation of a nondischargeability claim in bankruptcy court, which has exclusive jurisdiction to determine such claims.⁵⁶ While, a debtor may stipulate to the underlying facts that the bankruptcy court must examine to determine whether a debt is dischargeable as part of a pre-bankruptcy settlement,⁵⁷ in practice it is difficult (if not impossible) to obtain admissions to fraud or facts of fraud.

Talking about debt discharge in the context of a pre-bankruptcy settlement also raises the issue of “novation.” In 2003, the Supreme Court resolved a split among the Circuits and rejected the novation theory,⁵⁸ meaning that creditor will not be barred from filing a nondischargeability action simply because it entered into a pre-bankruptcy settlement in which it accepted the defendant debtor’s promise to pay in exchange for settlement and dismissal of a fraud claim.⁵⁹ However, the *amount* of the settling creditor’s nondischargeable claim may be limited to that which was agreed to as part of the settlement.⁶⁰

Issues abound in this area concerning the impact of a general release and dismissal with prejudice, which were not decided by the Supreme Court in the *Archer* case and are beyond the scope of this article except for this bare mention. For purposes of this discussion, in the context of mediating a civil dispute pre-bankruptcy, where those claims include fraud, fiduciary defalcation and/or intentional tort, there is much to be discussed. In addition to negotiating the dischargeability and potential treatment of the particular plaintiff creditor’s claim(s),

⁵⁵ *The Bank of China v. Huang (In re Huang)*, 275 F.3d 1173, 1177 (9th Cir. 2002); *Hayhoe v. Cole (In re Cole)*, 226 B.R. 647, 652-652 n. 6 (9th Cir. BAP 1998); *Johnson v. Kriger (In re Kriger)*, 2 B.R. 19, 23 (Bankr.D.Ore. 1979); *Klingman v. Levinson*, 831 F.2d 1292, 1296 n. 3 (7th Cir. 1987).

⁵⁶ *Hayhoe v. Cole (In re Cole)*, supra, 226 B.R. at 653; *Seven Elves, inc. v. Eskenazi (In re Eskenazi)*, 6 B.R. 366, 368 (9th Cir. BAP 1980); *Doug Howle’s Paces Ferry Dodge, Inc. v. Ethridge (In re Ethridge)*, 80 B.R. 581, 586 (Bankr.M.D.Ga. 1987); *First Georgia Bank v. Halpern (In re Halpern)*, 50 B.R. 260, 262 (Bankr.N.D.Ga. 1985), *aff’d*, 810 F.2d 1061 (11th Cir. 1987).

⁵⁷ *The Bank of China v. Huang (In re Huang)*, supra; *Hester v. Daniel (In re Daniel)*, 290 B.R. 914 (Bankr.M.D.Ga. 2003).

⁵⁸ *Archer v. Warner*, 538 U.S. 314 (2003).

⁵⁹ *Id.* at 315.

⁶⁰ See, e.g., *Ulliman v. Marino (In re Marino)*, 2009 WL 361386 (Bankr.M.D.Fla. 2009).

consideration should also be given to what the defendant debtor's prospective balance sheet might look like if his/her contract debts are discharged. It may be that the filing of a bankruptcy becomes an integral part of the parties' settlement negotiations.

I. What is an avoidable preference?

The final bankruptcy concept that will be addressed in these materials concerns the *strong arm* power of the bankruptcy trustee⁶¹ to undo or avoid pre-petition payments to creditors so that the debtor's assets can be distributed ratably among the debtor's creditors and no creditor is preferred by a pre-filing transfer or distribution.⁶² The most commonly encountered avoidance actions are those seeking recovery of *preferential payments* made to creditors before the bankruptcy was filed.⁶³ Generally, a preference is a transfer/payment made within 90 days of the petition on account of an antecedent debt that enables the creditor to receive more than it would have received if, instead of receiving the transfer/payment, the creditor had received a distribution in the Chapter 7 bankruptcy case. A detailed discussion of this statutory cause of action and the defenses thereto⁶⁴ are beyond the scope of these materials, except to identify the concerns plaintiff creditors might have about giving a complete release and dismissal of claims in exchange for a payment (or set of payments) that it might have to return if the defendant debtor files a bankruptcy petition within 90 days of such payment(s).

In most litigated disputes, there generally is not enough trust or information available to make an assessment as to how likely it is that the defendant debtor will file for bankruptcy during the proposed payment period of any settlement. As such, the preference risk may result in the plaintiff creditor asking for a third-party guaranty, a front-loaded payment plan, or a condition to the settlement such that any release will not be effective and any dismissal will not be filed unless and until the settlement survives for a minimum, defined period of time in excess of the 90-day preference period.

⁶¹ Section 544 of the Bankruptcy Code endows the trustee with the status of a hypothetical "perfect creditor" and a bona fide purchaser for purposes of pursuing actions to avoid pre-petition transfers and bring money and property back into the estate. See, *Elliott v. Frontier Props. (In re Lewis F. Shurtleff, Inc.)*, 778 F.2d 1416 (9th Cir. 1985).

⁶² 11 U.S.C. §§ 544-550.

⁶³ 11 U.S.C. § 547(b).

⁶⁴ 11 U.S.C. § 547(c).

J. Concluding Remarks

Theoretically, bankruptcy is intended to regulate, balance and protect the interests of debtors and creditors. In concept, then, the “threat” of bankruptcy should foster constructive dialogue between a plaintiff creditor and defendant debtor. As the foregoing discussion suggests, while the prospect of a bankruptcy filing can have the effect of expanding the parties’ discussion points, that discussion is somewhat complicated. Moreover, for litigants the bankruptcy discussion points can be frustrating because the discussion does not always concern the merits of their respective cases/defenses and involves a much broader set of interests and objectives. Finally, in any meaningful discussion concerning the impact a bankruptcy filing will have on the parties to a dispute, it usually becomes apparent that a bankruptcy filing will exact a toll on *all* parties and introduce a whole new level of uncertainty regarding the ultimate outcome.

4. Tips, Tools and Perspectives for Discussing Insolvency in Mediation

A. Early Mediation

Insolvency is a circumstance that warrants consideration of an “early” mediation – meaning one that occurs *before* the parties have completed discovery and maybe even before a lawsuit has been filed. This is because insolvency tends to create exigency.

- How long and on what terms will the bank and other creditors continue to work with the distressed party?
- When will new capital be infused and on what terms?
- How long before the market improves so that an asset can be sold to retire old debt or a new customer can be landed to generate profit to allocate towards payment of old debt or an unemployed (or under employed) can find a new job?
- How long will key employees stay and not accept work elsewhere?
- How long will owner / employees continue to work to retire old debt that they did not personally guaranty?

It is also because, insolvency brings to the forefront the realization that spending money on legal proceedings may not improve the ultimate net recovery and may even subtract from the net outcome.

Early mediation in the face of insolvency offers parties an opportunity to define the true objectives of their litigation stance - e.g., to obtain a recovery, to obtain vindication, to punish or embarrass the other side, etc. – and to assess how meaningful those objectives are in the broader perspective of going broke or breaking the bank (and possibly back) of the other side.

B. Timing is Everything

Structuring a settlement against the backdrop of insolvency usually involves several moving parts – other parties, conditions and/or contingencies – that need to fall into place at the same time. Timing is everything when trying to negotiate a settlement with insolvency as the backdrop for evaluating the parties' best- and worst-case alternatives to a negotiated agreement. There is usually one of at least several clocks ticking, including:

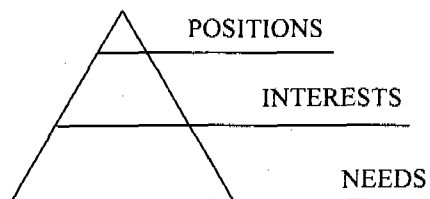
C. Red Zone Issues

The *Red Zone* is a football term that refers to the last 20 yards a team has to get through to enter the opposing team's end zone and score a touchdown. In mediation, the goal is to move from getting together to talk about a problem (20 yd line) to opening discussions about the problem (40 yd line) to exchanging opening offers (50 yd line) to having more in depth negotiations (40 to 20 yd line) to reaching a settlement (end zone). In mediation, the *Red Zone* refers to the last set of moves before achieving a negotiated resolution. Insolvency and the threat / prospect of bankruptcy are the type of issues that frequently arise during the final stage of a negotiation – when the parties are a play or two away from getting a deal done – and then find themselves at an impasse. This is due, at least in part, to the fact that the existence of an actual or potential insolvency is unsettling because it threatens both / all parties' ability to achieve their pre-defined litigation goals and may invite an emotional response such as:

- anger / aggression that can lead to heated exchanges and interfere with good judgment
- denial that can lead to blame and discourage a party from taking ownership of the problem and responsibility for participating in the solution

- inertia that can lead to an inability to adapt to changed circumstances and respond to what may be a reasonable offer or “best case” opportunity given the changed circumstances
- fear that can lead to “flight” (i.e., walking out) without allowing an opportunity for the situation to be assessed and discussed and included in the negotiations
- embarrassment / loss of “face” that can lead to stubbornness and “flight”
- opportunism that can lead to over-reaching (or under offering) due to a perceived power imbalance between the parties
- surprise / frustration that can highlight unrealistic expectations and unwillingness to compromise
- distrust that can lead to false attributions and clouded perceptions

In the context of mediating the litigated dispute, insolvency is a *reality factor* that might trump the merits of the dispute and force another type of discussion. It can force the parties into a “below the line” discussion about their interests / personal agenda items that are motivating demands or stated settlement positions. It can force the parties to critically assess and prioritize the needs (or wants) they are trying to satisfy through the negotiation.



Insolvency (or the threat of bankruptcy) is an issue that can come up at any point in time during the mediation. For example:

- Pre-mediation conference call / convening stage: One party might raise the issue by asking why it should come to mediation because it does not have any money. Or one side might question why it should come to mediation if all the other side is going to do is say that it will file for bankruptcy if it loses at trial.

- Joint session / opening stage: One party might say to the other side that it is there to participate in good faith, but wants the other side to know from the outset that it does not have the kind of money the other side is looking for; that if the other side is unreasonable during the negotiations and forces the matter to trial, it might force the closure of the business or prompt the filing of a bankruptcy to protect against a forced liquidation to pay creditors.
- Private caucus / communication stage: Something similar to the above.
- Pre-mediation conference call / convening stage: One party might raise the issue by asking why it should come to mediation because it does not have any money. Or one side might question why it should come to mediation if all the other side is going to do is say that it will file for bankruptcy if it loses at trial.

D. Coming to Grips with Reality

As mentioned above, insolvency or the threat of a bankruptcy filing are *reality factors*. As disappointing as this development might be – especially for the litigant who has prosecuted a case through trial and obtained a judgment in its favor - the first step is to deal with it and analyze it. That analysis takes a hard look at the situation and involves asking many questions, including some or all of the following:

- How did this happen? Was the reversal inevitable? Was it anticipated? Who / what is responsible? Was it caused by wrongful conduct another?
- Is it a cash flow problem? If so, how bad is it? Is it temporary or permanent? Can it be fixed? If so, what will the “fix” cost in terms of time and money?
- Is it a balance sheet problem? If so, how bad is it? What assets have lost value and why? What liabilities have increased and why? Is there insurance to cover the loss? Can the problem be fixed? If so, what will the “fix” cost in terms of time and money?
- Are there any assets that can be sold or refinanced to bring money to the table today?
- Are there other parties who are liable for the debts that can be brought to the table?

- For the operating business: is all or some aspect of the business worth saving? If so, what will it cost in time? Money? Commitment from the company's owners who may be asked to continue working a business to pay non-guaranteed debt?
- For the individual: what are his / her future prospects in terms of earning capacity, inheritance, etc.?

E. Dealing with Surprise

When insolvency is an issue, there frequently are several or numerous creditors engaged in litigation with the debtor, seeking to liquidate the amounts of their respective claims. Each creditor is focused on the *singular goal* of obtaining a final judgment and executing upon the debtor's assets. They are engaged in a *race to the courthouse*, competing to be the first one to judgment and attachment of the debtor's assets. In this race, the prospect of insolvency and possible bankruptcy resulting from a creditor's successful litigation outcome may be overlooked and, as a result, the potential creditor party (parties) may be *surprised* when insolvency and / or bankruptcy are raised at mediation. A typical reaction to surprise is to become guarded, resistant and suspicious. The mediator and parties faced with this situation really have only two options:

- Proceed with mediation and predicate discussions and any settlement proposals on certain assumptions, conditioned upon subsequent verification, or
- Recess the mediation to allow the parties time to gather, exchange and evaluate pertinent financial information, and then reconvene at a later date.

Either scenario depends on the parties' willingness to include one (or possibly both) party's insolvency / bankruptcy on the agenda of matters to be discussed during the course of the mediation.

F. Expanding the Pie

When the prospect of bankruptcy is an issue to be discussed during a mediation, it creates an opportunity to "expand the pie" by examining the parties' options in (a) avoiding a bankruptcy and / or (b) planning for a bankruptcy. The following are some examples of possible discussion areas, which will be discussed in greater detail in the second installment of this article:

- What does the prospective debtor hope to accomplish through bankruptcy? Debt discharge? Orderly liquidation? Novation of pre-petition liabilities and a structured payment plan?
- How does the prospective creditor expect to fare in a bankruptcy? Partial recovery? Full recovery? No recovery?
- Are there any hurdles the prospective debtor must surmount in order to obtain its bankruptcy relief objective? Can the debtor afford the cost of the bankruptcy proceedings? Can the debtor satisfy the Bankruptcy Code criteria for obtaining relief? Are there any timing issues?
- Are there any hurdles the prospective creditor must surmount in order to obtain payment on its claim? Can the creditor satisfy the Bankruptcy Code criteria for having its claim "allowed" for purposes of payment? Is the likely forum for the bankruptcy convenient or inconvenient to the creditor? Can the creditor afford the cost of participating in the bankruptcy case?

G. Difficult Conversations

Beyond making the statement "I have no money" or "A judgment along the lines you are asking for will force me into bankruptcy," talking about insolvency can be difficult, uncomfortable, frustrating and threatening for everyone involved. For one thing, parties generally enter the mediation with an expectation that they are going to talk about the merits and demerits of the dispute. It can be disappointing and disorienting to have time and attention focused on an issue that was not anticipated and does not relate to the dispute at hand. For the party whose financial situation is put in the spotlight, that circumstance can invite a whole host of emotional reactions and issues:

- pride / stubbornness - the need to save face within a certain community
- shame / avoidance - the loss of face within a certain community
- inertia – fear of failure, fear of the unknown, inability to adopt to change
- denial / ego – need to put blame elsewhere; not responsible for the problem; not responsible for the solution
- depression / inertia -- loss of control, loss of trust, loss of confidence, no hope

- insecurity – basic needs threatened (loss of home, safety, comfort, love)

For the party who is being asked to take the other party's financial condition into consideration, that circumstance can invite its own set of feelings and reactions:

- anger / aggression – directed at situation; directed at opposing party
- frustration / inertia – insolvency hurdle appears insurmountable; loss of control
- distrust – perception that other party is hiding something; insolvency not real
- opportunism – desire to take advantage of the other
- vengeance– desire to inflict pain on the other
- compassion – understanding; willing to consider other's situation
- altruism – desire to promote general / greater good
- pride / stubbornness - the need to save face within a certain community
- inertia – fear of failure, fear of the unknown, inability to adopt to change
- denial / ego – need to put blame elsewhere; not responsible for the problem; not responsible for the solution

One thing is certain, a discussion about one party's existing or forecasted insolvent condition cannot be forced. Everyone needs to be ready and willing to have that discussion.

H. Concluding Remarks

When “insolvency” or “bankruptcy” are brought up during the course of a mediation, that is the beginning – not the end – of the discussion, and that discussion invites a whole new set of issues and interests to talk about. If, for example, the parties assume that defendant is liable and that plaintiff will recover damages in the amount requested, that moves the dialogue to *collectability*. If a “win” by the plaintiff will “kill the debtor” because it will force the closure of the business and / or the surrender of the debtor's assets to a bankruptcy trustee for liquidation in a “fire sale” environment, then this potential circumstance should motivate the parties to consider

ways in which the dispute can be resolved so as to avoid this scenario. The treatment the plaintiff (creditor) would receive in a bankruptcy filed by the defendant (debtor) can provide an objective backdrop against which to evaluate settlement proposals that may be placed on the table. Is it better to take less now than to receive zero later? Likewise, the long-term benefit the defendant (debtor) hopes to derive by keeping its business open and running or holding on to assets expected to appreciate over time can provide a backdrop for assessing both the value of settlement and the financial viability of any settlement proposal that may be presented.

One way to evaluate a settlement proposal is to consider the *best alternative* to that proposal (BATNA). In the context of the litigated dispute, BATNA is proceeding with the judicial proceedings to judgment and evaluating the likelihood of prevailing / defending on some or all claims. Introducing one (or more) party's insolvency / potential bankruptcy forces all parties to consider their *worst alternative* to a pending settlement proposal (WATNA). For the plaintiff, WATNA assumes that plaintiff has a great case and it prevails at trial, but has a judgment that is uncollectible because the defendant is out of business, in bankruptcy or only has encumbered and/or exempt assets in his or her name.

Insolvency and the threat of bankruptcy offers up an opportunity for the parties to participate in a constructive exchange of information. Most importantly, that circumstance creates an opportunity for candor and communication about a subject that is slightly off topic (i.e., not focused on the merits or demerits of the dispute) and is relevant to both parties, especially if the objective of the litigation is to achieve a recovery of money or property from the other side. In those circumstances, the prospect of insolvency or threat of bankruptcy challenges the parties to think more broadly so as to come up with a solution that cuts their losses and allows both sides to do the best they can with a bad situation. It also offers objective criteria in the form of a balance sheet and cash flow statement to evaluate the reasonableness and feasibility of any proposed solution.

In many ways, insolvency is the ultimate "below the line" issue because it is an interest (or set of interests) that need to be considered, discussed and addressed irrespective of the merits of the dispute, the application of "the law" to the dispute, the perceived strength or weakness of either side's evidence, or the parties' feelings about the dispute. Insolvency operates as a big

reality check for all involved and forces the parties to get creative and go beyond the distributive model of bargaining. This is because when insolvency is an issue, the numbers that might otherwise be exchanged in a distributive negotiation are so out of reach that they are a non-starter simply because the party who is expected to pay does not have the financial wherewithal to do so – irrespective of the merits of the dispute at hand.

ATTACHMENT A

UNITED STATES BANKRUPTCY COURT						VOLUNTARY PETITION				
Name of Debtor (if individual, enter Last, First, Middle):						Name of Joint Debtor (Spouse) (Last, First, Middle):				
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):						All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):				
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):						Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):				
Street Address of Debtor (No. and Street, City, and State):						Street Address of Joint Debtor (No. and Street, City, and State):				
ZIP CODE						ZIP CODE				
County of Residence or of the Principal Place of Business:						County of Residence or of the Principal Place of Business:				
Mailing Address of Debtor (if different from street address):						Mailing Address of Joint Debtor (if different from street address):				
ZIP CODE						ZIP CODE				
Location of Principal Assets of Business Debtor (if different from street address above):						ZIP CODE				
Type of Debtor (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)			Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).			Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 </div> <div> <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding </div> </div> Nature of Debts (Check one box.) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." </div> <div> <input type="checkbox"/> Debts are primarily business debts. </div> </div>				
Filing Fee (Check one box.) <input type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.						Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). ----- Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).				
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.										THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> 1-49</div> <div><input type="checkbox"/> 50-99</div> <div><input type="checkbox"/> 100-199</div> <div><input type="checkbox"/> 200-999</div> <div><input type="checkbox"/> 1,000-5,000</div> <div><input type="checkbox"/> 5,001-10,000</div> <div><input type="checkbox"/> 10,001-25,000</div> <div><input type="checkbox"/> 25,001-50,000</div> <div><input type="checkbox"/> 50,001-100,000</div> <div><input type="checkbox"/> Over 100,000</div> </div>										
Estimated Assets <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> \$0 to \$50,000</div> <div><input type="checkbox"/> \$50,001 to \$100,000</div> <div><input type="checkbox"/> \$100,001 to \$500,000</div> <div><input type="checkbox"/> \$500,001 to \$1 million</div> <div><input type="checkbox"/> \$1,000,001 to \$10 million</div> <div><input type="checkbox"/> \$10,000,001 to \$50 million</div> <div><input type="checkbox"/> \$50,000,001 to \$100 million</div> <div><input type="checkbox"/> \$100,000,001 to \$500 million</div> <div><input type="checkbox"/> \$500,000,001 to \$1 billion</div> <div><input type="checkbox"/> More than \$1 billion</div> </div>										
Estimated Liabilities <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> \$0 to \$50,000</div> <div><input type="checkbox"/> \$50,001 to \$100,000</div> <div><input type="checkbox"/> \$100,001 to \$500,000</div> <div><input type="checkbox"/> \$500,001 to \$1 million</div> <div><input type="checkbox"/> \$1,000,001 to \$10 million</div> <div><input type="checkbox"/> \$10,000,001 to \$50 million</div> <div><input type="checkbox"/> \$50,000,001 to \$100 million</div> <div><input type="checkbox"/> \$100,000,001 to \$500 million</div> <div><input type="checkbox"/> \$500,000,001 to \$1 billion</div> <div><input type="checkbox"/> More than \$1 billion</div> </div>										

Voluntary Petition (This page must be completed and filed in every case.)		Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input type="checkbox"/> No.			
Exhibit D			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="text-align: right; margin-right: 100px;">_____ (Name of landlord that obtained judgment)</div> <div style="text-align: right; margin-right: 100px;">_____ (Address of landlord)</div>			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

Voluntary Petition*(This page must be completed and filed in every case.)*

Name of Debtor(s):

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Attorney*

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, [the president *or* other officer *or* an authorized agent of the corporation] [*or* a member *or* an authorized agent of the partnership] named as the debtor in this case, declare under penalty of perjury that I have read the foregoing [list *or* schedule *or* amendment *or* other document (describe)] and that it is true and correct to the best of my information and belief.

Date _____

Signature _____

(Print Name and Title)

FORM 6. SCHEDULES

Summary of Schedules

Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)

Schedule A - Real Property

Schedule B - Personal Property

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Nonpriority Claims

Schedule G - Executory Contracts and Unexpired Leases

Schedule H - Codebtors

Schedule I - Current Income of Individual Debtor(s)

Schedule J - Current Expenditures of Individual Debtors(s)

Unsworn Declaration Under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank.

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

United States Bankruptcy Court

In re _____
Debtor

Case No. _____

Chapter _____

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
TOTAL			\$	\$	

United States Bankruptcy Court

In re _____,
Debtor

Case No. _____

Chapter _____

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
TOTAL	\$

State the following:

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 12; OR , Form 22B Line 11; OR , Form 22C Line 20)	\$

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		\$
4. Total from Schedule F		\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$

In re _____
DebtorCase No. _____
(If known)**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand. 2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives. 3. Security deposits with public utilities, telephone companies, landlords, and others. 4. Household goods and furnishings, including audio, video, and computer equipment. 5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles. 6. Wearing apparel. 7. Furs and jewelry. 8. Firearms and sports, photographic, and other hobby equipment. 9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. 10. Annuities. Itemize and name each issuer. 11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)				

In re _____
DebtorCase No. _____
(If known)**SCHEDULE B - PERSONAL PROPERTY**
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.</p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize.</p> <p>14. Interests in partnerships or joint ventures. Itemize.</p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owed to debtor including tax refunds. Give particulars.</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.</p>				

In re _____
DebtorCase No. _____
(If known)**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.				
23. Licenses, franchises, and other general intangibles. Give particulars.				
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.				
25. Automobiles, trucks, trailers, and other vehicles and accessories.				
26. Boats, motors, and accessories.				
27. Aircraft and accessories.				
28. Office equipment, furnishings, and supplies.				
29. Machinery, fixtures, equipment, and supplies used in business.				
30. Inventory.				
31. Animals.				
32. Crops - growing or harvested. Give particulars.				
33. Farming equipment and implements.				
34. Farm supplies, chemicals, and feed.				
35. Other personal property of any kind not already listed. Itemize.				
_____ continuation sheets attached Total ➤			\$ _____	

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re _____
DebtorCase No. _____
(If known)**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.



Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Subtotal ► (Total of this page)							\$	\$
Total ► (Use only on last page)							\$	\$

continuation sheets
attached

(Report also on Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

In re _____
DebtorCase No. _____
(if known)**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Sheet no. _____ of _____ continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (s) ▶ (Total(s) of this page)	\$ \$
							Total(s) ▶ (Use only on last page)	\$ \$

(Report also on
Summary of Schedules.)(If applicable,
report also on
Statistical Summary
of Certain
Liabilities and
Related Data.)

In re _____
DebtorCase No. _____
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re _____,
Debtor

Case No. _____
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

** Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

____ continuation sheets attached

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

(Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See Instructions above.)	CODEBTR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
Account No.									
Account No.									
Account No.									
Account No.									
Sheet no. ____ of ____ continuation sheets attached to Schedule of Creditors Holding Priority Claims							Subtotals▶ (Totals of this page)	\$	\$
Total▶ (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)							\$		
Totals▶ (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)								\$	\$

In re _____
DebtorCase No. _____
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re _____,
Debtor

Case No. _____
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

** Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

_____ continuation sheets attached

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**
(Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODETOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
Account No.									
Account No.									
Account No.									
Account No.									
Sheet no. ____ of ____ continuation sheets attached to Schedule of Creditors Holding Priority Claims							Subtotals▶ (Totals of this page)	\$	\$
							Total▶ (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)	\$	
							Totals▶ (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)	\$	\$

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data..

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Subtotal▶							\$
Total▶							\$

____ continuation sheets attached

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.)

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Sheet no. _____ of _____ continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal▶ \$
							Total▶ \$
(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)							

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)

	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$ _____	\$ _____
2. Estimate monthly overtime	\$ _____	\$ _____

3. SUBTOTAL

\$ _____	\$ _____
----------	----------

4. LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify): _____	\$ _____	\$ _____

5. SUBTOTAL OF PAYROLL DEDUCTIONS

\$ _____	\$ _____
----------	----------

6. TOTAL NET MONTHLY TAKE HOME PAY

\$ _____	\$ _____
----------	----------

7. Regular income from operation of business or profession or farm
(Attach detailed statement)

\$ _____	\$ _____
----------	----------

8. Income from real property

\$ _____	\$ _____
----------	----------

9. Interest and dividends

\$ _____	\$ _____
----------	----------

10. Alimony, maintenance or support payments payable to the debtor for
the debtor's use or that of dependents listed above

\$ _____	\$ _____
----------	----------

11. Social security or government assistance
(Specify): _____

\$ _____	\$ _____
----------	----------

12. Pension or retirement income

\$ _____	\$ _____
----------	----------

13. Other monthly income
(Specify): _____

\$ _____	\$ _____
----------	----------

14. SUBTOTAL OF LINES 7 THROUGH 13

\$ _____	\$ _____
----------	----------

15. AVERAGE MONTHLY INCOME (Add amounts on lines 6 and 14)

\$ _____	\$ _____
----------	----------

16. COMBINED AVERAGE MONTHLY INCOME: (Combine column
totals from line 15)

\$ _____

(Report also on Summary of Schedules and, if applicable,
on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

In re _____,
DebtorCase No. _____
(if known)**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home) \$ _____
 - a. Are real estate taxes included? Yes _____ No _____
 - b. Is property insurance included? Yes _____ No _____
2. Utilities:
 - a. Electricity and heating fuel \$ _____
 - b. Water and sewer \$ _____
 - c. Telephone \$ _____
 - d. Other \$ _____
3. Home maintenance (repairs and upkeep) \$ _____
4. Food \$ _____
5. Clothing \$ _____
6. Laundry and dry cleaning \$ _____
7. Medical and dental expenses \$ _____
8. Transportation (not including car payments) \$ _____
9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$ _____
10. Charitable contributions \$ _____
11. Insurance (not deducted from wages or included in home mortgage payments)
 - a. Homeowner's or renter's \$ _____
 - b. Life \$ _____
 - c. Health \$ _____
 - d. Auto \$ _____
 - e. Other \$ _____
12. Taxes (not deducted from wages or included in home mortgage payments)
(Specify) \$ _____
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
 - a. Auto \$ _____
 - b. Other \$ _____
 - c. Other \$ _____
14. Alimony, maintenance, and support paid to others \$ _____
15. Payments for support of additional dependents not living at your home \$ _____
16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ _____
17. Other \$ _____
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$ _____
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:
20. STATEMENT OF MONTHLY NET INCOME
 - a. Average monthly income from Line 15 of Schedule I \$ _____
 - b. Average monthly expenses from Line 18 above \$ _____
 - c. Monthly net income (a. minus b.) \$ _____

In re _____,
DebtorCase No. _____
(if known)**DECLARATION CONCERNING DEBTOR'S SCHEDULES****DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR**

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____
Debtor

Date _____

Signature: _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any,
of Bankruptcy Petition PreparerSocial Security No.
(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address _____

X _____
Signature of Bankruptcy Petition Preparer_____
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets (Total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

ATTACHMENT B

UNITED STATES BANKRUPTCY COURT

In re: _____
DebtorCase No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

2. Income other than from employment or operation of business

None

☐

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors*Complete a. or b., as appropriate, and c.*

None

☐

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTSAMOUNT
PAIDAMOUNT
STILL OWING

None

☐

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS/
TRANSFERSAMOUNT
PAID OR
VALUE OF
TRANSFERSAMOUNT
STILL
OWING

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

None

☐

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None

☐

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	----------------------	---------------------------------	--------------------------

None

☐

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	--------------------	---

5. Repossessions, foreclosures and returns

None

☐

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None

☐

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF ASSIGNEE

DATE OF
ASSIGNMENT

TERMS OF
ASSIGNMENT
OR SETTLEMENT

None

☐

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF CUSTODIAN

NAME AND LOCATION
OF COURT
CASE TITLE & NUMBER

DATE OF
ORDER

DESCRIPTION
AND VALUE
OF PROPERTY

7. Gifts

None

☐

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF PERSON
OR ORGANIZATION

RELATIONSHIP
TO DEBTOR,
IF ANY

DATE
OF GIFT

DESCRIPTION
AND VALUE
OF GIFT

8. Losses

None

☐

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION
AND VALUE OF
PROPERTY

DESCRIPTION OF CIRCUMSTANCES AND, IF
LOSS WAS COVERED IN WHOLE OR IN PART
BY INSURANCE, GIVE PARTICULARS

DATE
OF LOSS

9. Payments related to debt counseling or bankruptcyNone
☐

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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10. Other transfersNone
☐

a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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None
☐

b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
----------------------------------	---------------------------	---

11. Closed financial accountsNone
☐

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None

☐

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None

☐

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None

☐

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None

☐

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

None

☐

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None

☐

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None

☐

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None

☐

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

18. Nature, location and name of business

None

☐

a. *If the debtor is an individual*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing

executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.*

*If the debtor is a corporation, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.*

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None ☐ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

- None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

- None ☐ b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None

☐

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None

☐

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None

☐

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT
OF INVENTORY
(Specify cost, market or other
basis)

None

☐

b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES
OF CUSTODIAN
OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None

☐

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None

☐

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

22. Former partners, officers, directors and shareholders

None

☐

a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME

ADDRESS

DATE OF WITHDRAWAL

None

☐

b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS

TITLE

DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None

☐

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS
OF RECIPIENT,
RELATIONSHIP TO DEBTOR

DATE AND PURPOSE
OF WITHDRAWAL

AMOUNT OF MONEY
OR DESCRIPTION
AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None

☐

If the debtor is a corporation, list the name and federal taxpayer-identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION

TAXPAYER-IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None

☐

If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER-IDENTIFICATION NUMBER (EIN)

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date	_____	Signature of Debtor	_____
Date	_____	Signature of Joint Debtor (if any)	_____

[If completed on behalf of a partnership or corporation]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date	_____	Signature	_____
		Print Name and Title	_____

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.

Address

Signature of Bankruptcy Petition Preparer

Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.

ATTACHMENT C

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: _____	Case Number: _____	
NOTE: 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.		
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: _____	<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.	
Name and address where payment should be sent (if different from above): _____ 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: \$ _____	
2. Basis for Claim: _____ (See instruction #2 on reverse side.)	*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.	
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. (See instruction 7 and definition of "redacted" on reverse side.) 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.

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.