

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT      District of South Carolina      **PROOF OF CLAIM**

Name of Debtor: Jackson L. Smith      Case Number: XX-XXXX

NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): Jane Doe, Trustee on behalf of XYZ Bank

Name and address where notices should be sent: Jane Doe, Trustee on behalf of XYZ Bank, 126 Main Street, Fieldstaff, VA 44225. Telephone number: (515) 555-1000 email: info@janedoe trustee.com

Name and address where payment should be sent (if different from above):

Telephone number:      email:

1. Amount of Claim as of Date Case Filed: \$ \_\_\_\_\_

If all or part of the claim is secured, check the box and specify the amount secured:  Secured      \$ \_\_\_\_\_

If all or part of the claim is unsecured, check the box and specify the amount unsecured:  Unsecured      \$ \_\_\_\_\_

2. Basis for Claim (See instructions):

3. Last time by which claim was filed: \_\_\_\_\_

4. Secured Claim? (See instructions)  Secured      \$ \_\_\_\_\_

5. Amount of Claim as of Date Case Filed: \$ \_\_\_\_\_

Domestic employee's claim under U.S.C. § 507(a)(1)

Up to \$2,775\* of deposits for purchase, lease, or rental of personal services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

\*Amounts are subject to adjustment on 4/01/15 and every 5 years thereafter on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction 6c)



# RESOLVED:

A Chapter 7 Trustee May File Proofs of Claim on Behalf of Unsecured Creditors

Steven Weiss and L. Alexandra Hogan

**A**s trustees, our job entails a lot of work for which we do not receive compensation. We all understand that comes with the territory. The reason is partly because of the numerous obligations we have to the courts and the U.S. Trustee, and partly because there is some percentage of cases in which, despite our investigations and efforts, no assets are recovered. But if there is anything worse than working on a case and not recovering any assets for distribution to creditors and payment of our fees and expenses, it is doing the work, recovering the assets, and still not being compensated for the effort because not enough creditors file claims.

Almost every trustee has had the experience of achieving a significant recovery that, in the end, exceeds the amount of filed claims. And since § 326 provides that our commissions are based on what we *distribute* to creditors (as opposed to what we recover), we do not receive compensation on any funds remitted to the debtor. That's why I have never really understood why trustees are reluctant to file claims for creditors, let alone why some of our colleagues have suggested that it borders on sanctionable conduct. Indeed, this seems to be one of the most hotly debated issues on the NABT website.

Let's start with the basic premise that both Bankruptcy Code Section 501(c) and Bankruptcy Rule 3004 specifically authorize trustees (or debtors) to file claims on behalf of creditors. Thus, it is hard to argue that the mere act of filing a claim on behalf of a creditor is prohibited in any way.

Why, one must ask, would Congress authorize trustees to file claims on behalf of creditors? Neither the Bankruptcy Code nor the Rules provide any specific criteria about when trustees should (or should not) file claims. While some courts have ruled that these provisions are intended to benefit debtors<sup>1</sup>, it is equally plausible that the reason is to maximize the chance that estate assets are distributed to creditors rather than to debtors. And there's nothing wrong with that.

I know there a number of arguments against filing claims on behalf of creditors, none of which, in the final analysis, are persuasive. The first is that filing claims for creditors violates a trustee's duty to the debtor. There is nothing in the Bankruptcy Code to support such a position. Certainly, there is nothing in § 704 to that effect.<sup>2</sup> Indeed, the structure of chapter 7 suggests just the opposite. For individual debtors in chapter 7, they receive a discharge of their debts, while protecting their exempt assets. Conversely, their rights to non-exempt assets are subordinate to the claims of all creditors, as set forth in more detail in § 726. Section 726(a)(2)(B) specifically contemplates payment of claims filed by a debtor or trustee.<sup>3</sup> Moreover, in most cases debtors are represented by counsel. They are certainly capable of protecting their clients' rights to surplus funds.

The second argument is that filing a claim for a creditor, without support, is frivolous, and maybe even a violation of Bankruptcy Rule 9011. While filing a claim, as with any other pleading, falls

within the purview of the rule, doing so is by no means frivolous. By filing a claim, a trustee is representing, to the best of his or her belief, "formed after an inquiry reasonable under the circumstances," that the debtor owes money to the creditors for whom claims are being filed, and that the claim is not being filed for an improper purpose. The debtor has filed his or her schedules under the pains and penalties of perjury, listing the names, addresses, account numbers and amounts owed to all creditors. Why is that not sufficient basis for a trustee to have a good faith belief that the debts are owed?<sup>4</sup> For that matter, how could a debtor object to the filing of a claim based on his or her own

verified pleadings? And how is filing a claim so a creditor can receive a distribution from funds recovered by the trustee for creditors an improper purpose?

Third, there is the perception by some judges (and maybe some U.S. Trustees) that filing claims for creditors is based on avarice rather than on duty.

That perception is both unfortunate and naïve. I will not deny that one of the motivations for filing claims is to receive a higher commission, but as noted above, it is not the only reason. I think most of our colleagues believe that the primary motivation in recovering assets is to be able to make distributions to creditors. And, of course, the Office of the U.S. Trustee keeps detailed statistics on our distributions to creditors. But, of course, we all have to make a living; we're not on salary with the court or the U.S. Trustee program. To the extent that a judge believes that a trustee is somehow getting a "windfall" from an increased distribution, one might appropriately ask that judge whether it is fair that trustees perform a multitude of services for which we receive no compensation. We investigate debtors' financial affairs, object to discharges, report possible § 707(b) violations, respond to creditor inquiries, move to dismiss cases, and more all under circumstances in which we are not likely to receive any compensation whatsoever. The cases in which we actually recover significant assets are, as we all know, far too few. We work hard to recover those assets; it is not a windfall for us to get paid fairly when we have done everything to maximize recovery for creditors.

To be sure, trustees filing claims need to do so in an ethical and

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## KEY POINTS

1. The Bankruptcy Code and Rules permit the filing of claims by trustees.
2. Filing claims to maximize returns to creditors is consistent with our duties.
3. When the claims are supported by information in the Debtors' schedules, filing claims is not frivolous.



### About the Authors

Attorney Steven Weiss is a Partner with Shatz, Schwartz and Fentin of Springfield, MA. He concentrates his practice in the areas of commercial and consumer bankruptcy, reorganization and litigation. Weiss supervises the firm's bankruptcy, reorganization and workout practice, represents creditors, debtors, and others in both commercial and consumer bankruptcy cases throughout Massachusetts, and has been a member of the private panel of Chapter 7 Trustees for the District of Massachusetts since 1987, and also serves as a Chapter 11 Trustee.

Attorney L. Alexandra (Alex) Hogan is an associate with the Springfield-based firm Shatz, Schwartz and Fentin, P.C., and concentrates her practice primarily in business, litigation, and bankruptcy law.