

Preferences and Best Practices of the Chapter 13 Trustees

with Sylvia Ford Brown and Jennifer K. Cruseturner

Presented by the MBA's Bankruptcy Section

Thursday, September 28, 2023, 3-4pm
Bankruptcy Court, 6th Floor

Bankruptcy Code and Rules of Bankruptcy Procedure

General Trustee preference is to refer to the Code and the Rules for guidance for all parties.

- * 11 U.S.C. §§ 1301-1330: Chapter 13
 - * 11 U.S.C. §§ 1301-1308: Officers, Administration, and the Estate
 - * 11 U.S.C. §§ 1321-1330: The Plan
- * Federal Rules of Bankruptcy Procedure
- * TNWB Local Rules of Bankruptcy Procedure

Bankruptcy Code: The Plan

- * 11 U.S.C. § 1322
 - * Requirements for content of the Plan, including definition of the 36/60-month applicable commitment periods.
- * 11 U.S.C. § 1325
 - * Requirements for Confirmation.

Bankruptcy Code and Rules of Bankruptcy Procedure

Cornell Law School, Legal Information Institute:

- * Title 11:

- * <https://www.law.cornell.edu/uscode/text/11>

- * Federal Rules of Bankruptcy Procedure:

- * <https://www.law.cornell.edu/rules/frbp>

- * Federal Rules of Civil Procedure:

- * <https://www.law.cornell.edu/rules/frcp>

§ 341 First Meeting of Creditors

- * As of 9/25/23, all §341 Meetings will be conducted via Zoom, pursuant to UST guidance.
- * The Zoom Meeting ID and Passcode are listed on the Notice of Bankruptcy Filing.
- * Each Trustee has a unique Meeting ID and Passcode that will be used at each setting-this won't change.
- * Debtors and their attorneys are to appear virtually at the §341 Meeting with functioning video and sound.

§ 341 First Meeting of Creditors

- * Provide all required documents to the Trustees in advance of the Meeting.
 - * State or federally issued photoidentification
 - * Proof of SSN and Form 121
 - * Most recent federal tax return
 - * Most recent pay advice
- * Meeting will not be conducted if we are not able to verify Debtor's identity

§ 341 First Meeting of Creditors

- * Under the Bankruptcy Code, Trustees do not have authority to file or to modify the Chapter 13 Plan prior to confirmation of the Plan. 11 U.S.C. §§ 1321 and 1323.
- * Therefore, Trustees will not increase the amount of the plan payment and will make no adjustment to treatment of claims at the Meeting of Creditors.
- * Adjustments to the Plan should be set forth in an Amended/Modified Chapter 13 Plan filed by the Debtor.

11 U.S.C. §1323

Modification of plan before confirmation (emphasis added)

- a) The **Debtor** may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of § 1322.

- b) After **the Debtor files** a modification under this section, the plan as modified becomes the plan.

Plan Confirmation

- * Trustees will file detailed objections to confirmation of the Plan by the objection deadline.
 - * At least 7 days prior to the first setting of the hearing on confirmation. FRBP 3015(f); TNWB LBR 2083(b)(2).
 - * Review the objections:
 - * Amend Schedules and Forms as necessary to address/resolve the objections;
 - * Amend the Plan to address/resolve the objections;
- OR
- * Request that the matter be set at 10am before the court for a legal determination of the objections opposed by the Debtor.

Pre-confirmation Modification (Amendment) of the Plan

- * Look at all filed secured and priority claims and make sure they are addressed in the Plan in a manner consistent with the bankruptcy code.
- * Consider waiting to file an amended Plan until after the objection deadline has expired, as there may be objections to the Plan from the Trustee as well as from a creditor or other interested party.
- * Rather than multiple consent orders with objecting parties on their individual objections, consider filing one amended Plan to resolve all objections.
- * Once Trustee's Objection to Confirmation is resolved and there are no remaining barriers to confirmation, Trustee's Objection will be withdrawn.

Notice of Pre-confirmation Modification (Amendment) of the Plan

- * FRBP 2002(a)(5): 21 days notice required for the time fixed to accept or reject a proposed modification of a plan
- * FRBP 2002(a)(9): 21 days notice required for the time fixed for filing objections to confirmation of a chapter 13 plan
- * FRBP 2002(b): 28 days notice required for hearing on confirmation of a Chapter 13 Plan
- * Consistent with FRBP 3015(f) and TNWB LBR 2083(b)(2), still have 7 days between objection deadline and confirmation hearing.

The Plan-Local Plan Form

- * Section 4: Domestic Support Obligations
 - * Technically also a priority claim under 11 U.S.C. § 507(a)(1)(A).
 - * Arrears need to be paid through the Plan unless the obligation has been assigned to a state agency and the Debtor elects a 60 month term. See 11 U.S.C. §§ 1322(a)(4) and 507(a)(1)(B).
- * Section 5: Priority Claims
 - * Must be paid in full through the Plan. See 11 U.S.C. § 1322(a)(2).
- * Section 6: Home Mortgage Claims
 - * Mortgages/Mortgage Arrears
 - * HOA/HOA Arrears
 - * Property Taxes

The Plan-Local Plan Form

- * Section 7: Secured Claims

- * To value collateral at an amount less than the total debt owed—provided claim is subject to valuation. See 11 U.S.C. §§ 1325(a)(5) and 506.

- * Section 8: 910/365 Claims

- * To pay in full claims that cannot be valued because the personal property securing the claim was acquired within 910 days (autos) or 365 days (other thing of value). See 11 U.S.C. § 1325, final hanging paragraph.

- * Section 12: Lien Avoidance

- * To avoid a lien that impairs an exemption. *Make sure you have claimed the exemption.* See 11 U.S.C. § 522(f).

Common Objections to Confirmation

- * **Lack of Good Faith:** Does not appear that the Debtor has filed either the plan or the case in good faith. 11 U.S.C. §§ 1325(a)(3) and (a)(7).
- * **Liquidation:** Plan does not pay to unsecured creditors the same amount they would receive in a Chapter 7 case. The value of Debtor's assets may be in question and the Debtor has the burden of establishing fair market value. 11 U.S.C. § 1325(a)(4).
- * **Secured Claims:** Treatment of secured claims is not in compliance with the requirements of 11 U.S.C. 1325(a)(5).
- * **Feasibility:** Debtor does not appear to have the ability to make all plan payments as proposed. 11 U.S.C. § 1325(a)(6).

This is not an exclusive list.

Common Objections to Confirmation

- * **Domestic Support Obligations:** Debtor is not current on post-petition DSO payments. 11 U.S.C. § 1325(a)(8).
- * **Priority Taxes:** Debtor has not filed all tax returns for priority years. 11 U.S.C. § 1325(a)(9).
 - * Providing a copy of the tax return to the Trustee may not resolve this objection. Instead, the filed proofs of claims from the taxing authorities will need to reflect all priority years are assessed.
 - * Failure to file all priority tax returns is grounds for dismissal of the case under 11 U.S.C. §§ 1307(e) and 1308.
- * **Disposable Income:** Plan does not either (1) pay all creditors in full; OR (2) propose to contribute all disposable income over the applicable commitment period. 11 U.S.C. § 1325(b)(1).

This is not an exclusive list.

Continuances

- * Trustees would like to see faster resolution of matters pending on Court calendars.
- * Review the calendar prior to the first court date.
- * Contact opposing parties prior to the first court date.
- * Contact Trustee offices and/or court chambers to provide announcements in a timely manner.
- * Absent extenuating circumstances, Trustees will generally move matters to the 10am calendar after three continuances with no progress or updates from moving party.

Orders

- * Please refer to chamber procedures before you send a proposed order to the Trustee.
- * Please check the proposed order for typographical errors before you send it to the Trustee.
- * Please ensure that the proposed order references the relief you requested in the initial pleading.
 - * For instance, if you filed a motion for relief from stay, the proposed order should be granting or conditioning the stay—not granting Debtor authority to sell real property.

Property of the Estate

- * The filing of a bankruptcy case creates a bankruptcy estate under 11 U.S.C. § 541(a) that consists of all property owned by the debtor at the time of filing.
- * Property of the estate under § 541 does not generally include post-petition property in the context of a Chapter 7 case, but 11 U.S.C. § 1306(a) expands the definition of property of the estate in a Chapter 13 case to include the debtor's post-petition property and the debtor's post-petition earnings until the case is closed, dismissed, or converted to another chapter.
- * Under § 1306(b), the debtor remains in possession of estate property unless the confirmed plan or confirmation order states otherwise.
- * Confirmation order in WDTN specifically references property of the estate remaining vested in the estate at confirmation, as referenced in 11 U.S.C. § 1327(b).

Motions to Sell Real Property

- * Should contain a copy of the contract for the sale of the property, including the purchase price.
- * Should contain factual information to establish:
 - * The proposed sale is an “arm’s length” transaction.
 - * The property was marketed in a commercially reasonable manner.
 - * The purchase price is fair market value.
- * If the proposed sale does not meet these requirements, motion should say why.
- * Non-exempt net sale proceeds are property of the bankruptcy estate and should be turned over to the Trustee.

Personal Injury Settlement

- * Make sure that if your client is represented by a P.I. attorney, that you are aware of the details of the settlement of their claim.
- * Trustee will seek to recover for the bankruptcy estate funds that are not necessary and reasonable for the care and maintenance of the Debtor or dependents.
- * If your client wants to retain some or all of the funds, Trustee needs to know the intended purpose/use of the funds.

Objections to Claims

- * Pursuant to 11 U.S.C. § 502(a), a claim is deemed allowed as filed.
- * Debtors can object to claims where they have a valid legal and factual basis to do so.
 - * 11 U.S.C. § 502(b)(1-9): bases for disallowance of claims
 - * F.R.B.P. 3007: rule of procedure on objections to claims (service, etc.)
- * **Debtor may be the only one that has independent knowledge of the facts to support the objection.**

Objections to Claims

- * Under 11 U.S.C. § 704(a)(5), made applicable by § 1302(b)(1), Trustees shall examine claims and object to the allowance of improper claims **if a purpose would be served.**
- * Trustee may not know underlying facts.
- * Generally, objection appropriate by Trustee where claim is facially invalid (late, no evidence of security perfection, math error, etc.).

Discharge:

File all required certifications

- * 11 U.S.C. § 1328(g)(1): Debtor must complete an instructional course concerning personal financial management.
- * F.R.B.P. 1007(b)(7): Debtor must file a statement regarding completion of this course, either through filing of the course certificate by the course provider or through the filing of Official Form 423.
- * 11 U.S.C. § 1328(a): Debtor must certify that the Debtor owed no domestic support obligation or paid any such obligation as required by the plan.
- * Section 1328(h): Court must make a finding that (1) there is no reasonable cause to believe that 11 U.S.C. § 522 (q)(1) may be applicable to the debtor, and (2) there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in 522 (q)(1)(A) or liable for a debt of the kind described in 522 (q)(1)(B).
- * The statements required of the Debtor under 11 U.S.C. §§ 1328(a) and (h) may be satisfied by filing Official Form B2830.

Automobile Insurance Program - Priority Insurance

- * Priority Insurance has recently updated its procedure to request additional information on vehicles filed with an initial value of greater than \$30,000. (Letters have gone out to Debtors and their attorneys.)
- * If the requested information is not provided to Priority Insurance, it will not provide coverage for the vehicle.
- * Priority Insurance was experiencing issues with vehicles being driven by uninsured parties or parties without a valid drivers license.
- * ****Encourage Debtors to obtain their own auto insurance coverage.****

QUESTIONS?

THANK YOU!