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1004 Business Bankruptcy Basics for the Generalist

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Faculty Biographies

Ronda P. Bayer

Ronda P. Bayer serves as associate general counsel for the The Valspar Corporation.

Previously, she was a partner with the twin cities law firm of Fredrikson & Byron.

Ms. Bayer is a longtime member of ACC and ACC's Minnesota chapter board of directors. She is the current president of the Minnesota chapter; she previously served as vice president, and chaired the membership committee and practice group lunches.

She completed her undergraduate work, summa cum laude, at Gustavus Adolphus College and received her JD, cum laude, from the University of Minnesota Law School.

David Garfield

David Garfield is deputy general counsel of Wells Fargo & Company and manages the litigation and workout division of Wells Fargo's law department.

Previously, he practiced in the areas of bankruptcy and commercial litigation with the Denver law firm of Davis, Graham & Stubbs. He also clerked with Justice Jean E. Dubofsky of the Colorado Supreme Court.

He has spoken many times on litigation, bankruptcy, and workout topics and is a co-author of the "Workouts and Bankruptcy" chapter of *Successful Partnering Between Inside and Outside Counsel* (West Group, 2000–2009).

Mr. Garfield graduated from the University of Denver and received his JD from Brigham Young University.

Timothy L. Howe

Timothy L. Howe is a senior lawyer in the law department of Minneapolis-based Cargill, Inc. He has a diverse corporate practice, and serves Cargill business units involved in grain origination, corn milling, sugar, and renewable energy.

Previously, he worked in a lead-lawyer capacity on several project financings and on the development of eight independent ethanol-production facilities located across the Midwest. He has also served as Cargill's lead lawyer for the financing and development of a sugarcane-refining joint venture in Louisiana, as well as a utility-grade combined heat-and-power station adjacent to a malting facility in North Dakota. Over the past few years, Mr. Howe has had several opportunities to represent Cargill's interests, whether as a trade creditor or a potential purchaser, in connection with various bankruptcies that have rippled through the grain and ethanol sectors.

Mr. Howe is a graduate of the University of Iowa College of Law.

James Lodoen

James Lodoen works for Lindquist & Vennum in Minneapolis. He co-chairs Lindquist & Vennum's bankruptcy and creditors' remedies group. His practice encompasses bankruptcy, debtor-creditor issues, agribusiness matters, and commercial lending and litigation. He has also represented several clients in acquiring assets and businesses via Section 363 sales and plans of reorganization arising from bankruptcy proceedings.

Certified in business bankruptcy law by the American Bankruptcy Board of Certification, Mr. Lodoen has represented a number of large companies, lenders, creditor committees, trade creditors, and individuals in bankruptcy proceedings, litigation, and workouts.

Mr. Lodoen has served as the judicial law clerk to the Honorable William A. Hill, United States Bankruptcy Judge for the District of North Dakota. He has been recognized in "Super Lawyers" (published annually in Minnesota Law & Politics), and is AV-rated by Martindale-Hubbell. Mr. Lodoen speaks and writes extensively on various bankruptcy, debtor-creditor, and agricultural law topics.

Mr. Lodoen earned his JD from the University of North Dakota School of Law.

BUSINESS BANKRUPTCY BASICS FOR THE GENERALIST

Executive Summary

The more you know about bankruptcy, the less overwhelming it is. This program will introduce in-house counsel with minimal knowledge of bankruptcy to the basics of the process. Topics addressed include various creditor remedies, proofs of claim, impact on intellectual property, licensing agreements and leases, responding to preference demands and the purchase of assets from a company in bankruptcy. Attendees will gain a broad-based understanding of bankruptcy that will help them navigate the process, minimize damage and maximize opportunities.

I. OVERVIEW

A. What Should Corporate Counsel Know about Bankruptcy Law?

Much like other areas of law, in-house counsel should know the basics about several recurring bankruptcy issues and processes. This program will focus on bankruptcy basics and branch out to touch on a few areas of bankruptcy law in which expertise is not required, but issue recognition is important.

B. Agenda

1. Resources and terminology
2. Checklist
3. Types of claims
4. Claim priorities
5. Common creditor rights/actions in bankruptcy proceeding
6. Preparing a reclamation claim
7. Preparing proofs of claims
8. Bankruptcy impact on leases, licenses and executory contracts
9. Bankruptcy Section 363 sales
10. Analyzing and defending preferential transfers
11. Understanding fraudulent transfers
12. Determining whether to serve on Creditors Committee
13. Basics of disclosure statements and plan of reorganization

14. Minimizing risks before bankruptcy occurs

II. RESOURCES AND TERMINOLOGY

A. What Is Bankruptcy Law?

Bankruptcy law incorporates most legal disciplines, including corporate, real estate, employment, contracts, benefits and litigation (to name a few) into a set of federal laws set forth in the United States Bankruptcy Code (Title 11 United States Code at 11 U.S.C. §§ 101-1532). The Federal Rules of Bankruptcy Procedure govern the procedural aspects of bankruptcy practice and are supplemented by local bankruptcy court rules. Selected statutes in Title 28 of the United States Code also apply to jurisdiction, venue and procedural matters. Ready access to bankruptcy material and summaries, forms and local bankruptcy court web pages can be found at www.uscourts.gov.

B. Bankruptcy Jargon

Much of bankruptcy terminology is unique to the bankruptcy process and unfamiliar to those who do not regularly practice bankruptcy law. The attached glossary of bankruptcy terms (Exhibit A) is derived in significant part from the U.S. Courts' web page at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/glossary.html> and supplemented by the authors. This glossary should serve as a ready reference to assist the reader in obtaining a better understanding of bankruptcy terminology and will help the reader appear wise beyond his or her years.

C. Bankruptcy Reference Material and Resources

1. Many legal publishers produce their own versions of the Bankruptcy Code and Rules on an annual basis. Never leave home without one!
2. The American Bankruptcy Institute at www.abiworld.org is a great resource and includes a searchable site for bankruptcy articles, seminar materials and other materials. The Institute also publishes several reasonably-priced booklets that cover the basics on topics such as reclamation, preferences and first day motions, to name a few. These resources are available at www.abiworld.org/abistore.
3. Bankruptcy petitions, schedules and all pleadings are readily available electronically at <http://pacer.psc.uscourts.gov/>. This site can also be searched to confirm or dispel a rumor that a bankruptcy filing has occurred.

D. Chapter What?

1. Chapter 7: Individual or Corporate Liquidation

Chapter 7 provides a structure for: liquidating non-exempt assets; pursuing claims to recover assets; determining allowance of claims of creditors against the bankruptcy estate; and ultimately distributing assets to the creditors. The U.S. Trustee appoints a Chapter 7 trustee, who locates and sells assets, distributing the proceeds to creditors.

2. Chapter 9: Municipalities

Chapter 9 is designed for municipalities and is seldom used.

3. Chapter 11: Individual or Corporate Reorganization

Chapter 11 refers to the chapter of the Bankruptcy Code entitled “Reorganization.” While a Chapter 11 reorganization will not magically cure financial problems, Chapter 11 provides a formal procedure for operating and possibly reorganizing a company, partnership or individual, and for dealing with its creditors in an organized fashion. Once a Chapter 11 petition is filed, most creditors are held at bay for a period of time to give the debtor, operating as a debtor-in-possession, “breathing room” to attempt to formulate a reorganization plan. While breathing room is the theoretical goal, in reality, the debtor is generally required to breathe twice as fast just to keep up. For the uninitiated, the one-year to 18-month or longer period that companies are generally in a contested reorganization is like an Antarctic Expedition: unfamiliar territory; difficult and strenuous conditions; and what appears to be the whole world against you. Chapter 11 has, however, provided many debtors with a final opportunity to reorganize and has produced many success stories. Many debtors use Chapter 11 as the avenue to sell their assets and then either convert to Chapter 7 or seek confirmation of a liquidating plan. A debtor-in-possession in Chapter 11 generally has the rights of a trustee. Throughout these materials references to a debtor may generally mean a debtor-in-possession or a trustee.

4. Chapter 12: Family Farmer or Family Fisherman Reorganization

Chapter 12 provides an abbreviated reorganization alternative for those who qualify as family farmers or fishermen and, if successful, results in a confirmed plan of reorganization.

5. Chapter 13: Individual Reorganization

Chapter 13 provides an abbreviated reorganization alternative for individuals who: do not qualify for Chapter 7 because they have the ability to repay creditors in part; have certain non-dischargeable debts they hope to satisfy; or need payment terms with respect to taxes or certain secured debts.

6. Chapter 15: Cross Border Cases

Chapter 15 is a new section of the Bankruptcy Code which applies to cross-border bankruptcy cases.

7. Chapters 1, 3 and 5: Apply to All

These Chapters of the Bankruptcy Code (and sections contained therein) include sections on general bankruptcy issues, case administration, creditors, debtors and the estate, and are generally applicable to each of the other Chapters. For example, a Chapter 11 case will be governed by these three Chapters along with Chapter 11.

III. CHECKLIST FOR CREDITORS OR OTHERS IN PRIVITIES WITH A COMPANY IN BANKRUPTCY

A. Confirm If, When and Where Bankruptcy Has Been Filed

1. If a bankruptcy is anticipated, consider implementing automatic on-line daily searches of media to learn of a filing.
2. Once you hear of a potential bankruptcy filing, confirm that a bankruptcy was actually filed by obtaining a copy of the petition from the debtor or by checking with the bankruptcy court via telephone or via the federal government PACER Service Center at <http://pacer.psc.uscourts.gov/>.

B. Immediate Steps upon Confirming Bankruptcy

1. Halt litigation and stop sending demand letters which violate the broad automatic stay legally imposed immediately upon a bankruptcy filing. 11 U.S.C. § 362.
2. Stop providing credit until satisfactory arrangements are made.
3. Contact carriers to stop shipments of product purchased on credit until satisfactory arrangements are made for payment of post-petition deliveries. If goods have yet to ship, stop shipment until satisfactory arrangements are made.
4. Consider the consequences of not providing contract services (as compared to goods) immediately. Perhaps work closely with the debtor to make appropriate arrangements for payment for post-petition services. See Section VIII, D, *infra*.
5. Serve a reclamation demand if the debtor received your goods within approximately 45 days prior to the bankruptcy filing.

6. Determine all outstanding business and relationships with the debtor, and obtain direction from internal business team as to what they would like to accomplish in the bankruptcy proceeding.
7. Determine if a critical vendor program will be implemented and begin using leverage to be included on critical vendor list.
8. Begin calendaring key dates:
 - a. Bar date or deadline to file proofs of claim (usually at least 90 days after bankruptcy petition date and often more).
 - b. First Meeting (Section 341 Meeting) of Creditors (usually 30-60 days after petition). Creditors are free to attend and ask questions of the debtor.
 - c. Deadline to file complaints objecting to discharge of debts or dischargeability of a particular debt (individual cases only) (usually 60 days after the First Meeting of Creditors).
 - d. Deadline to object to claimed exemptions (individual cases only) (usually 30 days after the First Meeting of Creditors).
 - e. Objection dates to various motions, plan, etc., as they are received through the cases. A particular pleading usually includes the date by which any party wishing to object must respond.
9. Post-petition liens do not extend to post-petition property of the debtor absent court approval. Secured creditors should confirm that their collateral is being preserved, that cash collateral is being protected and that their interests are being adequately protected. The debtor may not use cash collateral without creditor consent or a court order. A secured creditor—especially one with a security interest in cash collateral—will usually take an active role in the bankruptcy case from day one—and is well advised to do so. Secured creditors need to be diligent so that their collateral is preserved, or to the extent reduced or converted to cash, that their secured claim is being reduced if possible, or that they obtain a security interest in post-petition assets.
10. Parties to leases, licenses and executory contracts should obtain important information about: the status and value of property; amounts owed by or to the debtor; go-forward plans; and debtor's intentions. Parties should then begin considering strategy and alternatives. These issues are usually complex, and likely go beyond the expertise of corporate counsel with only minimal bankruptcy experience.

C. First Month

1. Obtain copies of bankruptcy schedules and the statement of financial affairs (forms attached as Exhibit B). Determine if claim is listed on the schedules.
2. Consider filing a notice of appearance and a request for service of papers (form attached as Exhibit C). The benefit of doing so is that the party receives notice of everything filed in the case, either in hard copy or via electronic copy, depending on the registration status of the filing party and the rules of the particular court. The down side, however, is that this can produce voluminous pleadings (dozens per day in large cases), and unless each is reviewed, pleadings pertinent to a particular creditor which require a response in order to preserve one's position could be overlooked. If no notice of appearance is filed, only those pleadings pertinent to the particular creditor will be served. Of course, one is free to review the docket and selected pleadings at any time. This is often an efficient and informal way to monitor the bankruptcy process.
3. Conduct an internal preference analysis to assess potential exposure for preferential transfers.
4. Continue with the "immediate steps" items set forth in Section B.
5. If outside bankruptcy counsel has been retained, work with outside counsel to establish a budget for the case.

D. Throughout Case

1. Immediately review each incoming pleading and determine whether a response is required or desired. Pay particular attention to any objection to a creditor's particular claim and receipt of any complaints (which are usually seeking to avoid preferential transfers).
2. Review incoming solicitations to purchase claims and consider whether to sell claim after carefully reviewing the proposed purchase agreement. Generally, the benefit of such offers is that they will generate cash sooner rather than later, although they are designed to pay less for the claim than will ultimately be realized. Claim assignment forms contain many traps for the unwary and should be closely scrutinized.
3. Continue to monitor status of debtor's cash flow through pleadings and reports filed with the United States Trustee, in order to determine if the case is on a successful path toward reorganization, a sale path or a crash-and-burn path.

4. File necessary proofs of claim by the bar date.
5. Obtain contact information for the Unsecured Creditors Committee counsel and contact periodically for case update.

IV. TYPE OF CLAIMS IN BANKRUPTCY

A. Administrative Claim

Claims arising from obligations incurred by the debtor after the date of filing. These claims are commonly made by professionals, utilities, vendors, wages, taxes, lease obligations, and others who perform services that benefit the estate and keep the debtor operating in a Chapter 11 or allow a Trustee to function in a Chapter 7 case. Claims for goods delivered in the ordinary course of business 20 days prior to the bankruptcy filing also fit in this category. Payment for these claims is usually not pursued through the proof of claim process, but by motion, application or other procedures established by the court. These administrative claims must be paid in full upon confirmation of a Chapter 11 plan.

B. Unsecured Priority Claim

Certain types of pre-petition, unsecured claims are given priority by the Bankruptcy Code. Such claims are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form and include certain taxes, consumer deposits and employee claims up to a certain level. Unsecured claims that are not specifically given priority status by the Bankruptcy Code are classified as unsecured nonpriority claims.

C. Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property. Examples of liens are a mortgage on real estate or a security interest in a car, truck, boat, television set or other personal property. A lien may have been obtained through a court proceeding before the bankruptcy case began. In some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim.

D. Unsecured Claim

If a claim is not secured, it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full. Amounts owing as of the date of the bankruptcy petition related to accounts receivable, lease payments, tort claims, promissory notes and almost anything else imaginable fit within this category. This category also includes

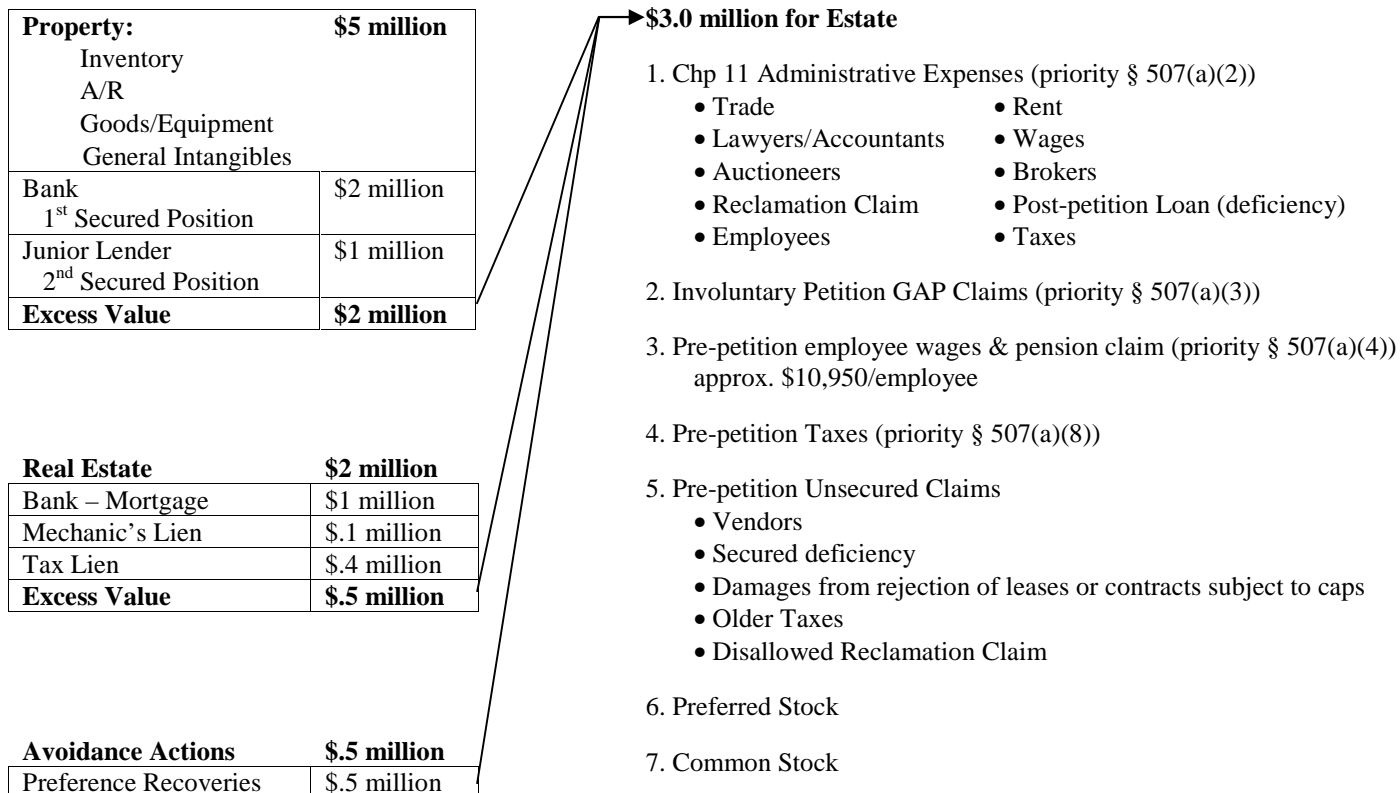
claims arising from rejection of an executory contract, in which case the claim is deemed to have occurred immediately prior to the filing of the bankruptcy petition.

V. CLAIM PRIORITY DISTRIBUTION SCHEME

A. The Bankruptcy Code Establishes a Priority Scheme That Governs Distributions to Creditors

1. Administrative Claim - entitled to be paid from unencumbered estate assets prior to any distribution to unsecured creditors.
2. Unsecured Priority Claim - entitled to be paid from unencumbered assets of the estate after payment of administrative claims.
3. Secured Claim - entitled to receive collateral or payments equal to the present value of the claimant's collateral, irrespective of administrative or priority claims (with the limited exception in which a secured creditor's collateral is surcharged by the estate under 11 U.S.C. § 506(c)).
4. Unsecured Claim - entitled to be paid pro-rata with all other unsecured claims from unencumbered estate assets after payment in full of administrative claims and unsecured priority claims up to the amount allowable for such claims.

B. The Following Chart is a Simplified Example of a Distribution Scheme in a Chapter 11 Proceeding:



VI. SPECIFIC RIGHTS IN BANKRUPTCY PROCEEDINGS

A. Secured Creditor Rights

1. Secured creditors are entitled to have their collateral and the value of their collateral adequately protected. If the value of secured creditors’ collateral exceeds the amount of their claim, they are also entitled to post-petition interest and attorney fees. Secured creditors are also entitled to have their collateral insured.
2. Debtors or Trustees are not allowed to use cash proceeds (cash collateral) from a secured creditor’s collateral unless the secured creditor consents or the court orders such after determining that the interest of the secured creditor is being adequately protected.
3. A secured creditor may proceed by motion to seek relief from the automatic stay so that it may exercise its state court remedies to recover its collateral. The two primary bases for such relief are: (a) for cause, including the lack of adequate protection; or (b) if the debtor

does not have an equity in the collateral and it is not necessary to an effective reorganization. 11 U.S.C. §§ 362(d)(1) and (2).

B. Unsecured, Vendor or Trade Creditor Rights

1. Reclamation Claims (11 U.S.C. § 546(c))
 - a. Immediately upon learning of a bankruptcy filing or an impending bankruptcy filing, creditors who have delivered products to the debtor within approximately 45 days of the bankruptcy filing should immediately (that day) send a reclamation demand. If the 45-day period ends after the date of the bankruptcy petition, the latest a reclamation claim can be filed is 20 days after the date of the petition filing. Never knowingly wait to file such a claim. A form reclamation demand with instructions is attached as Exhibit D.
 - b. While the debtor will most likely not return the goods, reclamation claims are important because they may allow an otherwise unsecured claim that is paid the proverbial ten cents on the dollar to be paid in full.
 - c. Goods received by the debtor approximately 45 days prior to the bankruptcy filing are subject to a reclamation claim, provided the product has not been sold by the time the debtor receives the notice. A delay in sending the notice may result in the sale of some of the product, thereby reducing the amount of the claim. A reclamation claim can always be amended with better documentation, so there is no down-side in sending the claim immediately, even if the supporting documentation is not complete.
2. Stoppage of Goods in Transit
 - a. Goods in Seller's Possession (UCC § 2-702(1) and UCC § 2-703)
 - (1) If the seller has not yet shipped goods ordered on credit terms, and the seller discovers that the buyer is insolvent or in bankruptcy, the seller may refuse delivery unless the buyer pays cash.
 - b. Goods in Possession of Warehouse, Carrier or Third Party (UCC § 2-705)
 - (1) The seller may stop delivery of goods upon learning of the buyer's insolvency or bankruptcy filing. This

continues until the buyer receives possession of the goods.

- (2) To stop goods in transit, the seller must notify the third party who has possession or control of the goods before the buyer receives possession or control of the goods. The seller should also notify the buyer.
 - (3) After the third party receives notice, the third party must hold the goods and deliver them according to the seller's instructions. The seller can then refuse to release the goods until the buyer pays for them.
3. Administrative Claim for Pre-petition Deliveries (U.S.C. § 503(b)(9))
 - a. A creditor who sells goods which were received within 20 days before the date of the petition to a debtor in the ordinary course of the debtor's business is entitled to an administrative claim for such goods (which may result in 100% payment for the goods). This claim may overlap with a reclamation claim, but is a stronger claim to the extent of delivery in the 20 days before the bankruptcy petition.
 - b. These claims are usually asserted via application or motion (or through a special procedure established by the court).
 4. Critical Vendor Treatment
 - a. Prior to the K-Mart Chapter 11 case, unsecured creditors aggressively sought to be included on a critical vendor list, and strongly encouraged the debtor to seek court authority to pay such creditors in full, early on in the case. This treatment usually occurred as a result of agreement by the creditor to provide post-petition trade credit, and over time the pre-petition claim rolled into a post-petition claim with administrative priority.
 - b. This treatment has become more limited in recent years, with higher standards established in order to have a critical vendor program. A hybrid program has emerged in some cases which allow those with administrative claims under 11 U.S.C. § 503(b)(9) to be paid early in the case in exchange for providing post-petition credit.

C. Depository Banks

1. Section 542(c) protects a bank (or others) that does not have either actual notice or actual knowledge of the commencement of a

bankruptcy case by a debtor that honors a check or transfers property of the debtor. Absent this protection, it would constitute an unauthorized post-petition transfer.

2. Once a bank learns of a bankruptcy filing, it should immediately stop draws from the debtor's account, absent court order providing direction or appropriate direction from a debtor-in-possession or a trustee with authority.
3. Depository banks who are owed money, and who have valid rights of setoff whether by agreement, statute or common law, should strongly consider placing an administrative freeze on the account, to be followed with a motion for relief from stay to allow setoff under 11 U.S.C. § 553.

VII. FILING A PROOF OF CLAIM AND ASSERTING ADMINISTRATIVE CLAIMS

A. Proof of Claim

1. What is it?
 - a. A creditor's essential response to the filing of a bankruptcy case is to consider whether to file a proof of claim. A proof of claim is a written statement that sets forth a creditor's claim and must conform substantially to the Official Form, a copy of which is attached as Exhibit E. The instructions for completing the form are also attached. Creditors may obtain proof of claim forms from the bankruptcy clerk's office, online from the U.S. Court web page, or, as is usually the case, a creditor will receive one by mail after the debtor files its bankruptcy schedules.
 - b. A proof of claim identifies the claimant, states the amount the creditor believes it is owed by the debtor, and states the status (priority) the creditor believes the claim should have in the case.
2. Who May File?
 - a. A creditor may file a proof of claim. A creditor is anyone to whom the debtor owes money or property. Most claims are filed by creditors.
 - b. If a creditor's filing of a proof of claim is not timely, an entity that is liable to the debtor or the trustee may file such claim.

3. Who Must File?
- a. In a Chapter 7, 12 or 13 case, for an unsecured creditor's claim to be "allowed," meaning eligible for payment, the creditor must file a proof of claim.
 - b. In a Chapter 9 or 11 case, any creditor or equity security holder whose claim or interest is not scheduled, or is scheduled as disputed, contingent, or unliquidated, **must** file a proof of claim or interest in order to be treated as a creditor for purposes of voting on a plan of reorganization and distribution. The Bankruptcy Code states that in a Chapter 11 case, a proof of claim or interest is deemed filed for any claim that appears in the schedules, unless that claim or interest is scheduled as disputed, contingent, or unliquidated. These three categories are particularly important for the Chapter 11 creditor in determining whether to file a proof of claim. It is the creditor's responsibility to review the schedules and ascertain how the debt is listed. Often a debtor will list a claim for an amount different than the creditor believes is owed. In such a case, the claim should be considered "disputed" and a proof of claim should normally be filed, even though the debtor may not realize a dispute exists.
 - c. If the amounts or other information stated in the proof of claim conflicts with that in the debtor's schedules but is adequately backed up by supporting documents, the information in the proof of claim supersedes the information in the debtor's schedules. In all cases, a proof of claim is deemed "allowed" unless a party in interest objects.
 - d. Although it is not always necessary to file a proof of claim in a Chapter 11 case, many creditors do so to avoid the consequences of a possible mistake or misrepresentation on the schedule. Many cases that are filed under Chapter 11 are later converted to liquidation proceedings under Chapter 7. A creditor who has not filed an actual proof of claim while the case was under Chapter 11 **must** file a proof of claim once the conversion to Chapter 7 has occurred. Proofs of claim actually filed by creditors during the Chapter 11 period of the case will carry over to the Chapter 7 proceeding.
 - e. Secured creditors who are fully "collateralized" (meaning the value of their lien on the debtor's property is equal to or greater than the debt), are not required to file a proof of claim. The creditor retains the right to foreclose or repossess the collateral after the bankruptcy. If the creditor does not file a proof of

claim and the claim turns out to be only partially collateralized, however, the creditor may lose the opportunity to collect the remaining portion of the debt.

- f. Counterparties to an executory contract that is rejected should also file a proof of claim upon rejection (which may amend a prior claim if one was previously filed) to include damages arising from rejection of the lease within such time as the court or local rules direct. Bankruptcy Rule 3002.
- g. If significant exposure to a preferential transfer claim exists, consider not filing a proof of claim to preserve a jury trial right—and a jump from the bankruptcy court to the district court—to resolve a preference suit. This may increase negotiation leverage because trustees are generally less comfortable pursuing a preference claim outside of bankruptcy court. This strategic maneuver makes particular sense when the unsecured claim is small, when the claim is fairly accurately set forth in Chapter 11 schedules and not disputed or otherwise contested, or if a distribution to creditors is expected to be very minimal. Consult with experienced bankruptcy counsel when making this decision.

4. Time to File

- a. In a Chapter 7, 12 or 13 case a proof of claim must generally be filed within 90 days after the date set for the first meeting of creditors. It is critical that proofs of claim be timely filed.
- b. In a Chapter 7 no-asset case creditors may receive a notice of no distribution (or no dividend) if there are no assets in the estate from which a dividend can be paid to creditors. Most courts combine this notice with the notice of the meeting of creditors. The notice of no distribution may state that it is unnecessary to file claims and that, if assets become available for paying creditors, another notice will be sent with instructions to file claims.
- c. In a Chapter 9 or 11 case the court fixes and may extend the time for filing proofs of claim. However, some courts have local rules fixing the same deadline for proofs of claim in Chapter 11 cases and cases under Chapters 7, 12 and 13. A creditor should carefully read the notice announcing the filing of the case and the meeting of creditors, because it may also contain information on filing a proof of claim. If a filing deadline for proofs of claim is not set or “fixed” at the beginning of the case, notices and case pleadings should be

closely monitored to determine when the filing deadline is fixed.

5. Claim Preparation

- a. Each claim should only include any “arrearage” and other charges that occurred before the petition was filed. An arrearage is the total amount of overdue payments on which the debtor has defaulted. Even if the debtor has subsequently made payments on the debt, the payments usually will have been applied to the current payment due, leaving earlier installments “in arrears” until made up by additional payments. Often the amounts in arrears will also accrue interest so that the total amount of an arrearage will usually be higher than the total amount of missed payments. A Chapter 13 debtor needs to know the amount of any arrearage so that the plan can provide for the debtor to pay the full amount that has accrued.
- b. If a claim is based upon a written document, key documents to support the claim should be attached by the creditor to the proof of claim form and filed with it. If such supporting documents are voluminous, a summary of them will usually suffice. Supporting documents provide evidence substantiating the amount stated in the proof of claim.
- c. In addition, if a creditor is claiming a security interest in property of the debtor, the creditor should include evidence of perfection of the security interest with the proof of claim. Examples of evidence of perfection of a security interest (including a lien, mortgage or deed of trust) include: a date-stamped copy of a deed of trust; mortgage; Uniform Commercial Code financing statement (UCC-1); or court judgment. Evidence of perfection should reflect that the document was filed with the appropriate government agency and that it constitutes a perfected lien on particular assets.
- d. At the end of the form, a creditor or other person authorized to file the claim should be sure to include: the full printed name and title, if any, of the creditor or authorized person; the creditor’s or authorized person’s full signature; and the date the form was completed. By signing the proof of claim, the creditor or other authorized person is stating under oath that in calculating the amount of the claim, the creditor has given the debtor credit for all payments received from the debtor.
- e. Be careful in preparing proof of claim forms and do not submit claims for amounts that are not supported by a valid, good-faith

basis. Under Section 152 of Title 18, United States Code, it is a federal crime to file a false or fraudulent claim in a bankruptcy case. Section 152 provides for a fine, for imprisonment of up to five years, or both, for a violation. Section 3571 of Title 18 provides a maximum fine of \$250,000 for an individual offender and \$500,000 for any “organization” convicted of a violation. Alternatively, Section 3571 provides for restitution based on damages caused by the offense, which creates the potential for making a restitution-based fine even higher.

B. Administrative Claims

1. If a claim is for an “administrative expense,” payment should not be requested on the proof of claim form. A separate “Request for Payment of Administrative Expense” with supporting documentation should be submitted.
2. There is no national form for a “Request for Payment of Administrative Expense.” The procedure for making such a request is usually guided by local rules or by an order particular to the specific bankruptcy case. Generally, administrative expenses relate either to a professional employed to assist the bankruptcy estate or an obligation incurred by a debtor during a Chapter 11 reorganization.

VIII. EXECUTORY CONTRACTS (INCLUDES LEASES AND LICENSES)

A. General Application

1. Section 365 of the Bankruptcy Code authorizes the trustee, debtor or debtor-in-possession (subject to certain requirements and limitations), to “assume or reject any executory contract or unexpired lease of the debtor.”
2. This statute is fraught with difficulty and uncertainty. It both provides benefits to and imposes substantial burdens on both the bankruptcy estate and the non-debtor party to the contract. Generally, however, Section 365 provides significant benefits to the debtor by allowing the debtor to reject certain contractual obligations which turns those obligations into unsecured claims. The statute also allows the debtor to cure certain defaults and assume the contract upon providing adequate assurances of future performance. Moreover, notwithstanding clauses in the contract that prohibit assignment, Section 365 allows the debtor to assign such contracts if it wishes. Section 365 also requires the debtor either to perform most post-petition obligations to non-debtor parties to a contract or lease or to risk having the contract or lease rejected and terminated.

3. To the extent a debtor accepts the benefits of an executory contract post-petition, whether or not the agreement is rejected, an administrative expense claim is created. Rejection of these arrangements results in a pre-petition unsecured claim for damages, measured as of the petition date according to applicable non-bankruptcy law. Deposits or letters of credit held by the lessor will usually be applied to the unsecured rejection claim, and not to the administrative portion of the claim, which benefits the lessor. The decision to reject an unexpired lease or executory contract is subject to court approval, and a straightforward business judgment test is generally the standard. If the contract or lease is assumed, it can generally be assigned notwithstanding contractual prohibitions, provided that the putative assignee gives adequate assurance of future performance.

B. Real Estate Leases

1. The Bankruptcy Code requires that the debtor pay real estate leases on an ongoing basis, subsequent to a Chapter 11 filing. While it is not necessary to immediately cure any pre-petition defaults, the Code requires a debtor, within 120 days of the date of the bankruptcy filing, to decide whether to assume or reject its real estate leases. If not assumed, the leases will probably be terminated. Upon court approval the 120-day period may be extended for another 90 days for good reason. Nevertheless, at some point in time, the debtor must decide whether to keep the real estate leases, which requires the debtor to cure all defaults and provide adequate assurances of future performance.
2. A debtor's rejection of real estate leases turns the claim of the lessor for pre-petition defaults, and for rejection of the lease, into an unsecured pre-petition obligation. Real property lessors' claims are capped at the greater of one year's rent or 15% of the remaining lease, according to a formula set forth in Section 502 of the Code.

C. Equipment Leases

1. Debtors often delay payment and, to some extent, performance of equipment leases and other executory contracts. Generally, however, payment is required to be timely made, at least for obligations arising 60 days after the bankruptcy petition.
2. Like real estate leases, these agreements must be assumed or rejected upon confirmation of a plan of reorganization, or earlier if the court so orders. In most circumstances, the debtor should pay lessors, franchisors, licensors or other parties to executory contracts on a current basis post-petition. By not doing so the debtor risks challenges to ongoing use of the equipment.

D. Lessor's Remedies When Debtor Fails to Perform Its Postpetition Obligations

1. Move to compel assumption or rejection. One of the most common remedies exercised by a lessor is to compel assumption or rejection of the lease by a particular date. This is not usually a remedy for real estate lessors because the Code requires that a lease be assumed within 120 days unless extended for cause, or the lease is deemed rejected. 11 U.S.C. § 365(d)(3). However, it is more commonly used for personal property leases, where such leases are not deemed rejected after a particular date.
2. Object to extension of the 120-day assumption/rejection period. Some courts have suggested that failure to comply with the requirements of 11 U.S.C. § 365(d)(3) to require ongoing payments is one of the elements courts will consider in deciding whether to extend the 120-day period.
3. Seek relief from the automatic stay. The immediate remedy of a lessor for non-payment of obligations under 11 U.S.C. § 365(d)(3) and (d)(10) may include denying the estate its right to assume the lease and exercising the lessor's attendant right to seek relief from stay to recover possession of the property. If a lessor is economically disadvantaged, it can seek relief from stay or adequate protection instead of waiting to receive payments equal to the debtor's actual use of the property, which in the personal property context can be nothing during the initial 60-day period.
4. Adequate protection under 11 U.S.C. § 363(e). This section provides that a lessor is entitled to adequate protection. A lessor's adequate protection rights in personal property are generally defined by Section 365(d)(10), which is the contract lease payment. A lessor's adequate protection rights in real property are generally defined by Section 365(d)(3). A request for adequate protection in the lease context provides the immediate remedy lacking under 11 U.S.C. § 365(d)(3) and (d)(10).
5. Request immediate payment. A motion or request for immediate payment may be granted regardless of whether the bankruptcy estate is administratively solvent, thereby providing the lessor with a priority administrative claim. A majority of the courts, however, do not recognize what is effectively a super-priority administrative claim by automatically requiring such payment to be made regardless of the administrative solvency of the estate.
6. Request administrative expense treatment for unpaid obligations. A majority of courts hold that unpaid 11 U.S.C. § 365 payment

obligations entitle the lessor to administrative expense treatment. Other courts view 11 U.S.C. § 365(d)(3) and (d)(10) as completely independent of 11 U.S.C. § 503(b)(1) and hold that Section 365(d)(3) and (d)(10) provide no basis for an administrative claim, leaving the lessor with its right to seek administrative treatment under 11 U.S.C. § 503(b)(1).

7. Move for an order to convert the case to Chapter 7 for failure to comply with the requirements of the Bankruptcy Code. This is a rather harsh remedy but has been recognized by some courts.
8. Lease rejected as a matter of law. Some courts, albeit few, have suggested that the failure to observe the strict requirements of 11 U.S.C. § 365(d)(3) results in termination of the lease.

E. Performance during Pre-Assumption or Pre-Rejection Period

1. A counterparty is probably not obligated to perform services or deliver goods pursuant to a prepetition contract absent a request or inducement of performance by the debtor.
2. Once performance is requested, the debtor may compel the counterparty to perform prior to assumption or rejection of the contract.
3. If the extension of financial accommodations or credit is material to the contract, performance will not usually be required absent satisfactory arrangements for payment. However, if such credit is only incidental to the arrangement, ongoing performance (such as for services contracts) may be required.

F. Licensees of Intellectual Property

1. License agreements are usually considered to be executory contracts in bankruptcy. Unlike other executory contracts, however, a licensee non-debtor's rights are preserved to a significant degree when a debtor rejects a license of "intellectual property," as defined in the Bankruptcy Code. The definition of intellectual property includes trade secrets, inventions, patents, copyrights and mask works, but does not specifically include trademarks. 11 U.S.C. § 101(35A). A prudent licensee will try to expand the scope of a trademark license to include defined "intellectual property" or purchase the marks with rights back to the seller which terminate upon the occurrence of certain events.
2. Section 365(n) of the Bankruptcy Code gives the licensee two options if a debtor-licensor rejects the license agreement. Those options are:
 - a. Treat the debtor's rejection as a contract breach terminating the contract, and assert damages as an unsecured creditor; or

- b. Retain rights under the contract for the duration of the contract and any extension, provided the licensee makes all royalty payments and waives claims of setoff or for administrative claim status.

IX. BANKRUPTCY SALES (SECTION 363 SALE)

A. Introduction

1. Bankruptcy filings of companies have increased substantially over the past twelve months and are expected to continue to increase during the months, if not years, ahead. A company in financial distress often looks to asset sales as part of a solution to its problems. While a strategic asset sale may provide the business with cash to continue operations, restructure, or simply work through a liquidity crunch, a company may alternatively conclude that the best way to maximize the value of its constituencies is the sale of substantially all of its assets. While a conventional asset sale outside of bankruptcy is often an option, businesses are, with increasing frequency, selecting the bankruptcy process as the preferred method of selling assets. Some buyers prefer acquiring their assets in a bankruptcy proceeding because of the added protection provided by a bankruptcy court order approving the sale. Section 363 of the Bankruptcy Code allows a debtor in bankruptcy, after notice and hearing, to sell property as part of the Chapter 11 process prior to filing a plan of reorganization. These sales are referred to in bankruptcy parlance as “Section 363 Sales.”
2. Most of the companies that file Chapter 11 do not successfully reorganize to continue as an ongoing entity. Rather, many of the companies filing Chapter 11 today do so with the expressed intent of using the bankruptcy as a process to conduct a “Section 363 Sale.” Such sales are generally approved when justified by a sound business purpose.

B. Advantages of Section 363 Sales

1. A buyer of assets in bankruptcy takes the assets free and clear of liens, claims and interests (other than certain environmental claims and, in some instances, product liability claims). To the extent various secured creditors have arguments over how the proceeds should be distributed and allocated, these disputes typically get sorted out after a sale has occurred and do not become an issue for the buyer.
2. A buyer of assets in a Section 363 Sale can decide which leases and other executory contracts to acquire and can leave the rest behind. The

Bankruptcy Code allows many contracts to be assigned, even if they include anti-assignment language.

3. A bankruptcy sale minimizes the liability to board members and officers with fiduciary obligations, and even allows them to be part of a buyer group, if they so choose. This is because everything is done in the open as a matter of public record, and the bankruptcy court approves the sale process.
4. A bankruptcy-court-sanctioned auction or sale process is often implemented with extensive parameters and procedures in place, so that potential buyers understand what the sale process will entail. This often maximizes the value of assets to the bankruptcy estate, which inures to the benefit of creditors of the company, and in some instances to the benefit of equity interests as well.

C. Disadvantages

1. Typically, a Section 363 Sale will not occur as quickly as a sale outside of bankruptcy.
2. A Section 363 Sale creates a competitive environment, and a buyer may end up paying more for the assets than it would otherwise.
3. Bankruptcy sales are public proceedings. A sale outside of bankruptcy avoids the stigma associated with a company having filed bankruptcy. This stigma will be of greater consequence in certain industries than others.

D. Summary of Section 363 Sale Process

1. Stalking Horse and Asset Purchase Agreement. A typical bankruptcy sale process involves a buyer entering into an asset purchase agreement. That buyer then becomes a “stalking horse.” This buyer may be identified by the debtor, or in larger cases is identified as a result of the marketing efforts of an investment banker. The stalking horse has the benefit of being able to negotiate the terms of an asset purchase agreement, which often will become the standard agreement that other parties wishing to bid on the assets must use. A stalking horse will typically negotiate a breakup fee and the various bid procedures, which are all designed by the stalking horse to try to obtain an advantage over other potential buyers. The signing of an asset purchase agreement with a stalking horse, however, is only the beginning of the Section 363 Sale process.
2. Bid and Sale Procedures. Once such an asset purchase agreement is signed, the debtor-in-possession in bankruptcy will usually file a motion with the bankruptcy court to approve the sale and bid

procedures. The motion will also request approval of the stalking horse asset purchase agreement. An auction is usually scheduled 30 to 60 days later, at which time other qualified bidders, as defined in the auction sale procedures, may come forward and bid on the assets. Typically, in order to be a qualified bidder at the auction, parties are required to submit asset purchase agreements that conform as much as possible to the stalking horse asset purchase agreement. A deposit is also usually required at that time.

3. Auction. The auction is usually held at a location designated by the company and conducted by the company's lawyers, investment bankers or financial advisors. Once the auction is completed and the company declares who had the highest and best bid, the debtor-in-possession will promptly return to the bankruptcy court to seek court approval of the successful bidder. If the successful bidder does not close on the transaction, the backup bidder is usually required to be in a position to close at the backup bid price.

X. AVOIDANCE ACTIONS

It has long been an underlying philosophy of bankruptcy law to encourage equal distribution among creditors. To do so it is necessary that the debtor or trustee have authority to inquire into the validity of transfers made by the debtor prior to filing, and to avoid those transfers for the benefit of the estate if they were made (intended or as a matter of law) to give certain creditors or groups of creditors preferential treatment. There are three major avoiding powers: (1) strong-arm; (2) preferences; and (3) fraudulent transfers. These must generally be initiated within 2 years of the commencement of the bankruptcy case.

A. Strong-Arm (11 U.S.C. § 544) Avoidance of Unperfected Security Interests

1. The Bankruptcy Code clothes the debtor-in-possession or trustee with the status of a hypothetical judicial lien creditor as of the commencement of the case. This status enables them to set aside unperfected security interests and certain other transfers that would be invalid against a creditor that levied under state law as of the date of the bankruptcy filing. This status is in no way dependent upon the existence of an actual creditor with such rights.
2. Secured creditors who have failed to perfect their security interest by required filings or mortgages, UCC-1 financing statements, account control agreements or whatever other method is required to perfect a security interest in particular collateral, will most likely be treated as unsecured creditors.
3. With respect to transfers of real property, the debtor or trustee is also clothed with the status of a hypothetical bona fide purchaser.

Likewise, the debtor may utilize the status of an existing unsecured creditor to set aside any pre-petition transfer that is avoidable pursuant to applicable non-bankruptcy law.

B. Preferential Transfers (Preferences)

One of the most difficult concepts for creditors to understand is why, when they are owed money by the debtor, they can be sued to return payments they previously received from the debtor. Such claims are pursued by the debtor-in-possession in a Chapter 11, a liquidating trust arising out of a confirmed Chapter 11 plan, or a bankruptcy trustee making a preference demand. Preferential transfer claims are usually made by letter prior to commencing litigation, but can also be commenced by the filing and service of a complaint with no advance warning.

1. Elements of a Preference (11 U.S.C. § 547)
 - a. Transfer of the debtor's property (usually by check or the filing of a mortgage or UCC-1 financing statement);
 - b. For or on account of an antecedent debt (outstanding debt);
 - c. Made while the debtor was insolvent (which is presumed during the 90-day period prior to bankruptcy);
 - d. Made within 90 days before the bankruptcy petition (or one year before if the transfer is to an insider); and
 - e. That enables the transferee to obtain more than it would in a liquidation under Chapter 7, had the transfer not been made (this protects fully secured creditors but generally exposes everyone else, as very few Chapter 7 cases provide 100% distribution to claimants).
2. Main Defenses That Prevent Avoidance of a Preferential Transfer
 - a. Contemporaneous Exchange. A transfer for a substantially contemporaneous exchange of value (i.e., check for COD);
 - b. Ordinary Course. Payment of a debt incurred by the debtor in the ordinary course of business of the debtor and the transferee, if such transfer was:
 - (1) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
 - (2) made according to ordinary business terms.

- c. New Value. Unsecured new value was provided after such preferential transfer was received for which the transferee did not receive an unavoidable transfer. Whether this must remain unpaid depends upon the particular court and circuit authority.

3. Strategy

- a. NEVER read a preference demand letter and pay the demanded amount without analyzing the defenses. A better deal can almost always be negotiated.
- b. Review the 90-day payment history and compare it to the 365 days prior to the 90-day period to determine the extent of variance, in order to assess the strength of your ordinary course of business defense. A template for analyzing a preferential transfer demand, along with a typical response letter for a simple preference matter, are attached as Exhibit F.
- c. There is often room to argue about the ordinary course defense, although the new value defense is often easier to apply (with some exceptions). A summary form of ordinary course analysis and a simple new value analysis are attached as Exhibit G.

4. Proactive Strategy to Reduce Risk of Preference Exposure

- a. Enforce credit terms and historical payment record from date of invoice to date of payment.
- b. Do not change method of payment (check to wire transfer) unless this change is the only way to get payment.
- c. Minimize unnecessary threats, and do not create evidence of additional pressure (such as through dunning e-mails).
- d. Obtain either guarantees from third parties or perfected security interests in assets.
- e. The caveat to each of the strategies above is that they weaken defenses to a preferential transfer. But, in the end, if your choice is between taking such steps and getting paid or not getting paid, opt for getting paid and argue about preference defenses later.

C. Fraudulent Transfers (11 U.S.C. §§ 548 and 544(b))

- 1. Transfers made with actual intent to hinder, delay or defraud creditors within two years prior to a bankruptcy filing are, as one would expect,

avoidable in bankruptcy. In addition, transfers by the debtor within such two-year period are avoidable if made while the debtor was insolvent, or had unreasonably small capital to continue its business, or at a time when the debtor believed it could not repay its debts. While in the present context this sounds unbelievably broad, keep in mind that the Bankruptcy Code protects transferees in these circumstances if they act in good faith and give reasonable value to the debtor in return for the transfer. Note, however, that preference recipients and strong-arm victims are not accorded such protection. The goal in each instance is to avoid unwarranted or unfair depletion of the bankruptcy estate during some arbitrary period prior to filing.

2. Leveraged buy-outs, intercompany transfers or guarantees and cross-collateralization among related entities are the types of transactions vulnerable to fraudulent transfer attacks. Of course, gifts of assets to affiliated entities, purchase prices above the value of assets sold, above-market salaries and dividends to shareholders are transactions commonly analyzed for potential fraudulent transfer exposure.
3. If a fraudulent transfer occurred outside of the two-year period prior to filing, it may still be set aside. To do so, the trustee must then proceed under applicable state law, under its status as an unsecured creditor under the strong-arm powers. This will extend the applicable statute of limitations.

XI. CREDITORS COMMITTEE (CHAPTER 11)

A. How Is the Creditors Committee Established?

1. During the initial week or two of a Chapter 11 case, the 20 largest unsecured creditors are contacted by the United States Trustee's office and asked whether they would like to serve on the Unsecured Creditors Committee. The United States Trustee either appoints the Committee members after determining initial interest or, in some jurisdictions, following a formation meeting the 20 largest unsecured creditors are invited to attend.
2. The creditors initially contacted are usually taken from the list of the 20 largest unsecured creditors filed by the debtor with its petition. Creditors are also free to contact the United States Trustee's office to request consideration, especially if they were wrongfully excluded from the list.

B. The Responsibilities of the Creditors Committee:

1. Investigate the financial and business affairs of the debtor;
2. Support or object to motions brought by various parties with respect to pre-confirmation administration of the estate and its assets; and
3. Negotiate with the debtor-in-possession, secured creditors and others to obtain acceptable treatment of unsecured creditors under a plan of reorganization.

C. The Committee Should Think on its Own

1. The Committee is not a spokesperson, but is expected to take its own positions on behalf of the unsecured creditors as a whole. At times, the Committee's positions may, by necessity, be adversarial, depending on the circumstances.
2. The Creditors Committee often makes strange bedfellows, supporting the debtor-in-possession with respect to one motion, a secured creditor with respect to another, and a counterparty to an executory contract or lease at yet another time.

D. To Be on the Committee or Not to Be—That Is the Question

1. Reasons an unsecured creditor may consider serving on the Committee:
 - a. Committee members have an almost direct pipeline to the debtor to obtain information about the business and viability of the debtor.
 - b. Committee members have the ability to influence the outcome of a plan of reorganization and the treatment of unsecured creditors, including the member's entity.
 - c. Committee members receive education about the Chapter 11 process from the Committee's counsel, and in large part need not pay their own counsel for the same education.
 - d. Committee's counsel keeps Committee members informed of all material motions, pleadings and any activities in the case. This may eliminate a member's need to hire its own monitoring counsel.

2. Reasons an unsecured creditor may decline to serve on the Committee:
 - a. Serving on the Committee is time consuming. The time commitment varies from a few meetings and conference calls in smaller cases to weekly meetings or conference calls in larger cases—plus special meetings or hearings.
 - b. Committees have a fiduciary obligation, and if breached, Committee members are subject to liability. Realization of this risk happens very seldom.
 - c. Committee members are usually compensated for expenses but are not compensated for their time.
 - d. The Committee member's company has objectives or an end-game in the case, which is often inconsistent with its role as a fiduciary to all unsecured creditors.

E. Other Types of Committees

1. Bondholder/noteholder committees.
2. Class-action claimant committees.
3. Retirees.
4. Equity holder committees – only when shareholder recovery is possible.

F. Employment of Professionals

1. The Creditors Committee has the duty to employ professionals to carry out all the necessary activities that the Committee must accomplish during a Chapter 11 case. The Committee must evaluate the need to employ professionals (attorneys, accountants, investment advisers or other professionals) based on the circumstances of the case. A Committee will usually hire legal counsel shortly after its formation to advise it on how to proceed in the Chapter 11 case. The Chapter 11 debtor estate pays for counsel and other professionals.
2. The Bankruptcy Code provides a procedure under 11 U.S.C. § 1103(a) governing the Committee's employment of professionals. Professionals hired by the Committee must not have conflicts of interest in the Chapter 11 case and are required to be approved by the court. Additionally, professionals retained to represent the Committee must follow the limitations placed on the retention of professionals set forth in Sections 328, 330 and 331 of the Bankruptcy Code.

XII. PLAN OF REORGANIZATION/DISCLOSURE STATEMENT

A. Relationship of Disclosure Statement to Plan

1. A confirmed Plan of Reorganization is the ultimate goal of virtually all debtors in Chapter 11 proceedings. Prior to obtaining confirmation of a Plan, the company must obtain approval of a Disclosure Statement. A Disclosure Statement is filed with the court and usually set for hearing 30 days thereafter. If parties object to the Disclosure Statement, it is revised, and ultimately court approval is obtained.
2. The Disclosure Statement is a relatively lengthy and detailed document that provides a brief history of the company, explains how the various classes of creditors and interest holders are being treated under the Plan of Reorganization, and describes how the company plans to operate going forward. Liquidation analyses, as well as historical and prospective balance sheets, income statements and cash flows, are typically attached to the Disclosure Statement. The purpose of the Disclosure Statement is to provide creditors and interest holders with sufficient information so that they may cast an informed vote on whether to accept or reject the proposed Plan of Reorganization.
3. A Plan of Reorganization details how all creditors and interest holders will be treated. In effect, it is a binding contract with all parties from the date of confirmation going forward. All debt is discharged upon confirmation of a Plan, except as specifically provided for in the Plan or as excepted by law.

B. Formulating the Disclosure Statement and Plan of Reorganization

1. During the first 120 days after filing, the debtor-in-possession has the exclusive right to file a Plan of Reorganization (the “exclusive period”). This period may be extended by the court for good cause shown. If filed within that time period, the company has an additional 60 days to obtain acceptance of the Plan. During this time, no other parties may file a reorganization plan (other timelines and requirements for confirmation apply to small-business Chapter 11 cases, which are not too common).
2. Once the so-called “exclusive period” expires, any party in interest to the bankruptcy proceedings, including equity holders, unsecured creditors or secured creditors may file and seek approval of their own Plan. Creditor plans are often liquidating plans, the goal being to liquidate the company and turn whatever asset value is available into cash for immediate distribution.

C. Confirmation Requirements

The Bankruptcy Code sets forth many requirements for obtaining confirmation of a Plan of Reorganization. Of those requirements, the following are particularly important:

1. Each secured creditor must receive payments equal to the value of its collateral, plus interest, and must retain the security interest on its collateral, or the secured creditor's collateral can be turned over to the secured creditor.
2. Unsecured creditors usually receive a percentage recovery on the dollar, but must at least receive as much or more than any creditor would receive in a straight liquidation. It is important to negotiate the Plan with the Unsecured Creditors Committee, and to obtain the Committee's approval before soliciting acceptances. The Committee will then probably send a letter to all unsecured creditors, advising them that it believes the proposed Plan to be in their best interests. A Committee letter endorsing the Plan is usually of great assistance in obtaining ballots approving the Plan.
3. All post-filing administrative expenses and professional fees must be paid upon confirmation of the Plan. In addition, many vendors who sold product to the debtor within 20 days prior to bankruptcy must be paid balances related to such sales.
4. Payments to cure defaults on contracts and leases to be assumed must also be made on confirmation of the Plan.
5. No equity holder may receive or retain any property unless all creditors are paid in full or the unsecured creditor class accepts the Plan and all creditors receive as much as in a Chapter 7 liquidation proceeding. Most courts conclude that this does not apply to nonprofit corporations when no actual stock is outstanding.

D. Classes-Balloting

1. The Bankruptcy Code requires that similarly situated creditors be grouped in classes and then be treated equitably within each class. For example, all unsecured creditors are often placed in one class while secured creditors are each placed in their own respective class. Confirmation of a Plan is much easier if the debtor obtains acceptance, by means of a ballot accepting the Plan, from all classes of creditors whose rights are being modified or "impaired" by the Plan.
2. Class acceptance is achieved by obtaining a yes vote from half in number and 2/3 in dollar amount from all creditors returning ballots.

Creditors receive ballots when they are sent copies of the Disclosure Statement and Plan.

E. “Cramdown”

1. If all impaired classes do not accept the Plan, but at least one impaired class accepts the Plan, then the company can ask the court to force the Plan upon the non-consenting classes. This procedure is descriptively referred to as “cramdown.” Before a Plan can be confirmed under a “cramdown,” the court must find, with respect to each class that has not accepted the Plan, that the Plan does not unfairly discriminate against the class and is fair and equitable as to that class.
2. The requirement that the Plan does not unfairly discriminate means that equal classes must share equally under the Plan. Thus, for example, the unsecured creditors cannot be divided into two classes and dealt with separately on an unequal basis.
3. The requirement that a Plan be fair and equitable means that no class of creditors or equity holders can be forced to participate in the reorganization until all classes senior thereto have received full compensation for the value of their claims. By way of illustration, if the value of the estate is insufficient to pay all of the secured claims, (claim is equal to the value of the secured creditors’ collateral), it is improper for unsecured creditors to share in the Plan unless the secured creditors consent to such participation. In more concrete terms, a debtor should not retain any equity, property or control position in its assets unless: (1) all secured, administrative, priority and unsecured claims are paid in full; or (2) those classes that are not paid in full consent to the debtor’s retaining such property or control.
4. Often such consent is conditioned upon the equity interest providing “new value” to the reorganized entity. This requires equity holders to make a contribution of cash or something else of material value to fund the reorganization of the company. The required contribution amount becomes the subject of intense negotiation, or sometimes, bidding. A third-party, for example (especially if frustrated by management’s refusal to sell assets), may attempt to acquire control of the assets of the reorganized company by funding the reorganization and outbidding, and thereby ousting, the previous equity.

F. Discharge

When a Chapter 11 bankruptcy Plan is successfully confirmed, and the reorganized debtor continues in business, a company generally receives a complete discharge of all of its debts. This means that, except to the extent the Plan provides that the

company will make payments in the future, the company is relieved of all of its previous debt and gets a fresh start.

XIII. PRE-BANKRUPTCY PROACTIVE STEPS TO MINIMIZE RISKS IN A BANKRUPTCY PROCEEDING

A. Creditors

1. Perform strong due diligence prior to extending credit.
2. Enforce strong credit policies and terms.
3. Consider how you might enhance your position. For example, can you obtain a perfected security interest? Might you be able to obtain guarantees from third parties or letters of credit? In addition, might you be able to persuade the debtor to waive an outstanding claim, or to enhance a contractual provision to make a contractual relationship more favorable?
4. Formalize a bailor-bailee relationship to keep title to the product until pulled from a designated facility by the debtor and payment is made to the creditor.
5. Watch for red flags that financial problems exist or are looming. Early detection gives creditors the opportunity to take steps to assure payment or other protections before the debtor's condition deteriorates to a point that such actions cannot be taken. Accomplish this through periodic review of financial documents, and ask for updated financial information from time to time.
6. Perform liquidation analysis. Use this as a baseline with the debtor in negotiations. Consider the impact on your business if the debtor fails. Can you find an alternative supplier or customer? Does the debtor have work in process that you need? Further, what are the bankruptcy risks for the debtor? Might a debtor be threatening bankruptcy in order to win concessions from your client?

B. Joint Venture Parties

1. Prior to entering into a joint venture transaction, conduct a thorough due diligence examination of the joint venture and the other partners in the joint venture. Evaluate their current management teams. Request and review documents and financial data to gauge the condition and adequacy of assets, the value of disclosed and undisclosed liabilities, and to confirm the accuracy of representations and warranties.
2. Ensure that you understand both your client's strategic goals for entering into the joint venture and the exit strategy.

3. Draft wrap-around or other contracts with the joint venture in contemplation of bankruptcy either by the joint venture or the other partner.
4. Incorporate contractual provisions allowing for the setoff of mutual obligations, and tie multiple contracts between the same parties together with aggregate rights of setoff.

C. Contracts

1. Recognize that contractual provisions triggered by a bankruptcy filing are generally not enforceable. This includes termination clauses and anti-assignment clauses.
2. Draft contracts with bankruptcy in mind. For example, if the transaction fits into one of the safe harbor exceptions to the automatic stay (for example, the exception for forward contracts under the Bankruptcy Code), carefully draft language tailored to the specific circumstance, making it clear that the parties acknowledge the exception.
3. Present grants of rights are generally preferable to a contract containing promises to grant rights in the future. Such promises will not likely be enforceable after a bankruptcy is filed.
4. File UCC-1 Financing Statements for notification purposes if another entity has possession of your assets pursuant to a contract arrangement, and provide other notices to secured lenders and parties as required by the Uniform Commercial Code.
5. Obtain an estoppel agreement from a secured creditor or landlord if they have the ability to prevent the exercise of rights that you would otherwise have under the Bankruptcy Code.

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Overview

- Resources
- Chapter what?
- Checklist and timeline
- Claims
- Creditors' rights
- Section 363 sales
- Defending avoidance actions
- Creditors committee
- Plan of reorganization
- Minimizing bankruptcy risks

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Resources

- What is bankruptcy law?
– www.uscourts.gov
- Bankruptcy jargon
– Exhibit A (glossary)
- Bankruptcy reference material and resources
– www.abiworld.org
– pacer.psc.uscourts.gov

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Chapter What?

- **7 — Individual or corporate liquidation**
- 9 — Municipalities
- **11— Individual or corporate reorganization**
- 12 — Family farmer or family fisherman reorganization
- 13 — Individual reorganization
- 15 — Cross-border cases
- **1, 3, and 5 apply to all**

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Bankruptcy. Now What?

- Immediate ten things to do
- First month
- Throughout the case

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Immediate Ten Things To Do

1. Halt litigation; no demand letters
2. Stop providing credit
3. Stop product shipments
4. Evaluate providing contract services
5. Reclamation demand
6. Determine outstanding business and relationships with debtor

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Immediate Ten Things To Do (cont.)

7. Critical vendor program?
8. Calendar key dates
 - Bar date or proofs of claim deadline
 - First meeting of creditors
 - Deadline to file complaints objecting to discharge of debts (individual)
 - Deadline to object to claimed exemptions (individual)
 - Objection dates to various motions, plan, etc.

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Immediate Ten Things To Do (cont.)

9. Secured creditors: protect collateral
10. Assess leases, licenses, executory contracts

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First Month

1. Bankruptcy schedules and statement of financial affairs (Exhibit B)
 - Claim listed?
2. Consider filing notice of appearance and request for service of papers (Exhibit C)

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First Month (cont.)

3. Conduct preference analysis
4. Continue with "immediate steps"
5. Discuss budget and level of involvement with outside counsel, if retained

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Throughout the Case

1. Review incoming pleadings
2. Consider solicitations to purchase claims
3. Monitor debtor's cash flow and operations
4. File proof of claim
5. Contact unsecured creditors committee counsel periodically

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Claims and Priority

- Secured claim
- Administrative claim
- Unsecured priority claim
- Pre-petition unsecured claim

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Claim-Priority Distribution

Property Inventory A/R Goods and equipment General intangibles	\$5 million	Real estate	\$2 million
Bank First secured position	\$2 million	Bank—mortgage	\$1 million
Junior lender Second secured position	\$1 million	Mechanic's lien	\$1 million
Excess value	\$2 million	Tax lien	\$4 million
Avoidance actions	\$5 million	Excess value	\$5 million
Preference recoveries	\$5 million		

\$3 million for estate

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Claim-Priority Distribution (cont.)

1. Administrative claims

- Trade
- Lawyers/accountants
- Auctioneers
- Reclamation claim
- Employees
- Taxes
- Rent
- Wages
- Brokers
- Post-petition loan (deficiency)

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Claim-Priority Distribution (cont.)

2. Involuntary petition GAP claim (priority claim)
3. Pre-petition employee wages and pension claim (priority claim)
4. Pre-petition taxes (priority claim)

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Claim-Priority Distribution (cont.)

5. Pre-petition unsecured claims

- Vendors
- Secured deficiency
- Damages from rejection of leases or contracts subject to caps
- Older taxes
- Disallowed reclamation claim

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Claim-Priority Distribution (cont.)

6. Preferred stock
7. Common stock

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Secured Creditors' Rights

- Adequate protection
- Cash collateral
- Relief from stay

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Unsecured, Vendor, or Trade Creditors' Rights

- Reclamation claim
- Stoppage of goods in transit
- Administrative claim for pre-petition deliveries
- Critical vendor treatment

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Depository Bank

- Stop draws on debtor's account
- Administrative freeze

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Proof of Claim and Administrative Claims

- Proof of claim
 - What?
 - Who?
 - Timing
 - Preparation
- Administrative claims

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Leases, Licenses, Executory Contracts

- Leases: real estate and equipment
- Lessor's remedies
- Counter-party obligations
- Licenses: intellectual property

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Bankruptcy Sales (Section 363)

- Advantages
- Disadvantages
- Sale process
 1. Stalking horse and asset purchase agreement
 2. Bid and sale procedures
 3. Auction

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Avoidance Actions

- Unperfected security interests and mortgages usually of no value and avoided
- Lesson: always file timely UCC-1 and mortgage/deeds of trust

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Avoidance Actions (cont.)

- Preferential transfers (preferences)
 - Elements of a preference
 - Transfer of debtor's property
 - For or on account of an antecedent debt
 - Made while debtor was insolvent
 - Made within 90 days before bankruptcy petition (one year before if transfer is to an insider)
 - Enables transferee to obtain more

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Preferential transfers (cont.)

- Main defenses that prevent avoidance of a preferential transfer
 - Contemporaneous exchange
 - Ordinary course
 - New value

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Avoidance Actions (cont.)

- Fraudulent transfers
 - Actual fraud
 - Constructive fraud

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Creditors Committee—Chapter 11

- How it's established
- Responsibilities
- To be or not to be (on the committee)?
- Employment of professionals

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Plan of Reorganization and Disclosure Statement

- Disclosure statement
- Plan
- Confirmation requirements
- Classes: balloting
- Cramdown
- Discharge

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Minimizing Bankruptcy Risks

- Watch list
- Creditors
- Joint venture parties
- Contracts

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Watch List

- Bankruptcy filing? When and where
 - Copy of petition from debtor
 - Call bankruptcy court
 - <http://pacer.psc.uscourts.gov>
 - 30 to 60 days for formal notice

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Creditors

- Due diligence before extension of credit
- Strong credit policies and terms
- Enhance position
- Bailor-bailee relationship
- Financial red flags
- Liquidation analysis

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Joint Venture Parties

- Due diligence
- Client's strategic goals and exit strategy
- Wrap-around or other contracts
- Set-off of mutual obligations
- Tying multiple contracts together

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Contracts

- Bankruptcy provisions **unenforceable**
- Drafting of contracts
- Present grants of rights
- File UCC-1 financing statements/
mortgages
- Estoppel agreement

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Exhibit A

Bankruptcy Terminology

Most debtors who file a bankruptcy petition, and many of their creditors, know very little about the bankruptcy process. Bankruptcy Basics is designed to provide debtors, creditors, judiciary employees, and the general public with a basic explanation of bankruptcy and how it works. This glossary of bankruptcy terminology explains, in layman's terms, many of the legal terms that are used in cases filed under the Bankruptcy Code.

adversary proceeding A lawsuit arising in or related to a bankruptcy case that is commenced by filing a complaint with the court. A nonexclusive list of adversary proceedings is set forth in Fed. R. Bankr. P. 7001.

allowed claim The amount of the claim allowed for a particular creditors.

assume An agreement to continue performing duties under a contract or lease.

automatic stay An injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

bankruptcy A legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code).

bankruptcy administrator An officer of the judiciary serving in the judicial districts of Alabama and North Carolina who, like the U.S. trustee, is responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties. *Compare* **U.S. trustee**.

Bankruptcy Code The informal name for title 11 of the United States Code (II U.S.C. §§ 101-1330), the federal bankruptcy law.

bankruptcy court The bankruptcy judges in regular active service in each federal judicial district; a unit of the district court.

bankruptcy estate All legal or equitable interests of the debtor in property at the time of the bankruptcy filing. (The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.)

bankruptcy judge A judicial officer of the United States district court who is the court official with decision-making power over federal bankruptcy cases.

bankruptcy petition The document filed by the debtor (in a voluntary case) or by creditors (in an involuntary case) by which opens the bankruptcy case. (There are official forms for bankruptcy petitions.)

bankruptcy schedules The debtor is required to file schedules during the first 15 days of its bankruptcy case, unless more time is granted by the court. These are available online via the

governments PACER electronic pleading system located at www.pacer.psc.uscourts.gov and provide valuable information to creditors about the debtor's history, assets and creditors.

chapter 7 The chapter of the Bankruptcy Code providing for “liquidation” (i.e., the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors).

chapter 9 The chapter of the Bankruptcy Code providing for reorganization of municipalities (which includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts) .

chapter 11 The chapter of the Bankruptcy Code providing (generally) for reorganization, usually involving a corporation or partnership. (A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in chapter 11.)

chapter 12 The chapter of the Bankruptcy Code providing for adjustment of debts of a “family farmer,” or a “family fisherman” as those terms are defined in the Bankruptcy Code.

chapter 13 The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

chapter 15 The chapter of the Bankruptcy Code dealing with cases of cross-border insolvency.

claim A creditor's assertion of a right to payment from the debtor or the debtor's property.

confirmation Bankruptcy judges's approval of a plan of reorganization or liquidation in chapter 11, or payment plan in chapter 12 or 13.

consumer debtor A debtor whose debts are primarily consumer debts.

consumer debts Debts incurred for personal, as opposed to business, needs.

contested matter Those matters, other than objections to claims, that are disputed but are not within the definition of adversary proceeding contained in Rule 7001.

contingent claim A claim that may be owed by the debtor under certain circumstances, *e.g.*, where the debtor is a cosigner on another person's loan and that person fails to pay.

creditor One to whom the debtor owes money or who claims to be owed money by the debtor.

credit counseling Generally refers to two events in individual bankruptcy cases: (1) the “individual or group briefing” from a nonprofit budget and credit counseling agency that individual debtors must attend prior to filing under any chapter of the Bankruptcy Code; and (2) the “instructional course in personal financial management” in chapters 7 and 13 that an individual debtor must complete before a discharge is entered. There are exceptions to both requirements for certain categories of debtors, exigent circumstances, or if the U.S. trustee or

bankruptcy administrator have determined that there are insufficient approved credit counseling agencies available to provide the necessary counseling.

creditors' meeting see **341 meeting**

creditors' committee A group of approximately 3-7 of the largest unsecured creditors, appointed by the court, who hire counsel and actively represent the common interests of all unsecured creditors in a Chapter 11 case.

current monthly income The average monthly income received by the debtor over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and income from the debtor's spouse if the petition is a joint petition, but not including social security income and certain other payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101 (10A).

debtor A person who has filed a petition for relief under the Bankruptcy Code.

debtor education see credit counseling

defendant An individual (or business) against whom a lawsuit is filed.

discharge A release of a debtor from personal liability for certain dischargeable debts set forth in the Bankruptcy Code. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

dischargeable debt A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

disclosure statement A written document prepared by a chapter 11 debtor or other plan proponent designed to provide "adequate information" to creditors to enable them to evaluate the chapter 11 plan of reorganization.

eve of bankruptcy The period of hours, days, weeks or perhaps even months prior to the day a bankruptcy petition is filed. During this time astute creditors may notice signs that a bankruptcy may be looming, which may allow steps to be taken to minimize exposure.

equity The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$100,000 is subject to an \$80,000 mortgage, there is \$20,000 of equity.)

executory contract or lease Generally includes contracts or leases under which both parties to the agreement have duties remaining to be performed. (If a contract or lease is executory, a debtor may assume it or reject it.)

exemptions, exempt property Certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors. For example, in some states the debtor may be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption), or some or all "tools of the trade" used by the debtor to make a living (i.e., auto tools for an auto mechanic or dental tools for a dentist). The availability and amount of property the debtor may exempt depends on the state the debtor lives in.

family farmer or family fisherman An individual, individual and spouse, corporation, or partnership engaged in a farming or fishing operation that meets certain debt limits and other statutory criteria for filing a petition under chapter 12.

fraudulent transfer A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

fresh start The characterization of a debtor's status after bankruptcy, *i.e.*, free of most debts. (Giving debtors a fresh start is one purpose of the Bankruptcy Code.)

insider (of an individual debtor) Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or a corporation of which the debtor is a director, officer, or person in control.

insider (of a corporate debtor) A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the debtor.

joint administration A court-approved mechanism under which two or more cases can be administered together. (Assuming no conflicts of interest, these separate businesses or individuals can pool their resources, hire the same professionals, etc.)

joint petition One bankruptcy petition filed by a husband and wife together.

lien The right to take and hold or sell the property of a debtor as security or payment for a debt or duty.

notice of appearance A form filed by counsel to request notices of all papers filed in the bankruptcy case.

liquidation A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

liquidated claim A creditor's claim for a fixed amount of money.

means test Section 707(b)(2) of the Bankruptcy Code applies a "means test" to determine whether an individual debtor's chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring dismissal or conversion of the case (generally to chapter 13). Abuse is presumed if the debtor's aggregate current monthly income (see definition above) over 5 years, net of certain statutorily allowed expenses is more than (i) \$10,950, or (ii) 25% of the debtor's

nonpriority unsecured debt, as long as that amount is at least \$6,575. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income.

motion to lift the automatic stay A request by a creditor to allow the creditor to take action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

no-asset case A chapter 7 case where there are no assets available to satisfy any portion of the creditors' unsecured claims.

nondischargeable debt A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. Some debts, such as debts for money or property obtained by false pretenses and debts for fraud or defalcation while acting in a fiduciary capacity may be declared nondischargeable only if a creditor timely files and prevails in a nondischargeability action.

objection to dischargeability A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts. Common reasons include allegations that the debt to be discharged was incurred by false pretenses or that debt arose because of the debtor's fraud while acting as a fiduciary.

objection to exemptions A trustee's or creditor's objection to the debtor's attempt to claim certain property as exempt from liquidation by the trustee to creditors.

party in interest A party who has standing to be heard by the court in a matter to be decided in the bankruptcy case. The debtor, the U.S. trustee or bankruptcy administrator, the case trustee and creditors are parties in interest for most matters.

petition preparer A business not authorized to practice law that prepares bankruptcy petitions.

plan A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

plaintiff A person or business that files a formal complaint with the court.

postpetition transfer A transfer of the debtor's property made after the commencement of the case.

prebankruptcy planning The arrangement (or rearrangement) of a debtor's property to allow the debtor to take maximum advantage of exemptions. (Prebankruptcy planning typically includes converting nonexempt assets into exempt assets.)

preference or preferential debt payment A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.

presumption of abuse see means test

priority The Bankruptcy Code's statutory ranking of unsecured claims that determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full. For example, under the Bankruptcy Code's priority scheme, money owed to the case trustee or for prepetition alimony and/or child support must be paid in full before any general unsecured debt (*i.e.* trade debt or credit card debt) is paid.

priority claim An unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Priority refers to the order in which these unsecured claims are to be paid.

proof of claim A written statement and verifying documentation filed by a creditor that describes the reason the debtor owes the creditor money. (There is an official form for this purpose.)

property of the estate All legal or equitable interests of the debtor in property as of the commencement of the case.

reaffirmation agreement An agreement by a chapter 7 debtor to continue paying a dischargeable debt (such as an auto loan) after the bankruptcy, usually for the purpose of keeping collateral (*i.e.* the car) that would otherwise be subject to repossession.

reclamation claim a claim arising from a "reclamation letter" having been sent by a creditor who product the debtor received within approximately 45 days prior to the bankruptcy filing.

secured creditor A creditor holding a claim against the debtor who has the right to take and hold or sell certain property of the debtor in satisfaction of some or all of the claim.

secured debt Debt backed by a mortgage, pledge of collateral, or other lien; debt for which the creditor has the right to pursue specific pledged property upon default. Examples include home mortgages, auto loans and tax liens.

schedules Detailed lists filed by the debtor along with (or shortly after filing) the petition showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

small business case A special type of chapter 11 case in which there is no creditors' committee (or the creditors' committee is deemed inactive by the court) and in which the debtor is subject to more oversight by the U.S. trustee than other chapter 11 debtors. The Bankruptcy Code contains certain provisions designed to reduce the time a small business debtor is in bankruptcy.

statement of financial affairs A series of questions the debtor must answer in writing concerning sources of income, transfers of property, lawsuits by creditors, etc. (There is an official form a debtor must use.)

statement of intention A declaration made by a chapter 7 debtor concerning plans for dealing with consumer debts that are secured by property of the estate.

substantive consolidation Putting the assets and liabilities of two or more related debtors into a single pool to pay creditors. (Courts are reluctant to allow substantive consolidation since the action must not only justify the benefit that one set of creditors receives, but also the harm that other creditors suffer as a result.)

341 meeting The meeting of creditors required by section 341 of the Bankruptcy Code at which the debtor is questioned under oath by creditors, a trustee, examiner, or the U.S. trustee about his/her financial affairs. Also called creditors' meeting.

transfer Any mode or means by which a debtor disposes of or parts with the debtor's property.

trustee The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the U.S. trustee or bankruptcy administrator. The trustee is a private individual or corporation appointed in all chapter 7, chapter 12, and chapter 13 cases and some chapter 11 cases. The trustee's responsibilities include reviewing the debtor's petition and schedules and bringing actions against creditors or the debtor to recover property of the bankruptcy estate. In chapter 7, the trustee liquidates property of the estate, and makes distributions to creditors. Trustees in chapter 12 and 13 have similar duties to a chapter 7 trustee and the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.

U.S. trustee An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties. Compare, bankruptcy administrator.

undersecured claim A debt secured by property that is worth less than the full amount of the debt.

unliquidated claim A claim for which a specific value has not been determined.

unscheduled debt A debt that should have been listed by the debtor in the schedules filed with the court but was not. (Depending on the circumstances, an unscheduled debt may or may not be discharged.)

unsecured claim A claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien; a debt for which credit was extended based solely upon the creditor's assessment of the debtor's future ability to pay.

voluntary transfer A transfer of a debtor's property with the debtor's consent.

Exhibit B

(Official Form 1) (12/03)

FORM B1 United States Bankruptcy Court District of Minnesota		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 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):															
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all):		Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all):															
Street Address of Debtor (No. & Street, City, State & Zip Code):		Street Address of Joint Debtor (No. & Street, City, State & 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):															
Location of Principal Assets of Business Debtor (if different from street address above):																	
Information Regarding the Debtor (Check the Applicable Boxes)																	
Venue (Check any applicable box)																	
<input checked="" 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.																	
Type of Debtor (Check all boxes that apply)		Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)															
<input type="checkbox"/> Individual(s) <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____		<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding															
<input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank		<input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13															
Nature of Debts (Check one box)		Filing Fee (Check one box)															
<input type="checkbox"/> Consumer/Non-Business <input checked="" type="checkbox"/> Business		<input checked="" 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 No. 3.															
Chapter 11 Small Business (Check all boxes that apply)																	
<input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)																	
Statistical/Administrative Information (Estimates only)		THIS SPACE IS FOR COURT USE ONLY															
<input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" 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.																	
Estimated Number of Creditors <table style="display: inline-table; border: none;"> <tr> <td style="padding: 0 10px;">1-15</td> <td style="padding: 0 10px;">16-49</td> <td style="padding: 0 10px;">50-99</td> <td style="padding: 0 10px;">100-199</td> <td style="padding: 0 10px;">200-999</td> <td style="padding: 0 10px;">1000-over</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>			1-15	16-49	50-99	100-199	200-999	1000-over	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
1-15	16-49		50-99	100-199	200-999	1000-over											
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Estimated Assets <table style="display: inline-table; border: none;"> <tr> <td style="padding: 0 10px;">\$0 to \$50,000</td> <td style="padding: 0 10px;">\$50,001 to \$100,000</td> <td style="padding: 0 10px;">\$100,001 to \$500,000</td> <td style="padding: 0 10px;">\$500,001 to \$1 million</td> <td style="padding: 0 10px;">\$1,000,001 to \$10 million</td> <td style="padding: 0 10px;">\$10,000,001 to \$50 million</td> <td style="padding: 0 10px;">\$50,000,001 to \$100 million</td> <td style="padding: 0 10px;">More than \$100 million</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
Estimated Debts <table style="display: inline-table; border: none;"> <tr> <td style="padding: 0 10px;">\$0 to \$50,000</td> <td style="padding: 0 10px;">\$50,001 to \$100,000</td> <td style="padding: 0 10px;">\$100,001 to \$500,000</td> <td style="padding: 0 10px;">\$500,001 to \$1 million</td> <td style="padding: 0 10px;">\$1,000,001 to \$10 million</td> <td style="padding: 0 10px;">\$10,000,001 to \$50 million</td> <td style="padding: 0 10px;">\$50,000,001 to \$100 million</td> <td style="padding: 0 10px;">More than \$100 million</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										

FORM B6A
(8/90)

In re: _____ Debtor Case No. _____ (if known)

SCHEDULE A - REAL PROPERTY

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Total			0.00	

(Report also on Summary of Schedules.)

FORM B6B
(10/89)

In re _____

Debtor

Case No. _____

(If known)

SCHEDULE B - PERSONAL PROPERTY

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.	X			
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			
14. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			

FORM B6B
(10/89)

In re

Debtor

Case No.

(if known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
15. Accounts receivable.	X			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. 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.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			

FORM BBB
(10/89)

In re _____ Debtor Case No. _____ (if known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed. Itemize.	X			
2 continuation sheets attached			Total >	\$ 0.00

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

FORM B6C
(6/90)

In re _____, Case No. _____
Debtor. (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
NONE			

FORM B6D
(12/03)

In re: _____

Case No. _____

Debtor

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

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

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions, above.)	CO-DEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.							
		VALUE _____					

Continuation sheets attached

Subtotal >
(Total of this page)
Total >
(Use only on last page)

\$0.00
\$0.00

(Report total also on Summary of Schedules)

Form B6E
(04/04)

In re _____ Debtor Case No. _____ (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS 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) **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)(2).

 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 \$4,925* per person earned within 90 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)(3).

 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)(4).

 Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$4,925* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

 Deposits by individuals

Claims of individuals up to \$2,225* 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)(6).

 Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 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).

 Other Priority Debts

* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

1 Continuation sheets attached

Form B8E - Cont.
(04/04)

In re _____ Case No. _____
Debtor (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM				AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
			CONTINGENT	UNLIQUIDATED	DISPUTED		
ACCOUNT NO.							

Sheet no. 1 of 1 sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal (Total of this page)	>	\$0.00
Total (Use only on last page of the completed Schedule E.)	>	\$0.00

(Report total also on Summary of Schedules)

Form B6F (12/03)

In re _____ Debtor

Case No. _____ (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

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

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions, above.)	CODEBATOR 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.						

Continuation sheets attached

Subtotal >

Total >

\$0.00
\$0.00

(Report also on Summary of Schedules)

Form B8G
(10/89)

In re:

_____ Debtor

Case No.

_____ (if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

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.

B5H
(6/90)

In re: _____ Debtor _____ Case No. _____ (if known)

SCHEDULE H - CODEBTORS

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
------------------------------	------------------------------

Form B6
(6/99)

**United States Bankruptcy Court
District of Minnesota**

In re

Case No.

Chapter **11**

SUMMARY OF SCHEDULES

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	YES	1	\$ 0.00		
B - Personal Property	YES	3	\$ 0.00		
C - Property Claimed as Exempt	YES	1			
D - Creditors Holding Secured Claims	YES	1		\$ 0.00	
E - Creditors Holding Unsecured Priority Claims	YES	2		\$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	YES	1		\$ 0.00	
G - Executory Contracts and Unexpired Leases	YES	1			
H - Codebtors	YES	1			
I - Current Income of Individual Debtor(s)	NO	0			\$
J - Current Expenditures of Individual Debtor(s)	NO	0			\$
Total Number of sheets in ALL Schedules >		11			
Total Assets >			\$ 0.00		
Total Liabilities >				\$ 0.00	

United States Bankruptcy Court
District of Minnesota

In re

Case No.
Chapter 11

Exhibit "A" to Voluntary Petition

1. If any of debtor's securities are registered under section 12 of the Securities and Exchange Act of 1934, the SEC file number is .

2. The following financial data is the latest available information and refers to debtor's condition on .

a. Total assets \$ _____

b. Total debts (including debts listed in 2.c., below) \$ _____

Approximate number of holders

c. Debt securities held by more than 500 holders.

secured unsecured subordinated _____

d. Number of shares of preferred stock _____

e. Number of shares of common stock _____

Comments, if any:

3. Brief description of debtor's business:

4. List the name of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

Official Form 4
11/92

**United States Bankruptcy Court
District of Minnesota**

In re _____ Debtor Case No. _____
Chapter 11

List Of Creditors Holding 20 Largest Unsecured Claims

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

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

I, _____, of the Corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date: _____

Signature: _____

(Print Name and Title)

Form 7
(12/03)

**UNITED STATES BANKRUPTCY COURT
District of Minnesota**

In re:

Case No. _____

Chapter **11**

STATEMENT OF FINANCIAL AFFAIRS

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 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	FISCAL YEAR PERIOD
--------	--------	--------------------

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, or 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	FISCAL YEAR PERIOD
--------	--------	--------------------

3. Payments to creditors

None

a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (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 PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
------------------------------	-------------------	-------------	--------------------

b. 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.)

None

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	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
------------------------------------	----------------------	---------------------------------	--------------------------

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.)

None

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
---	---	---

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
---------------------------------	-----------------------	---

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.)

None

NAME AND ADDRESS OF CUSTODIAN	NAME AND ADDRESS OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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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
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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
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9. Payments related to debt counseling or bankruptcy

None

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 PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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10. Other transfers

None

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 **one year** 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
--	------	--

11. Closed financial accounts

None

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
---------------------------------	--	------------------------------------

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
---------------------------	-----------------------------------	----------------------

15. Prior address of debtor

None

If the debtor has moved within the two 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 the **six-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.

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.

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.

None

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
-----------------------	---------------------------------------	----------------	-------------------

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.

None

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
-----------------------	---------------------------------------	----------------	-------------------

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.

None

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, partnership, sole proprietorship, or was a self-employed professional within the **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 the **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 business, 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 the **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 business, 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 the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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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.

None

NAME	ADDRESS
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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
------------------	-------------------------

b. List all firms or individuals who within the **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.

None

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

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.

None

NAME	ADDRESS
------	---------

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

None

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)
-------------------	----------------------	---

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

None

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
------------------	--------------------	------------------------

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 securities of the corporation.

None

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
------	---------	--------------------

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.

None

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 the **six -year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION

TAXPAYER IDENTIFICATION NUMBER

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 the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER

* * * * *

[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.

Form B1, Exhibit C
(9/01)

**UNITED STATES BANKRUPTCY COURT
District of Minnesota**

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

In re:

Case No.:

Chapter: 11

Debtor(s)

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

**United States Bankruptcy Court
District of Minnesota**

In re:

Case No.

List of Equity Security Holders

REGISTERED NAME OF HOLDER OF SECURITY LAST KNOWN ADDRESS OR PLACE OF BUSINESS	CLASS OF SECURITY	NUMBER REGISTERED	KIND OF INTEREST REGISTERED

**Form 1008-1 - Proof Of Authority To Sign And File Petition
United States Bankruptcy Court
District of Minnesota**

In re:

Debtor

Case No. _____

Chapter 11

STATEMENT REGARDING AUTHORITY TO SIGN AND FILE PETITION

I, _____, declare under penalty of perjury that I am the _____ of _____, a Corporation and that on _____ the following resolution was duly adopted by the _____ of this Corporation:

"Whereas, it is in the best interest of this Corporation to file a voluntary petition in the United States Bankruptcy Court pursuant to Chapter 11 of Title 11 of the United States Code; Be It Therefore Resolved, that _____ of this

Corporation, is authorized and directed to execute and deliver all documents necessary to perfect the filing of a Chapter 11 voluntary bankruptcy case on behalf of the Corporation; and

Be It Further Resolved, that _____ of this Corporation, is authorized and directed to appear in all bankruptcy proceedings on behalf of the Corporation, and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the Corporation in connection with such bankruptcy case; and

Be It Further Resolved, that _____ of this Corporation, is authorized and directed to employ James A. Lodoen, attorney and the law firm of Lindquist & Vennum P.L.L.P., to represent the Corporation in such bankruptcy case."

Executed on: _____

Signed: _____

LOCAL RULE REFERENCE: 1008-1

Form 1007-1 - Statement Of Compensation By Debtor's Attorney

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. BKY _____

Chapter _____ Case _____

Address :

Social Security No(s):

Employer's Tax Identification No(s). [if any]:

STATEMENT OF COMPENSATION BY ATTORNEY FOR DEBTOR(S)

The undersigned, pursuant to Local Rule 1007-1, Bankruptcy Rule 2016(b) and § 329(a) of the Bankruptcy Code, states that:

- 1. The undersigned is the attorney for the debtor(s) in this case and files this statement as required by applicable
- 2. (a) The filing fee paid by the undersigned to the clerk for the debtor(s) in this case is: \$ _____
- (b) The compensation paid or agreed to be paid by the debtor(s) to the undersigned is: \$ _____
- (c) Prior to filing this statement, the debtor(s) paid to the undersigned: \$ _____
- (d) The unpaid balance due and payable by the debtor(s) to the undersigned is: \$ _____

3. The services rendered or to be rendered include the following: (a) analysis of the financial situation and rendering advice and assistance to the debtor in determining whether to file a petition under Title 11 of the United States Code; (b) preparation and filing of the petition, exhibits, attachments, schedules, statements and lists and other documents required by the court; (c) representation of the debtor(s) at the meeting of creditors; (d) negotiations with creditors; and (e) other services reasonably necessary to represent the debtor(s) in this case.

4. The source of all payments by the debtor(s) to the undersigned was or will be from earnings or other current compensation of the debtor(s), and the undersigned has not received and will not receive any transfer of property other than such payments by the debtor(s), except as follows:

NONE

5. The undersigned has not shared or agreed to share with any other person other than with members of undersigned's law firm any compensation paid or to be paid.

Dated: _____

Signed: _____

James A. Lodoen
Bar no: 0173605
Attorney for Debtor(s)
Lindquist & Vennum P.L.L.P.
80 South 8th Street
Suite 4200
Minneapolis MN 55402
612-371-3211

1. Under 11 U. S. C. § 110(h), I declare under penalty of perjury that I am not an attorney or employee of an attorney, that I prepared or caused to be prepared one or more documents for filing by the above-named debtor(s) in connection with this bankruptcy case, and that compensation paid to me within one year before the filing of the bankruptcy petition, or agreed to be paid to me, for services rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For document preparation services, I have agreed to accept	\$ _____
Prior to the filing of this statement I have received	\$ _____
Balance Due	\$ _____

2. I have prepared or caused to be prepared the following documents (itemize):

and provided the following services (itemize):

3. The source of the compensation paid to me was:

Debtor	Other (specify)
--------	-----------------

4. The source of compensation to be paid to me is:

Debtor	Other (specify)
--------	-----------------

5. The foregoing is a complete statement of any agreement or arrangement for payment to me for preparation of the petition filed by the debtor(s) in this bankruptcy case.

6. To my knowledge no other person has prepared for compensation a document for filing in connection with this bankruptcy case except as listed below:

NAME:	SOCIAL SECURITY NUMBER
-------	------------------------

DECLARATION OF BANKRUPTCY PETITION PREPARER

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

X _____

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

Social Security number of bankruptcy petition
preparer (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.)

_____ Date

Address: _____

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.

LOCAL RULE REFERENCE: 1007-1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

SIGNATURE DECLARATION

Debtor(s).

Case No. _____

- _____ PETITION, SCHEDULES & STATEMENTS
- _____ CHAPTER 13 PLAN
- _____ SCHEDULES AND STATEMENTS ACCOMPANYING VERIFIED CONVERSION
- _____ AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
- _____ MODIFIED CHAPTER 13 PLAN
- _____ OTHER (Please describe: _____)

I, the undersigned debtor(s) or authorized representative of the debtor,
make the following declarations under penalty of perjury:

- The information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct;
- The information provided in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case is true and correct;
- **[individual debtors only]** If no Social Security Number is included in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case, it is because I do not have a Social Security Number;
- I consent to my attorney electronically filing with the United States Bankruptcy Court my petition, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, together with a scanned image of this Signature Declaration and the completed "Debtor Information Pages," if applicable; and
- **[corporate and partnership debtors only]** I have been authorized to file this petition on behalf of the debtor.

Date: _____

X _____
Signature of Debtor or Authorized Representative

Printed Name of Debtor or Authorized Representative

**UNITED STATES BANKRUPTCY COURT
District of Minnesota**

In re:

Case No. _____

Chapter 11

BUSINESS INCOME AND EXPENSES

FINANCIAL REVIEW OF THE DEBTOR'S BUSINESS (NOTE: ONLY INCLUDE information directly related to the business operation.)

PART A - GROSS BUSINESS INCOME FOR PREVIOUS 12 MONTHS:

1. Gross Income For 12 Months Prior to Filing: \$ 0.00

PART B - ESTIMATED AVERAGE FUTURE GROSS MONTHLY INCOME:

2. Gross Monthly Income: \$ 0.00

PART C - ESTIMATED FUTURE MONTHLY EXPENSES:

- 3. Net Employee Payroll (Other Than Debtor) \$ 0.00
- 4. Payroll Taxes 0.00
- 5. Unemployment Taxes 0.00
- 6. Worker's Compensation 0.00
- 7. Other Taxes 0.00
- 8. Inventory Purchases (Including raw materials) 0.00
- 9. Purchase of Feed/Fertilizer/Seed/Spray 0.00
- 10. Rent (Other than debtor's principal residence) 0.00
- 11. Utilities 0.00
- 12. Office Expenses and Supplies 0.00
- 13. Repairs and Maintenance 0.00
- 14. Vehicle Expenses 0.00
- 15. Travel and Entertainment 0.00
- 16. Equipment Rental and Leases 0.00
- 17. Legal/Accounting/Other Professional Fees 0.00
- 18. Insurance 0.00
- 19. Employee Benefits (e.g., pension, medical, etc.) 0.00

20. Payments to Be Made Directly By Debtor to Secured Creditors For Pre-Petition Business Debts (Specify):
None

21. Other (Specify):
None

22. Total Monthly Expenses (Add items 3 - 21) \$ 0.00

PART D - ESTIMATED AVERAGE NET MONTHLY INCOME:

23. AVERAGE NET MONTHLY INCOME (Subtract Item 22 from Item 2) \$ 0.00

Official Form 6 - Cont.
(12/03)

In re: _____
Debtor

Case No. _____
(if known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

(NOT APPLICABLE)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the _____ of the Corporation named as debtor in this case, 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.
(Total shown on summary page plus 1.)

Date _____

Signature: _____

[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.

UNITED STATES BANKRUPTCY COURT
District of Minnesota

In re:

Case No. _____

Chapter 11

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s), or debtor's attorney if applicable, do hereby certify under penalty of perjury that the attached Master Mailing List of creditors, consisting of 0 sheet(s) is complete, correct and consistent with the debtor's schedules pursuant to Local Bankruptcy Rules and I/we assume all responsibility for errors and omissions.

Dated: _____

Signed: _____

Signed: _____

James A. Lodoen
Bar No. 173605

Exhibit C

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Billy Ray's Organic Kitchen & Eatery (d/b/a
"BROKE"),

Debtor.

Chapter 11

Bankruptcy Case No. 09-99999

**NOTICE OF APPEARANCE AND REQUEST
FOR NOTICES AND SERVICE OF PAPERS**

The undersigned hereby gives notice that James A. Lodoen of Lindquist & Vennum P.L.L.P., is appearing in the above-entitled matter as counsel for Billy Ray's Organic Kitchen Eatery (d/b/a "BROKE") (the "Appearing Party"). The Appearing Party requests pursuant to Rules 2002, 9007 and 9010(b) of the Federal Rules of Bankruptcy Procedure that it receive copies of all notices, pleadings, and orders in the above case, and that it be added to the service list and main matrix in the above case. All notices/pleadings should be sent to the following:

James A. Lodoen
Lindquist & Vennum P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402

The undersigned also gives notice that this request includes not only the notices and papers referred to in the Bankruptcy Rules specified above, but also includes, without limitation, orders and notices of any applications, motions, petitions, pleadings, plans and disclosure statements, requests, complaints or demands, whether formal or informal, whether written or oral, whether transmitted or conveyed by mail, courier service, hand-delivery, telephone, facsimile transmission, telegraph, telex, e-mail, internet or otherwise filed or made with regard to

the above-captioned cases, which affects or seeks to affect in any way any rights or interests of any party in interest in this case.

Neither this Notice of Appearance nor any subsequent appearance, pleading, claim or suit is intended to waive (i) the Appearing Party's right to have final orders in non-core matters entered only after de novo review by a district court judge; (ii) the Appearing Party's right to trial by jury in any proceedings so triable herein, or in any case, controversy or proceeding related hereto; (iii) the Appearing Party's right to have the reference withdrawn by the District Court in any matter subject to mandatory or discretionary withdrawal; or (iv) any other rights, claims, actions, defenses, set-offs or recoupments to which the Appearing Party is or may be entitled under agreements, in law or in equity, all of which rights, claims, actions, defenses, set-offs and recoupments are expressly reserved.

Dated: October 1, 2009

LINDQUIST & VENNUM P.L.L.P.

By: _____
James A. Lodoen, (MN Atty. No.)
IDS Center
South Eighth Street
Minneapolis, MN 55402
Phone:
Facsimile:
e-mail: _____

ATTORNEYS FOR BROKE

Exhibit D

LINDQUIST & VENNUM P L L C

Minneapolis • Denver

James A. Lodoen

www.lindquist.com



Board Certified Business Bankruptcy Law
The American Board of CertificationSM

4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274
Phone: (612) 371-3211
Fax: (612) 371-3207

Also Admitted in
North Dakota and Kansas

August 20, 2009

Dennis Adams
Dennis Adams Beet Farm, Inc., d/b/a Dead Beet, Inc.
555 Country Road
Greater, MN 55000

**Re: Notice of Demand for Reclamation by No Bull Fertilizers, LLC against Dead Beet, Inc.
("Debtor")**

Dear Mr. Adams:

You are hereby notified that No Bull Fertilizers, LLC ("Claimant") makes demand upon you in accordance with 11 U.S.C. § 546(c) and Section 2-702 of the Uniform Commercial Code for the return of all goods received during the periods referred to in the above-cited statutes. This demand specifically includes but is not limited to all goods set forth on the attached schedule (if attached) which is a summary of invoice numbers, shipment dates and amounts, all goods set forth on any accompanying invoices, and all goods received by you from Claimant on or subsequent to the start of the 45 day (or longer if allowed by applicable statute) period prior to the date the Debtor's bankruptcy petition was filed. Claimant has not been paid for these goods. This demand includes but is not limited to all unused fertilizer, fertilizer equipment, manure spreaders and other related products shipped by Claimant to you.

Demand is further made that the goods reclaimed pursuant to this notice not be sold, that they be segregated immediately, and that the Debtor contact Claimant to make arrangement for return of the goods, except to the extent specifically authorized by order of the bankruptcy court, following notice and a hearing.

The Claimant makes this demand without prejudice to all other rights and remedies available to it, at law or in equity, including but not limited to, the Claimant's right to an allowed administrative expense claim under § 503(b)(9) of the Bankruptcy Code for all goods received by you within twenty (20) days before the date of commencement of your bankruptcy case which is hereby asserted and claimed in the amount of approximately \$10,000.

Please call me with questions or delivery instructions.

Very truly yours,

James A. Lodoen

JAL/gll
enclosures

RECLAMATION INSTRUCTIONS

1. Complete form reclamation letter as thoroughly as possible. Each subsidiary that sells product should have a form letter prepared and ready to go at a moment's notice by inserting only the date and the name of the Debtors, address, etc.
2. Identify goods by invoice number, date, amount and product description (to the extent possible) and attach a schedule of invoices issued over the past 50-55 days so as to pick up all product delivered to the Company (yes, I mean delivered and not sent) within the 45 days prior to the bankruptcy filing.
3. *Address the letter to each legal entity with whom you do business. If more than one legal entity files under the same bankruptcy, be sure to identify each legal entity with whom you do business and send a letter to each (send the same letter to each legal entity).
4. Send the letter by fax and overnight delivery to the Company contact in the business office, the CFO (even if you do not know his or her name), the Company's bankruptcy attorney (Ch. 11) or the Trustee (Ch. 7).
5. Send the letter to the actual physical location where goods were delivered as well.
6. Keep fax transmittal confirmation pages and obtain overnight delivery confirmation receipts.
7. If more goods may be received by the Debtor from the Company after the demand is sent, send multiple demands each day.

Exhibit E

LINDQUIST & VENNUM P L L P

Minneapolis • Denver

James A. Lodoen
(612) 371-3234
jlodoen@lindquist.com
www.lindquist.com



Board Certified Business Bankruptcy Law
The American Board of CertificationSM

4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274
Phone: (612) 371-3211
Fax: (612) 371-3207

Also Admitted in
North Dakota and Kansas

August 20, 2009

Clerk of Court
U.S. Bankruptcy Court
301 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: *In re: Dennis Adams Beet Farm, Inc., d/b/a Dead Beet, Inc.;*
Bankruptcy Case No. 09-99999

Dear Clerk of Court:

Enclosed for filing, as indicated, please find the proof of claim on behalf of No Bull Fertilizers, LLC in the above-referenced case.

We have provided an additional copy of the face page of the proof of claim, which we ask that you stamp to reflect filing, and return to us in the enclosed self-addressed, stamped envelope.

Please contact me at 612-371-3211 with questions.

Very truly yours,

James A. Lodoen

JAL/gll
enclosures

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA		Chapter 11	PROOF OF CLAIM
Name of Debtor: Dennis Adams Beet Farm, Inc. (d/b/a Dead Beet, Inc.)		Case Number: 09-99999	
<p><i>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.</i></p>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): No Bull Fertilizers, LLC		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.	
Name and address where notices should be sent: James A. Lodoen Lindquist & Vennum P.L.L.P. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 Telephone number: 612-371-3211		Court Claim Number: _____ (If known) Filed on: _____	
Name and address where payment should be sent (if different from above): Telephone number:		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach a copy of statement giving particulars. <input type="checkbox"/> Check box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed: \$ <u>10,000</u> 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 \$10,950*) 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"/> Contribution to an employee benefit plan – 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11U.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)(____).	
2. Basis for Claim: <u>good and services provided</u> (See instruction #2 on reverse side.)		<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)(____).	
3. Last four digits of any number by which creditor identifies debtor: <u>5555</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
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: \$ <u>10,000</u>		Amount entitled to priority: \$ _____	
6. Credits: The amount of all payments on this claim has been credited and deducted 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: 10/1/2009 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. _____ James A. Lodoen, Attorney for No Bull Fertilizers, LLC		FOR COURT USE ONLY Send original to: U.S. Bankruptcy Court 301 U.S. Courthouse 300 South Fourth St. Minneapolis, MN 55415	

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 particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

DEFINITIONS

Debtor

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

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

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

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the

amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Exhibit F

Schedule of Unpaid Invoices

Invoice No.	Invoice Amount	Invoice Date	Period Goods/Services Provided	Balance Owing

LINDQUIST & VENNUM^{LLP}

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August 20, 2009

PRIVILEGED SETTLEMENT COMMUNICATION

Anita Cheate
 Lye, Cheate and Steel
 654 Fibber Lane
 St. Paul, MN 55102

**Re: *In re: Billy Ray's Organic Kitchen & Eatery, d/b/a BROKE*
 Bankruptcy Case No. 09-99999**

Dear Ms. Cheate:

Our firm represents Billy Ray's Organic Kitchen & Eatery ("BROKE"). We have been asked to respond to your letter of April 1, 2009, whereby you assert that BROKE has received preferential transfers in the amount of \$42,152 in the above-referenced bankruptcy proceeding.

Enclosed with this letter is some historical analysis which I asked our client to prepare in response to your letter. BROKE, as you perhaps know, is an organic food service business that provided ongoing food deliveries to your client, The Greasepit. Note that during the one-year period prior to the beginning of the preference period, the average days between the date of invoice and date of payment was 23. Note that during the preference period, the average number of days between the date of invoice and the date of payment was 31 days. The four largest invoices paid during the preference period, totaling \$39,425.43, were paid within a range of 15-25 days from the date of invoice, which invoices were paid on an average within 21.75 days from date of invoice to the date of payment. Those four invoices would clearly fit within the ordinary course of business exception. In the event you take the position that the May 18 invoice in the amount of \$1,086.25, the July 5 invoice in the amount of \$578.75 and the June 20 invoice in the amount of \$801.43, totaling \$2,466.43 are outside the ordinary course, those payments are protected by the new value exception, as total unpaid new value of \$17,514.43 was provided during the preference period, after these referenced transfers.

As set forth in this letter and the attachments, we believe there to be no basis for avoiding the payments identified in your letter as preferential transfers. The ordinary course and new value defenses prevent such avoidance. I trust you will arrive at the same conclusion. If you have any further questions, need further information from my or otherwise wish to discuss this matter further, please contact me. Thank you.

Very truly yours,

James A. Lodoen

enclosures

Payment History -- Sorted by Check #
From July 1, 2005 to June 30, 2006

Petition Date: September 28, 2006

Job Number	Invoice Date	Invoice Amt	Pay'mt Date	Pay'mt Amt	Check #	Days Invoice	
						Outstanding	Ck Amt
307-8063759	6/17/2005	860.06	7/5/2005	860.06	143116	18	
307-8063758	6/21/2005	282.33	7/5/2005	282.33	143116	14	1,142.39
307-8063755	6/28/2005	401.00	7/18/2005	401.00	143361	20	
307-8063754	7/5/2005	208.62	7/18/2005	208.62	143361	13	609.62
307-8063758-1	7/1/2005	476.00	7/25/2005	476.00	143474	24	
307/8063756	7/12/2005	1,210.25	7/25/2005	1,210.25	143474	13	1,686.25
307-8063754-1	7/19/2005	17.21	8/1/2005	17.21	143586	13	17.21
307-3031863	7/26/2005	1,700.00	8/15/2005	1,700.00	143800	20	
307-8063753	8/2/2005	1,011.85	8/15/2005	1,011.85	143800	13	
307-8058287	8/2/2005	942.35	8/15/2005	942.35	143800	13	3,654.20
307-8063751	8/30/2005	5,074.60	9/12/2005	5,074.60	144195	13	
307-8058290	8/30/2005	812.28	9/12/2005	812.28	144195	13	5,886.88
307-8058288	8/18/2005	896.78	9/21/2005	896.78	144321	34	
307-8063752	8/22/2005	176.21	9/21/2005	176.21	144321	30	1,072.99
307- 5972	8/22/2005	9,847.68	9/27/2005	9,847.68	144444	36	
307-8058289	9/9/2005	2,666.93	9/27/2005	2,666.93	144444	18	
307-8067895	9/13/2005	436.90	9/27/2005	436.90	144444	14	12,951.51
307-3033300	9/30/2005	3,063.71	10/17/2005	3,063.71	144728	17	3,063.71
307-8067894	9/28/2005	200.85	10/31/2005	200.85	144962	33	
307-8067893	10/4/2005	453.26	10/31/2005	453.26	144962	27	
307-3032837	10/11/2005	218.47	10/31/2005	218.47	144962	20	872.58
307-8067876	10/4/2005	353.25	11/8/2005	353.25	145053	35	
307-3033789	10/13/2005	400.50	11/8/2005	400.50	145053	26	
307-3033934	10/14/2005	11,138.72	11/8/2005	11,138.72	145053	25	11,892.47
307-8058291	10/24/2005	1,166.99	11/15/2005	1,166.99	145192	22	
307-8067877	10/25/2005	626.35	11/15/2005	626.35	145192	21	
307-8067878	10/27/2005	665.36	11/15/2005	665.36	145192	19	2,458.70
307-30033576	10/21/2005	3,063.71	11/22/2005	3,063.71	145306	32	
307-8067890	11/2/2005	1,486.52	11/22/2005	1,486.52	145306	20	4,550.23
307-8067888	11/16/2005	272.88	11/25/2005	272.88	145426	9	272.88
307-8067889	11/21/2005	419.79	12/12/2005	419.79	145673	21	
307-8067886	11/22/2005	582.25	12/12/2005	582.25	145673	20	1,002.04
307-8067887	11/17/2005	313.90	1/5/2006	313.90	145888	49	
307-8073236	11/29/2005	488.98	1/5/2006	488.98	145888	37	
307-3034872	11/30/2005	541.58	1/5/2006	541.58	145888	36	
307-8067885	12/1/2005	1,754.00	1/5/2006	1,754.00	145888	35	
307-8067883	12/2/2005	638.17	1/5/2006	638.17	145888	34	
307-3036593	12/13/2005	1,016.50	1/5/2006	1,016.50	145888	23	
307-3036440	12/13/2005	3,498.00	1/5/2006	3,498.00	145888	23	8,251.13
307-8073212	12/19/2005	1,880.00	1/17/2006	1,880.00	146115	29	
307-8073235	12/20/2005	390.28	1/17/2006	390.28	146115	28	
307-8073234	12/28/2005	789.36	1/17/2006	789.36	146115	20	3,059.64
307-3036920	12/29/2005	4,379.55	2/1/2006	4,379.55	146363	34	
307-3037003	1/4/2006	858.00	2/1/2006	858.00	146363	28	
307-3037056	1/12/2006	2,681.25	2/1/2006	2,681.25	146363	20	
307-8073233	1/17/2006	1,188.12	2/1/2006	1,188.12	146363	15	
307-8073232	1/18/2006	278.40	2/1/2006	278.40	146363	14	
307-8073230	1/20/2006	1,903.50	2/1/2006	1,903.50	146363	12	11,288.82

Job Number	Invoice Date	Invoice Amt	Paymt Date	Paymt Amt	ck #	Outstanding	Ck Amt
307-3037313	1/27/2006	1,491.07	2/14/2006	1,491.07	146611	18	
307-8073229	2/2/2006	589.06	2/14/2006	589.06	146611	12	2,080.13
307-3037639	2/8/2006	2,100.00	2/17/2006	2,100.00	146735	9	
307-3037335	2/9/2006	540.30	2/17/2006	540.30	146735	8	2,640.30
307-8073220	2/14/2006	4,108.40	2/24/2006	4,108.40	146863	10	
307-8073217	2/17/2006	1,872.84	2/24/2006	1,872.84	146863	7	5,981.24
307-3038450	2/27/2006	8,900.00	3/21/2006	8,900.00	147239	22	8,900.00
307-8073227	3/1/2006	572.30	3/29/2006	572.30	147375	28	
307-3039017	3/8/2006	1,800.00	3/29/2006	1,800.00	147375	21	
307-8073228	3/13/2006	855.90	3/29/2006	855.90	147375	16	
307-8073225	3/13/2006	2,678.30	3/29/2006	2,678.30	147375	16	
307-3039145	3/16/2006	2,700.90	3/29/2006	2,700.90	147375	13	8,607.40
307-8073215	1/10/2006	5,634.60	4/6/2006	5,634.60	147506	86	
307-8073221	3/8/2006	610.00	4/6/2006	610.00	147506	29	
307-8073224	3/23/2006	3,142.00	4/6/2006	3,142.00	147506	14	9,386.60
307-3039505	3/24/2006	336.00	4/28/2006	336.00	148034	35	336.00
307-8073223	4/12/2006	995.40	5/5/2006	995.40	148179	23	995.40
307-8075513	4/17/2006	739.68	5/19/2006	739.68	148438	32	739.68
307-3041124	5/19/2006	987.55	6/2/2006	987.55	148735	14	987.55

Payments 365 days prior to 6-30-2006 - > **114,387.55** Average days outstanding - - - - > **23**

307-3041059	5/18/2006	1,086.25	6/30/2006	1,086.25	149131	43	
307-8075562	6/5/2006	2,537.40	6/30/2006	2,537.40	149131	25	
307-8058293	6/5/2006	1,405.53	6/30/2006	1,405.53	149131	25	5,029.18
307-3041941	6/27/2006	13,774.50	7/19/2006	13,774.50	149413	22	13,774.50
301-0210179-47	7/17/2006	21,708.00	8/1/2006	21,708.00	149788	15	21,708.00
307-8075560	7/5/2006	578.75	8/15/2006	578.75	150033	41	
307-8045559	7/27/2006	260.01	8/15/2006	260.01	150033	19	838.76
307-8075515	7/20/2006	801.43	9/18/2006	801.43	150579	60	801.43

Payments 90 days prior to 9-28-2006 - - > **42,151.87** Average days outstanding - - - - > **31**

307-8075561	6/29/2006	393.45					
307-8075514	7/28/2006	6,457.20					
307-8075517	8/1/2006	4,874.35					
307-3043602	9/7/2006	6,182.88					
307-8075557	10/3/2006	412.01					
307-8075556	10/5/2006	573.38					
307-8045520	10/16/2006	694.50					

Prepetition New Value of \$17,514.43

Open unpaid Invoices - - - - - > **19,587.77**

Exhibit G

Preference Analysis

Summary of Days Between Invoice Date and Payment Date

Day Intervals	Preference Payments 90 Days		Historical Payments 455 Days	
	Number	Percent	Number	Percent
0-5	0	0.0%	0	0.0%
6-10	0	0.0%	0	0.0%
11-15	0	0.0%	0	0.0%
16-20	0	0.0%	0	0.0%
21-25	0	0.0%	0	0.0%
26-30	0	0.0%	1	0.8%
31-35	2	1.4%	6	4.9%
36-40	0	0.0%	13	10.7%
41-45	36	25.0%	13	10.7%
46-50	21	14.6%	7	5.7%
51-55	23	16.0%	37	30.3%
56-60	16	11.1%	25	20.5%
61-65	24	16.7%	7	5.7%
66-70	9	6.3%	9	7.4%
71-75	0	0.0%	0	0.0%
76-80	0	0.0%	1	0.8%
81-85	0	0.0%	1	0.8%
86-90	1	0.7%	0	0.0%
91-95	1	0.7%	2	1.6%
95-100	1	0.7%	0	0.0%
100+	10	6.9%	0	0.0%
Total	144	100.0%	122	100.0%

EXAMPLE OF A SIMPLE NEW VALUE DEFENSE ANALYSIS

DATE	PAYMENT	SHIPMENT	PREFERENCE EXPOSURE
May 1	\$30,000*		\$30,000
May 2		\$10,000**	\$20,000
May 10	\$5,000*		\$25,000
May 10		\$15,000**	\$10,000
May 15	File Bankruptcy		

*Assumes that these payments do not fit within the ordinary course of business defense and are avoidable as preferences unless saved by the new value defense.

**Assumes that no payment was received on account of these shipments and that these invoices were outstanding as of the date of the bankruptcy filing. However, the trend is to allow these shipments to be used for the new value defense even if payments were made provided the actual payments received are avoidable as preferences because the end result is that that invoices would end up being outstanding.

ACC Extras

Supplemental resources available on www.acc.com

Top Ten Key Questions (and Answers) for Dealing with Financially Distressed Suppliers.

Quick Reference. June 2008

<http://www.acc.com/legalresources/resource.cfm?show=116654>

Focus on Insolvency Law.

Article. February 2009

<http://www.acc.com/legalresources/resource.cfm?show=301808>

Protecting Data in a Business Failure.

ACC Docket. September 2009

<http://www.acc.com/legalresources/resource.cfm?show=516410>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.