

Debtors

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

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

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

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

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

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

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

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

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

Domestic support obligations

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

Extensions of credit in an involuntary case

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

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

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

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not advanced or provided. 11 U.S.C. § 507(a)(7).

Taxes and certain other debts owed to governmental units

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

Commitments to maintain the capital of an insured depository institution

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

Claims for death or personal injury while debtor was intoxicated

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

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re [REDACTED]

Case No. _____

Debtors

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Taxes and Certain Other Debts
Owed to Governmental Units

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	H W J C Husband, Wife, Joint, or Community	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M	TYPE OF PRIORITY			A M O U N T E N T I T L E P R I O R I T Y	
				C O N T I N G E N T	U N L I Q U I D E D	D I S P U T E D		A M O U N T O F C L A I M
Account No. Employment Security Commission Attn: Tax Dept. P.O. Box 26504 Raleigh, NC 27611-6504	J						0.00	
Account No. Forsyth Co. Tax. Dept. P.O. Box 757 Winston Salem, NC 27102	J						0.00	
Account No. Internal Revenue Service P.O. Box 21126 Philadelphia, PA 19114	J						0.00	
Account No. NC Dept. of Revenue P.O. Box 1168 Raleigh, NC 27640	J						0.00	
Account No.							0.00	
Subtotal (Total of this page)							0.00	0.00
Total (Report on Summary of Schedules)							0.00	0.00

Sheet 1 of 1 continuation sheets attached to
Schedule of Creditors Holding Unsecured Priority Claims

Debtors

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

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

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

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

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

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

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community			C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	
		H	W	J					C
Account No. XXXX-XXXX-XXXX-0553 Bank of America P.O. Box 16726 Washington, DE 19886			W					11,775.00	
Account No. XXXXXXXXXXXXX8453 Unlabeled P.O. Box 17674 Baltimore, MD 21297		H						11,230.00	
Account No. XXXXXXXXXXXXX7681 Capital One P.O. Box 108131 Washington, GA 30348		H						4,775.00	
Account No. XXXXXXXXXXXXX7681 Capital One P.O. Box 108131 Washington, DE 19886			J					755.00	
Subtotal (Total of this page)									28,535.00

Continuation sheets attached

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
[insert correct division name] DIVISION

In re:)
) Case No. - - -
) Chapter 13
)
)
) Debtor(s))

**CHAPTER 13 PLAN INCLUDING NOTICE AND MOTION(S) FOR VALUATION;
MOTION(S) TO AVOID CERTAIN LIENS; MOTION(S) FOR ASSUMPTION
AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.
NOTICE OF OPPORTUNITY FOR HEARING ON CONFIRMATION OF THE PLAN
INCLUDING ALL MATTERS AS SET FORTH IN THE PLAN
FOR CASES FILED ON OR AFTER JULY 2, 2007**

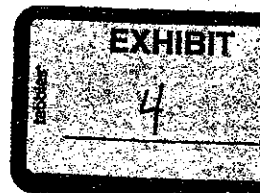
The following is the Chapter 13 plan proposed by the above-named debtor(s). The plan may also include in its provisions certain motions to avoid liens, motions for valuation of collateral securing claims, and motions to assume or reject executory contracts and unexpired leases. (Check the motions applicable to this plan.)

- Motion to Value Liens Includes Valuation of Property Securing A Claim
- Motion to Value Liens Includes Valuation of Property Securing A Claim in an Amount Less than the Amount of the Claim
- Motion to Avoid Liens §522(f)
- Motion to Assume Executory Contract(s) and Unexpired Leases
- Motion to Reject Executory Contract(s) and Unexpired Leases
- No Motions Applicable to this Plan

TAKE NOTICE: Your rights may be affected. You should read the plan carefully, including any motions contained in the plan, and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to confirm the proposed plan of the debtor(s), including any of the motions included in the plan, or if you want the court to consider your views on these matters, then you or your attorney must file with the Court a written objection to confirmation and request for hearing on confirmation at one of the following addresses:

Cases filed in the Charlotte, Shelby or Wilkesboro Divisions:
Clerk, U.S. Bankruptcy Court, P.O. Box 34189, Charlotte, N.C. 28234-4189



Cases filed in the **Asheville or Bryson City Divisions:**
Clerk, U.S. Bankruptcy Court, Room #112, 100 Otis Street, Asheville, N.C. 28801

Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fifteen (15) days following the conclusion of the Section 341(a) meeting of creditors. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing on the objection. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions. Any creditor's failure to object to confirmation of the proposed plan shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).

STANDING STAY MODIFICATION: The automatic stay provided in 11 U.S.C. § 362(a) is modified in Chapter 13 cases as follows: Affected secured creditors may contact the debtor about the status of insurance coverage on property used as collateral. If there are direct payments to creditors, affected secured creditors may contact the debtor in writing about any payment in default; and shall send to the debtor statements, payment coupons or other correspondence that the creditor sends to its non-debtor customers. Such actions do not constitute violations of 11 U.S.C. § 362(a).

PLAN PAYMENTS; ADMINISTRATIVE COSTS; PROOFS OF CLAIM

1. a. The base plan proposes payments of \$_____ per month for _____ months
(estimated percent payment to general unsecured creditors _____%) or
- b. The percentage plan proposes payments of \$_____ per month for _____%
(percentage) payment to general unsecured creditors.
- c. If applicable, the plan will also be funded by: _____

2. Administrative Costs

a. Attorney's Fees. The attorney for the debtor(s) has received \$ _____ of the total base attorney fee of \$ _____. The remainder of the base fee shall be paid through the plan by the trustee on a pro rata basis with required monthly payments to allowed secured claimants.

b. Trustee's Costs. The trustee shall be entitled to reimbursement of fees and costs up to the statutory maximum on each disbursement made by the trustee, regardless of whether it is paid prior to or following confirmation.

3. Filing of Proofs of Claim

a. The trustee shall only distribute payments, including adequate protection payments, to creditors who have actually filed proofs of claim (including adequate proof of security) with the Court that are deemed allowed pursuant to 11 U.S.C. Section 502(a). However, if a creditor does not file a timely proof of such creditor's claim, then either the debtor(s) or the trustee may file such a claim as provided for by 11 U.S.C. Section 501(c) and in that event such claim shall be deemed the claim for all purposes under the plan.

b. The trustee shall mail payments and provide notices to the address provided on the filed proof of claim or amended proof of claim or filed name or address change or assignment or transfer of claim filed with the Court

CLASSIFICATION AND TREATMENT OF CLAIMS

4. **PRIORITY CLAIMS.** All claims entitled to priority under 11 U.S.C. Section 507 and 1322 shall be paid in full in deferred cash payments, except for priority claims under Section 507(a)(1)(B), unless the holder of the particular claim agrees to a different treatment of such claim.

a. Domestic Support Obligations ("DSOs")

All postpetition DSOs, including postpetition DSOs assigned to a governmental unit, will be paid directly to the holder by the debtor(s) or to the assignee of the claim and not through the Chapter 13 Trustee unless otherwise specified under the "Special Terms" section of the plan.

i. None

ii. The name, address and phone number including area code of the holder of any DSO as defined in 11 U.S.C. Section 101(14A). Pursuant to 11 U.S.C. Section 112, the names of minor children should not be disclosed. Include in this list all DSOs as defined by the statute, notwithstanding the fact that the debtor may believe the obligation to be voluntary or contingent in nature.

Name Address (incl. city, state, zip code) Telephone

1.

2.

b. DSO Prepetition Arrearages Owed to DSO Holders Under 11 U.S.C. Section 507(a)(1)(A), or assigned to a governmental unit, to be paid in full through the Chapter 13 plan on a pro-rata basis after payment of secured claims and the attorney fee and prior to payment of any non-DSO priority claim, unless a different treatment is proposed under the "Special Terms" section of the plan:

i. None

ii. Name of holder Amount of Arrearage

1.

2.

c. Priority Claims Other Than DSOs

All priority claims other than DSOs shall be paid in full on a pro rata basis after the payment in full of all DSO priority claims.

i. None

ii. The names and amounts of all claims entitled to priority under 11 U.S.C. Section 507, other than DSOs:

Name Claim Amount

1.

2.

A. SECURED CLAIMS

Other than secured claims that are to be paid as long-term debts pursuant to 11 U.S.C. Section 1322(b)(5), or that are to be paid directly by the debtor(s), the trustee shall pay the value of all allowed secured claims, on a pro rata basis in monthly amounts sufficient to provide adequate protection.

a. For purposes of the plan, the treatment of each claim is specified below. Treatment shall be one of the following: (1) Direct payment by the debtor(s): "Direct";

(2) Payment in full by the Chapter 13 Trustee through the plan where Section 506(a) does not apply: "910/365"; (3) Payment of the value of the collateral by the Chapter 13 Trustee through the plan where Section 506(a) does apply: "As valued"; (4) Debtor(s) will surrender the collateral: "Surrender", or (5) File proceeding to determine validity of lien: "Avoidance."

<u>Creditor</u>	<u>Collateral</u>	<u>Value of Coll.</u>	<u>Claim Amt.</u>	<u>Treatment</u>	<u>Int. Rate</u>
1.					
2.					
3.					
4.					

To the extent that any of the claims referred to above are secured by mortgage loans or real property, and such claims are scheduled to be paid by the Trustee, then and in the event the Debtors will no longer be making any mortgage payments to any of the designated mortgage servicers and/or their successors and assigns and all such entities are hereby authorized to provide account information to the Chapter 13 Trustee.

b. For secured claims to be paid directly by the debtor(s), state below the amount of prepetition arrearages to be paid through the Chapter 13 Trustee:

<u>Creditor</u>	<u>Collateral</u>	<u>Pre-pet. arrearage</u>	<u>Int. Rate.</u>
1.			
2.			
3.			

If the treatment option for secured claims is "Surrender", the debtor(s) surrenders any interest in the collateral securing the claims of the specified creditors. Upon confirmation, the automatic stay will be deemed lifted for the collateral and the creditor need not file a motion for relief from stay in order to repossess, foreclose upon or sell the collateral. Nothing herein is intended to lift any applicable co-debtor(s) stay, or to abrogate the debtor(s)' state law contract rights.

c. For claims secured by improved real property or motor vehicles, state below requested insurance information, vehicle mileage, and vehicle identification number.

<u>Collateral</u>	<u>Insurance Agent and Address</u>	<u>Vehicle Mileage</u>	<u>VIN.</u>
1.			
2.			
3.			

6. General Unsecured Claims Not Separately Classified. General unsecured claims shall be paid on a pro rata basis with payments to commence after the payment of all administrative, secured and priority unsecured claims in full.

7. Special Terms

- a. None
- b. Special Treatment of Unsecured Claims
- c. Other Direct Payments to Creditors Other than Section 5.
- d. Other Special Terms

8. Plan Motions:

Motion to Value All Liens in Paragraph #5a

The debtor(s) hereby moves the Court to value the collateral of each of the creditors described in paragraph 5a. (except those creditors whose claims are classified to be paid directly or to be paid in full by the Chapter 13 Trustee where Section 506(a) does not apply) at the collateral value stated. To the extent that the amount of the debt of any such creditor exceeds the stated collateral value, the debtor(s) hereby moves the Court that said difference be treated in the Chapter 13 plan as a general unsecured claim without priority. The debtor(s) further moves the Court that the lien of each creditor listed upon the collateral listed hereinabove be satisfied upon payment of the collateral value and the issuance of the debtor(s) discharge.

**Motion to Avoid Non-Possessory, Non-Purchase Money Security Interests
In Household Goods and Personal Items**

The debtor(s) is indebted to the following creditors in the amounts stated. As security for the debt, each such creditor insisted upon, and the debtor(s) executed, a waiver of exemption of certain property, and a security agreement granting said creditors a non-possessory, non-purchase money security interest in household goods which is property delineated by 11 U.S.C. Section 522(f)(2) and which is held primarily for the personal, family or household use of the debtor(s) or a dependent of the debtor(s). The debtor(s) believes that a financing statement may have been properly filed evidencing each such creditor's security interest and liens:

<u>Creditor</u>	<u>Last 4 Digits of Account/I.D.</u>	<u>Debt Amount</u>	<u>Description of Property</u>
1.			
2.			

The debtor(s)' interest in any item of property referred to above does not exceed the value claimed as exempt. The money borrowed from each such creditor does not represent any part of the purchase money of any of the items covered by each such creditor's security agreement. The existence of each such creditor's lien on the debtor(s)' household goods and personal items impairs the exemptions to which the debtor(s) would be entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law. The debtor(s) moves the Court for the cancellation and avoidance of the security interest of each such creditor in the debtor(s)' personal and household goods, effective upon discharge.

Motion to Avoid Judicial Liens

Judgments were obtained by the creditors listed below in cases before the General Court of Justice of the State of North Carolina, and said judgments have been recorded in the Public Registry as follows:

<u>Creditor</u>	<u>Judgment Book And Page</u>	<u>Registry</u>	<u>Judgment Date</u>	<u>Judgment Lien Amount</u>
1.				
2.				

The above-stated judgments created liens on the real property in which the debtor(s) has an interest, which real property is more specifically described as _____ . The value of the debtor(s)'s interest in this real property is \$ _____. The aforesaid liens constitute judicial liens under 11 U.S.C. Section 522(f)(1). The property which this judicial lien encumbers is property which the debtor(s) is entitled to exempt under 11 U.S.C. Section 522 and the claimed amount of this exemption is \$ _____. The existence of this judicial lien impairs the exemption to which the debtor(s) is entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law.

The debtor(s) respectfully moves the Court to issue an order compelling the above-stated creditors to cancel and avoid their judicial liens upon the real property described herein, effective upon discharge.

Motion to Assume or Reject Executory Contracts and Unexpired Leases

a. The debtor(s) moves to assume or reject the following executory contracts and unexpired leases. If assumed, payments due after the filing of the case will be paid directly by the debtor(s) rather than by the trustee.

b. Unless otherwise provided, the debtor(s) proposes to promptly cure any pre-bankruptcy defaults on the assumed leases or contracts over a period of _____ months, with said payments to be made by the trustee.

<u>Creditor</u>	<u>Assume or Reject</u>	<u>If Assumed, Amount of Arrearage paid in Plan</u>
1.		
2.		

General Provisions

1. To receive payment from the trustee, either prior to or following confirmation, a secured creditor must file a proof of claim. Secured claims which are not filed within the time period required by Federal Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the Court.

2. Confirmation of this plan does not bar a party in interest from objecting to a claim which is not filed in accordance with Federal Bankruptcy Rules 3001 or 3002.

3. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within one-hundred twenty (120) days (or such other period as the Court orders) after the removal of the property from the protection of the automatic stay. For purposes hereof, the removal date shall be the date of the entry of the order confirming the plan, modifying the plan, or granting relief from stay. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or release to another lien holder.

4. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution and for any other purpose under the plan.

5. Property of the estate includes all of the property specified in 11 U.S.C. Section 541 and all property of the kind specified in such section acquired by the debtor(s) after commencement of the case but before the case is closed, dismissed or likewise converted to one under another chapter of the Code. All property of the debtor remains vested in the estate until completion of the plan.

6. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the trustee on the prepetition arrearages, if any, only to such arrearages; to deem the prepetition arrearages as contractually cured by confirmation; to apply the direct mortgage payments, if any, paid by the trustee or by the debtor(s) to the month in which they were

made under the plan or directly by the debtor(s), whether such payments are immediately applied to the loan or placed into some type of suspense account; to notify the trustee, the debtor(s) and the attorney for the debtor(s) of any changes in the interest rate for an adjustable rate mortgage and the effective date of the adjustment; to notify the trustee, the debtor(s) and attorney for the debtor(s) of any change in the taxes and insurance that would either increase or reduce the escrow portion of the monthly mortgage payment; and to otherwise comply with 11 U.S.C. Section 524(l). See Local Rule 4001-1(e).

7. All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case.

I declare under penalty of perjury that the information provided in the Chapter 13 Plan, including Motion(s) for Valuation; Motion(s) to Avoid Certain Liens; and Motion(s) for Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated _____

Debtor's Signature

Dated _____

Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated _____

Attorney for the Debtor(s)

UNITED STATES BANKRUPTCY COURT Middle District of North Carolina

PROOF OF CLAIM

Case Number: _____

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of creditor (the person or other entity to whom the debtor owes money or property): _____

Check this box to indicate that this claim amends a previously filed claim.

Address where notices should be sent: _____

Court Claim Number: _____
(If known)

Filed on: _____

Address where payment should be sent (if different from above): _____

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

Amount of Claim as of Date Case Filed: \$ _____

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.

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.

Specify the priority of the claim.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of charges.

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

Identify the Claim: _____

(See instruction #2 on reverse side.)

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).

List any rights of any number by which creditor identifies debtor: _____

Debtor may have scheduled account as: _____

(See instruction #3a on reverse side.)

Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).

Identify Estates (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.

Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).

Category of property or right of setoff: Real Estate Motor Vehicle Other

Value of Property: \$ _____ Annual Interest Rate _____ %

Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).

Amount of arrearage and other charges as of time case filed included in secured claim,

Amount: \$ _____ Basis for perfection: _____

Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____).

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

Amount entitled to priority:

\$ _____

The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction # "redacted" 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.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If documents are not available, please explain: _____

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.

File Claim in Duplicate with Trustee:

Richard M. Hutson II
Chapter 13 Office
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INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

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

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien

documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the extent of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of security interest. You may also attach a summary. FRBP 3001(c) and Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 5011 claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and any, of the creditor or other person authorized to file this claim. State filer's address and telephone number if it differs from the address given top of the form for purposes of receiving notices. Attach a complete or any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

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

Creditor

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101(5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. Pursuant to Local Rule this form must be filed with the Chapter 13 Trustee's Office. Do Not file Proof of Claim with the Bankruptcy Clerk's Office.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, either enclose a stamped self-addressed envelope with a copy of this proof of claim or you may use the PACER system (www.pacer.uscourts.gov) and pay a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claim. Some of these entities may contact the creditor or offer to purchase the claim. Some of the communications from these entities may be confused with official court documentation communications from the debtor. These entities represent the bankruptcy court or the debtor. The creditor has no obligation to sell his claim. If the creditor decides to sell its claim, any transaction is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §), and any applicable orders of the bankruptcy court.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed electronically by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

File in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

File in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

4. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

5. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a):

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005 (a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

— DEFINITIONS —

Creditor
A creditor is the person, corporation, or other entity that has filed a bankruptcy claim.

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of

— INFORMATION —

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the

Creditor

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business purchasing claims for an amount less than the face value of the claims. Some of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 300 and any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *seq.*), and any applicable orders of the bankruptcy court.

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.

Frequently Asked Questions - Electronic Filing of Proof of Claim

Updated: 08/14/08

1. Can I file an electronic proof of claim in any chapter case?

Yes. The North Carolina Middle District Bankruptcy Court began accepting electronic claims in all cases, including Chapter 13 cases, effective July 1, 2008.

2. Do I need to attach the B10 claim form as an attachment?

No. The fillable form will create the B10 form. Any attachments should consist of supporting documentation to the Proof of Claim.

3. Is a signature required on the Proof of Claim?

Yes. Type the name and title, if any, of the person authorized to file the claim on behalf of the creditor. A copy of the power of attorney, if any, should be attached to the claim.

4. Can I include a separate mailing address for payments?

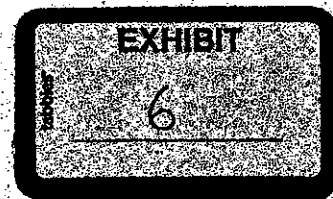
Yes. Check the box indicating that the Payment Address is different from the Notice Address. An additional address field will appear for this alternate address for payments.

5. Can I get a stamp-filed acknowledgment of the Proof of Claim?

Yes. The Court's claim number will display with a link to the electronically file-stamped proof of claim upon submitting the proof of claim. The claim will be file stamped as of the entry date. It is recommended that the claim be printed or saved at this time.

6. I am a creditor's attorney and will be filing a claim on behalf of my client. How do I record the creditor address and my address as attorney?

When filing the claim, there is a drop-down box on the first screen which allows you, the filer, to select who is submitting the claim. The options are: Creditor; Creditor's Attorney; Debtor; Debtor's Attorney; or Trustee. If the attorney is the filer, you will be able to add the attorney name and address and select the creditor's name from the listing of creditors in the case or if the creditor is not listed or listed incorrectly, you are able to



add the correct creditor. Both names and addresses will be added to the mailing matrix and displayed on the Proof of Claim and Claims Register.

7. I filed a claim and my attachments did not properly attach to the claim filed. How do I get the supporting documentation filed?

- a) Ensure that the attachment(s) is in PDF format and is being submitted in black and white (no color documents).
- b) Confirm that each PDF document being attached is less than 2 MG in size.
- c) File an amended claim and attach the correct PDF images.
- d) When filing the amended claim, check the box on the form that designates that the claim is amended. Select the claim number of the claim to be amended.
- e) Attachments must be added by the process above. Amendments cannot be faxed or mailed to the Trustee's office unless specifically requested by the Trustee.

8. When will the claim appear on the claims register?

The claim will immediately appear on the claims register upon submitting the proof of claim.

9. Will the Trustee be served with the Proof of Claim?

Yes. The Trustee will receive notification of the claim filed. You do not need to file a separate paper claim with the Trustee's office.

10. I need to amend a claim. How do I do this?

When completing the fillable claim form, check the box (above Item 1. On the form) to indicate that the claim amends a previously filed claim. You can then enter the Court claim number and/or date of the previous claim.

11. I need to amend a claim that was originally filed with the Chapter 13 Trustee's office. When I check the box on the form to indicate the amendment, the claim number assigned to the original claim by the Trustee's office does not appear in the box. What do I do?

All Chapter 13 claims filed before July 1, 2008, are on record in the Chapter 13 Trustee's office but are not recorded on the Court's claims registers. If you know the date your original claim was filed with the Trustee's office, you may enter that information. If not, simply check the box to indicate the amendment. A new claim number will be assigned and the claims register will indicate that the claim is an amendment. The Trustee's office will be able to reconcile the amendment with the claim on file in that office.

13. How will I know the treatment of my claim by the Chapter 13 Trustee?

Check the website of the Chapter 13 Trustee assigned to the case or contact the Chapter 13 Trustee's office. To access the Chapter 13 Trustee websites, go to: www.13network.com and select the Trustee office assigned to the case. The Trustees are listed by state. Access to the individual websites requires a login and password. There are instructions on each office's home page regarding web access. For the Middle District of North Carolina, you are able to access the three Trustee offices (Durham, Greensboro, Winston-Salem) using one login and password. The data available on the Trustee's website is as of the previous day.

Helpful Tips

- * Verify the debtor(s) name and case number prior to submitting the Proof of Claim. The fillable form will display the case number and Debtor's name at the top of the form. If you have entered the incorrect case number, simply use the 'Back' button to return to the first screen to enter the correct case number.
- * If you are a creditor's attorney filing the claim, be sure to indicate the appropriate payment address for the creditor. If a separate payment address is not entered, any funds will be sent to the creditor at the address shown on the claim form..
- * If you are amending a claim for any reason, be sure to check the 'Amends' box on the claim form.
- * If you are amending a claim to reflect that -0- is now due, in Item 1, in the amount field, use the format: **00.00**

- **Verify the amounts entered in Items 1, 4 & 5. The total amount claimed is required in Item 1. Do not use commas when entering an amount in any of the boxes in Items 1, 4 & 5.**
- **If there is supporting documentation for your claim, select 'Yes' at the bottom of the form (before the signature line). After clicking on 'Submit Claim', you will be able to attach your documentation.**
- **If there is insufficient space in the blocks provided on the fillable claim form to enter information you wish to provide regarding the basis of your claim, please attach that information as supporting documentation.**
- **Print or save the completed Proof of Claim. Option to view/print is displayed on screen after the submission of claim. This screen also displays the claim number assigned to your claim.**

United States Bankruptcy Court Middle District of North Carolina

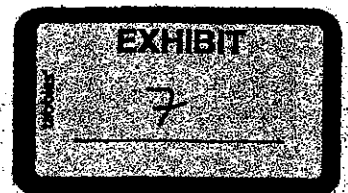
File Claim

Case Number

Name of Creditor

Filed by: Creditor

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A claim for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.



United States Bankruptcy Court Middle District of North Carolina

Select Creditor

Creditor not listed

United States Bankruptcy Court Middle District of North Carolina

Debtor: Patriot's Pointe, LLC
Case Number: 08-10119

Name of Creditor
Address where notices should be sent

City, State, Zip
Telephone Number:

Payment Address differs from Notice Address

Check this box to indicate that this claim amends a previously filed claim.

Check box if you are aware that anyone else has filed a proof of claim relation to your claim. Attach copy of statement giving particulars.

Court Claim Number:
Filed on:

Amount of Claim as of Date Case Filed:

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

Basis for Claim: (See instruction #2)

Last four digits of any number by which creditor identifies debtor:

Debtor may have scheduled account as: (See instruction #3a)

Secured Claim (See instruction #4)

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: Real Estate Motor Vehicle 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: \$

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:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- 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)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)().

* Amounts are subject to adjustment on 4/1/2010 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.**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 definition of "redacted" on reverse side.)**Attachments:**

- Necessary documentation can be attached to the Proof of Claim after the information for the form is submitted.
- Attachments to the Proof of Claim are required to be PDF files.
- Attachments to the Proof of Claim are NOT to exceed 2.1 Mb in size.
- Multiple attachments to the Proof of Claim are permitted.

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.Do you wish to attach supporting documentation? Yes No

Signature*

*Print name (required) and title, if any, of the person authorized to file this claim: Signature, Title

Submit Claim

Clear Form

** Verify debtor name(s) prior to submitting claim to be filed.

**Instructions
For
Filing
Proofs of Claim**

**United States Bankruptcy Court
Eastern District of North Carolina**

03/23/07



Proof of Claim

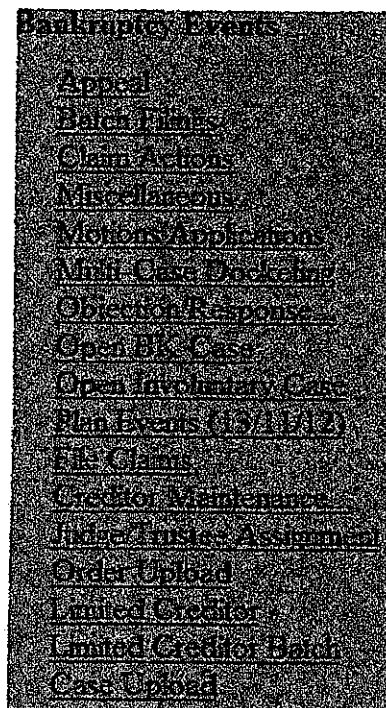
These instructions will guide you through the process of filing a Proof of Claim and adding a creditor to a case.

STEP 1 - Click on the Bankruptcy hyperlink on the CM/ECF Main Menu Bar.

STEP 2 - The BANKRUPTCY EVENTS screen displays.



- Click on File Claims hyperlink.



STEP 3 - The SEARCH FOR A CREDITOR screen displays.

Search for Creditor

Case Number: 50-99999

Name of creditor:

Type of creditor: Creditor

Next Clear

- Enter the correct case number using a hyphen between case year and case number, leaving the **Name of creditor** field blank.
 - Click the [Next] button.
- NOTE: If the system prompts that you have entered an invalid case number, click the browser [Back] button to try again. *Additionally*, be sure to choose the correct case if several cases are displayed for selection.

STEP 4 - The SELECT A CREDITOR screen displays.

- Click the down arrow to scroll through the list of creditors which are listed in alphabetical order.
 - Click the creditor's name to select it.
 - Click the [Next] button.
- NOTE: If the creditor is not listed, or if they are listed but with a different address, skip to STEP 8 for instructions on how to add a creditor. You do not have access rights to the Edit Creditor Feature.

Select a Creditor for Claim

Case 50-99999-8 JRL Debtor Test

John Smith - PO Box 1246 Greenville, NC 27834 2519830

[Add Creditor](#)

[Edit Creditor](#)

Next Clear

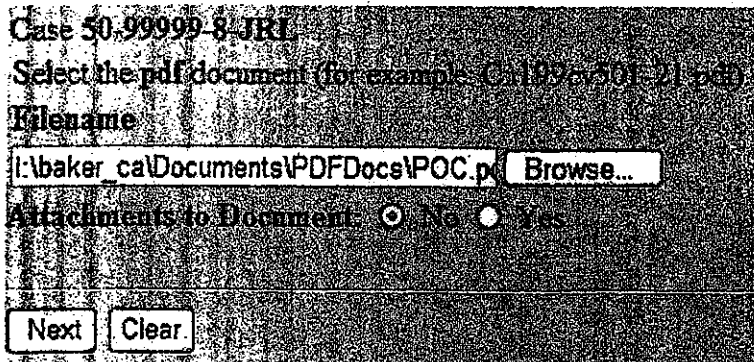
STEP 5 - The CLAIM INFORMATION screen displays.

- Fill in the Proof of Claim information as follows:
- [Amended Claim #] If the original claim was filed with the court, insert the claim number listed on the court's claim register. If not or you are unsure, leave blank and add amended claim information in the [Remarks] Field.
- [Filed By] The default is Creditor. Modify if applicable.
- Fill in the Amount Claimed information by inserting claim amounts in the [Unsecured], [Secured], [Priority] or [Unknown] fields as applicable.
NOTE: Amounts must be entered without \$ signs or commas. Use periods to denote decimals. The amount will be displayed in the [Total (Display Only)] field.
- Fill in the [Description] and [Remarks] fields with additional comments to describe the claim, if applicable.
NOTE: Use the [Description] and [Remarks] fields to note information such as, "Amount shown plus interest", "Amount unknown", "Amount cannot be determined", etc.
- Click the [Next] button.

Proof of Claim Information For				
2109680 - John Smith PO Box 1246 Greenville, NC 27634				
Case Number: 50-99999-8-JRL	Amended Claim #		Filed By: Creditor	
Last Date To File	Date Filed: 08/07/2007			
Last Date To File (Govt)				
Amount Claimed				
Unsecured	Secured	Priority	Unknown	Total (Display Only)
			100.00	100.00
Amount Allowed				
				Total (Display Only)
Description:				
Remarks:				
[Next]	[Clear]			

STEP 6 - The SELECT PDF screen displays.

- Select the .pdf file to associate with this event, beginning with Official Form B10, Proof of Claim. Add additional attachments, such as supporting documentation, as applicable. Skip to STEP 12 on instructions on adding additional attachments if necessary.
- Click the [Next] button.



The screenshot shows a software interface for selecting a PDF document. At the top, it displays "Case 50-99999-8-JRI". Below this, it prompts the user to "Select the pdf document (for example: C:\199e\501-21.pdf)". There is a text field labeled "Filename" containing the path "I:\baker_ca\Documents\PDFDocs\POC.p" and a "Browse..." button to its right. Below the filename field, there is a section for "Attachments to Document" with two radio buttons: "No" (which is selected) and "Yes". At the bottom of the form, there are two buttons: "Next" and "Clear".

STEP 7 - The NOTICE OF ELECTRONIC CLAIMS FILING screen displays.

- This is the verification of the date and time the claim was filed. It is recommended that you print this screen for your records.

USE THE FOLLOWING STEPS IF THE CREDITOR IS NOT LISTED IN STEP 4 ABOVE

STEP 8 - Do the following at the SEARCH FOR A CREDITOR screen at STEP 3.

- Select [Add Creditor].

Add Creditor(s)

Case 50-99999-8-JRE already contains creditors!

Case number 50-99999-8-JRE Debtor Test

*Name may be 50 characters, address may be 3 lines, 40 characters each.
More than one creditor may be added. Separate creditors with a blank line.*

Name and Address

John Henry Doe
1412 Anywhere Street
Wilson, NC 27896

Creditor type Creditor

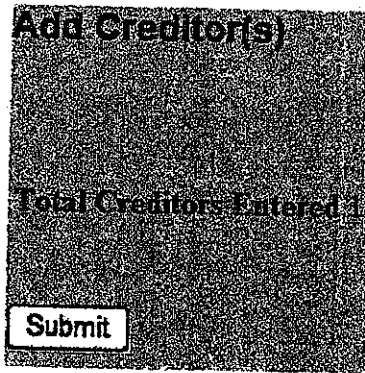
Creditor committed No Yes

Next

Clear

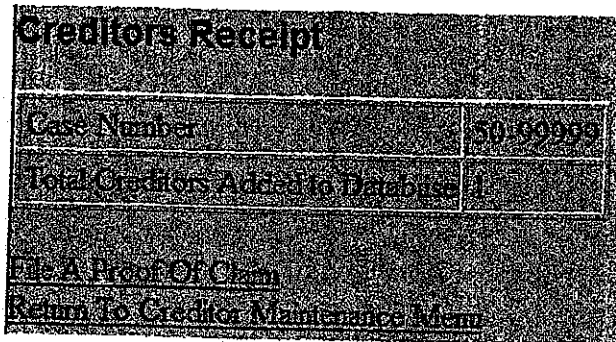
STEP 9 - The ADD CREDITOR(S) screen displays.

- Enter the creditor's name and address in the following format.
 - Name and Address: John Henry Doe
 1412 Anywhere Street
 Wilson, NC 27896
 - Leave the [Type] field at the default - Creditor.
1. Click the [Next] button.



STEP 10 - The ADD CREDITOR(S) screen displays with a total number of creditors entered.

- Click the [Submit] button.



STEP 11 - The CREDITORS RECEIPT screen displays.

- Click the [File a Proof of Claim] link and continue with STEP 4 above.

USE THE FOLLOWING STEPS IF ADDITIONAL PDF ATTACHMENTS ARE TO BE ADDED

STEP 12 - Adding Additional PDF Attachments.

- After browsing and attaching .pdf file in STEP 6, Click Yes at Attachments to Document.

Case 50-99999-3-JRI
Select the pdf document (for example: C:\199cv501-21.pdf)
Filename
I:\baker_ca\Documents\PDFDocs\POC.pdf Browse...
Attachments to Document: No Yes
Next Clear

- Click the [Next] button.
- 1) Browse and attach pdf document.

Select one or more attachments
Case 50-99999-3-JRI
1) Enter the pdf document that contains attachment (for example: C:\appendix.pdf)
Filename
I:\baker_ca\Documents\PDFDocs\POC.pdf Browse...

- 2) Choose Type and/or Description as applicable.

2) Select a document type, and/or enter a description
Type Description
Supporting Documentation

3) Click on Add to List. This step removes the file location from 1) (filename), to 3) (list box).

Select one or more attachments.
Case 50-99999-3-JR

1) Enter the pdf document that contains attachments (for example: C:\appendix.pdf)
Filename

2) Select a document type and/or enter a description.
Type Description

3) Add the filename to the list box below. If you have more attachments, go back to Step 1. When the

<input type="text" value="I:\baker_ca\Documents\PDFDocs\POC.pdf"/>	<input type="button" value="Add to List"/>
<input type="text"/>	<input type="button" value="Remove from List"/>

- Click Next to proceed to STEP 7 above.

United States Bankruptcy Court Western District of North Carolina

File Claim

Case Number

Name of Creditor

Filed by Creditor

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.

United States Bankruptcy Court Western District of North Carolina

Debtor ** **Gloria Linton**
 Case Number **08-10119**

Name of Creditor **test case**
 Address where notices should be sent

(City, State, Zip)

Telephone Number:

Payment Address differs from Notice Address

Check this box to indicate that this claim amends a previously filed claim.

Check box if you are aware that anyone else has filed a proof of claim relation to your claim. Attach copy of statement giving particulars.

Court Claim Number:
 Filed on:

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

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

2. Basis for Claim: *(See instruction #2)*

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as: *(See instruction #3a)*

4. Secured Claim *(See instruction #4)*

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: Real Estate Motor Vehicle 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: \$**

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:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- 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)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)().

* Amounts are subject to adjustment on 4/1/2010 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim:

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 definition of "redacted" on reverse side.)

Attachments:

- Necessary documentation can be attached to the Proof of Claim after the information for the form is submitted.
- Attachments to the Proof of Claim are required to be PDF files.
- Attachments to the Proof of Claim are NOT to exceed 2 Mb in size.
- Multiple attachments to the Proof of Claim are permitted.

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.

Do you wish to attach supporting documentation? Yes No

** Verify debtor name(s) prior to submitting claim to be filed.



**UNITED STATES BANKRUPTCY COURT
Western District of North Carolina
Wilkesboro Division**

Case No. 04-50736
Chapter 13

In Re: Debtor(s) (name(s) used in the last 8 years, including married, maiden, trade, and address):

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**DISCHARGE OF DEBTOR
AFTER COMPLETION OF CHAPTER 13 PLAN**

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 1328(a) of title 11, United States Code, (the Bankruptcy Code).

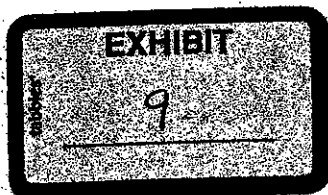
Dated: July 31, 2008

BY THE COURT

J. Craig Whitley
United States Bankruptcy Judge

Electronically filed and signed (7/31/08)

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.



**EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 13 CASE**

This court order grants a discharge to the person(s) named in the order after the debtor has fulfilled all requirements under the chapter 13 plan. It is not a dismissal of the case.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor(s), a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 13 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt is provided for by the chapter 13 plan or is disallowed by the court pursuant to section 502 of the Bankruptcy Code.

Debts that are Not Discharged

Some of the common types of debts which are not discharged in a chapter 13 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts provided for under section 1322(b)(5) of the Bankruptcy Code and on which the last payment or other transfer is due after the date on which the final payment under the plan was due;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for certain consumer purchases made after the bankruptcy case was filed if prior approval by the trustee of the debtor's incurring the debt was practicable but was not obtained;

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

**HOT TOPICS IN BANKRUPTCY FOR THE MUNICIPAL ATTORNEY
AS IDENTIFIED BY A CHAPTER 7 TRUSTEE, BANKRUPTCY LAWYER,
CITY ATTORNEYS AND YOU**

A. ZONING AND CODE ENFORCEMENT

Questions Presented:

1. *The code enforcement officer has determined properties owned by a debtor in bankruptcy are not in compliance with the local zoning ordinance and wishes to take enforcement action. Can the city issue a notice of violation and proceed with its enforcement procedures?*

2. *The city's housing administrator has identified properties in violation of the substandard housing ordinances. During the enforcement procedures, the owner filed a petition in bankruptcy. Can the city proceed with enforcement of its substandard housing ordinances?*

3. *The code enforcement officer has noted numerous vacant lots and other properties owned by a company in a Chapter 11 proceeding that are a threat to public health and safety due to serious overgrown weeds, vegetation and other conditions. A Chapter 11 Trustee has been appointed by the bankruptcy court. What action can the city take to remedy these conditions?*

Answer:

Look to § 362(b)(4) of the United States Bankruptcy Code to determine if the proposed actions by the city are exempt from the provisions of the automatic stay as set forth in § 362(a). If the enforcement actions are exempt, the city may proceed and will not be in violation of the automatic stay. However, the exemption does not apply to any action or proceeding to enforce a money judgment.

§ 362(b)(4) excepts from the automatic stay actions and proceedings, including the enforcement of certain judgments, to enforce police or regulatory powers of a governmental unit. As stated in Collier on Bankruptcy 15th Edition Revised, the bankruptcy court is not a haven for wrong doers. The policy of the Code is to permit regulatory, police and criminal actions to proceed in spite of § 363(a)(1), and to permit enforcement of resulting judgments and orders, other than money judgments, in spite of § 362(a)(2). A governmental unit may pursue actions against the Debtor or the estate, but it may not enforce a money judgment or seize or seek control over property of the estate without first obtaining relief from the stay. Thus, an action by a governmental unit seeking to enforce compliance with federal or state laws may proceed to a judgment or order In re Javens, 107 F. 3d 359(6th Cir. 1997) (razing of condemned buildings excepted from automatic stay as exercise of police or regulatory power). It may proceed even further, to enforcement of the judgment or order, but a governmental unit may not enforce a money judgment against the estate. Ohio v. Kovacs, 469 U.S. 274, 283 n.11 (1985); EEOC v. McLean Trucking Company, 834 F. 2d 398(4th Cir. 1987); Cournoyer v. Town of Lincoln, 790 F. 2d 971 (1st Cir. 1986) (action to enforce zoning ordinance). To determine whether an action is excepted from the automatic stay from a police or regulatory power action or simply a collection action, the courts have developed two tests to judge the government's action:

(1) the pecuniary purpose test (is the governmental unit pursuing a matter of public safety and welfare rather than a governmental pecuniary interest?) and

(2) public policy test (is the government action designed to effectuate public policy rather than to adjudicate private rights?).

Burg v. Good Samaritan Hosp., Inc. (In re Burg, 230 F. 3d 1165(9th Cir. 2000).

If the answer to either question is “yes,” then the exception applies.

B. SALES OF PROPERTY FREE AND CLEAR OF LIENS PURSUANT TO §363 OF THE BANKRUPTCY CODE

Question Presented:

The city has received a motion to transfer its ad valorem tax lien to the proceeds of the sale of certain real and personal property. Can a debtor in bankruptcy sell property subject to the city's tax lien?

Answer:

§363(f) provides that a trustee may sell property free and clear of any interest in such property of an entity other than the estate upon certain conditions. Typically, the trustee relies upon §363(f)(2) which provides for a transfer and sale free and clear of interest if such entity consents. Accordingly, unless the city objects to the sale and transfer of its lien, the trustee will prevail. While ad valorem tax liens generally have a first and prior status to other consensual liens or judgments, the city should be aware that some sales provide for credit bids to be allowed. Accordingly, if there are no proceeds to which the lien is transferred, the city may not receive any payment. See 11 U.S.C. § 363(k). The tax collector may wish to object to such sale and ask that the court not transfer its lien.

Practical Pointer:

Whenever the city receives a motion requesting the court to authorize the sale of real or personal property free and clear of all liens, the city attorney should contact the trustee or movant and request that the order provide that the ad valorem taxes will be paid in full at closing. Typically all parties would consent to the payment of ad valorem taxes as they are a first and prior lien to all other parties in interest.

C. § 547 – COLLECTION OF PREFERENCES

Question Presented:

Can a trustee or debtor in bankruptcy seek to avoid and recover payments made by the debtor to the city for taxes within the 90 days preceding the bankruptcy filing?

Answer:

A much despised and misunderstood provision in the Bankruptcy Code is § 547. The purpose of § 547 is to level the playing field between those creditors lucky enough to get paid and others who were not. The Bankruptcy Code allows trustees and debtors to seek to avoid and recover payments made by the debtor within the 90 days prior to the filing of the bankruptcy petition. The concept is to avoid a “preference” of one creditor over another. In many cases, trustees will file adversary proceedings to collect preferential payments against any person or entity that received payments from the debtor within 90 days of the filing of the bankruptcy petition. However, often there are defenses available to the municipality which will defeat the demand of the trustee or debtor-in-possession.

Taxes paid on time can never be preferences. "In the tax context, [§ 547(c)(2)] will mean that a payment of taxes when they are due, either originally or under an extension, . . . will not constitute a voidable preference." H.R.Rep. No. 595 95th Cong., 1st Sess. 373 (1977); In re Valley Steel Prod. Co., Inc., 214 B.R. 202 (E.D.No. 1997). Thus, taxes paid prior to the deadline for payment and before the occurrence of penalty or interest qualify as ordinary course payments and are not subject to being avoided as a preferential transfer.

Even if it is determined that the payment may constitute a preference, the trustee or debtor-in-possession may be willing to compromise the matter based upon the facts and circumstances of each case. In any event, it should not be assumed that just because the city received a payment within 90 days of the filing of the bankruptcy petition that it may be avoided as a preferential transfer.

D. DETERMINATION OF TAX LIABILITY – 11 U.S.C. § 505

Question Presented: *The debtor has asked the bankruptcy court to revalue the property taxes on a piece of real property. Does the court have the power to do this?*

Answer: Yes, but with some important exceptions. This section allows the bankruptcy court to determine the amount and legality of any tax and any fine, penalty or addition to any tax. There are three exceptions to this power, two of which are of particular interest to local governments. Those two exceptions can be summed up as:

THE DEBTOR GETS ONLY ONE BITE AT THE APPLE!

-- First, the bankruptcy court may not determine the amount or legality of the tax if that issue was contested before, and fully adjudicated by, a court

or a judicial tribunal of competent jurisdiction. If the debtor contested the tax and lost, the debtor cannot relitigate the issue in the bankruptcy court.

-- Second, the bankruptcy court cannot litigate the amount or legality of an ad valorem tax on real or personal property if the time for contesting or redetermining that amount under any non-bankruptcy law has expired. If the debtor missed the time to contest the tax, the matter is closed. The bankruptcy does not reopen the issue.

The third exception deals with the timing and sufficiency of a request for a tax refund.

Section 505(c) provides an exception to the automatic stay of Section 362 to allow the governmental unit to assess any tax determined under Section 505(a), subject to applicable law.

RELEVANT CODE SECTIONS

11 U.S.C. § 505. Determination of tax liability

(a) (1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine--

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title;

(B) any right of the estate to a tax refund, before the earlier of--

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request; or

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.

(b) (1) (A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may--

(i) designate an address for service of requests under this subsection; and
(ii) describe where further information concerning additional requirements for filing such requests may be found.

(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

(2) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax-

(A) upon payment of the tax shown on such return, if--

(i) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(ii) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(B) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(C) upon payment of the tax determined by such governmental unit to be due.

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

E. WAIVER OF SOVEREIGN IMMUNITY – 11 U.S.C. § 106

Question Presented: *My town is a creditor in a bankruptcy and just got sued/counterclaimed/setoff. My town is a sovereign! It's immune from suit! Right?*

Answer: Absolutely. Every municipality is considered a sovereign and is entitled to all the benefits of sovereign immunity, except to the extent that such immunity is waived. A municipality can waive the immunity voluntarily. *See, e.g.,* N.C.G.S. § 160A-485 (“Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance.”). A city can also have its immunity waived for it by someone higher in the governmental food chain.

In the bankruptcy context, Congress saw fit in 11 U.S.C. § 106 to waive governmental immunity for all levels of governmental units, from the federal government all the way down to municipalities. The historical and constitutional issues associated with such a waiver exceed the scope of this manuscript, but the waivers of Section 106 can be summarized into three separate situations: (1) bankruptcy causes of action; (2) compulsory counterclaims; and (3) setoffs. Each situation may overlap with one or both of the other situations, and the breadth of each waiver is different for each situation.

Section 106(a) – Bankruptcy causes of action

Section 106(a) recites of litany of 60 Bankruptcy Code sections for which Congress abrogated sovereign immunity for all governmental units, including municipalities. The effect of the immunity waiver contained in this section allows for actions against municipalities for certain causes of action peculiar to bankruptcy including the following:

- Recovery of preferences and avoidance of liens (11 U.S.C. § 547);
- Recovery of fraudulent transfers (11 U.S.C. § 548);
- Enforcement of the automatic stay (11 U.S.C. § 362);
- Enforcement of the discharge injunction (11 U.S.C. § 524); and
- Turnover of property of the estate (11 U.S.C. § 542).

The list of code sections does not include Section 541 which defines the property of the estate. As such, prepetition claims against a governmental unit which are property of the estate but would otherwise be barred by sovereign immunity are not given new life under the Bankruptcy Code.

Section 106(a) also includes limitations on the types of judgments that may be entered against a governmental unit for a successful bankruptcy cause of action. For example, a debtor may not recover punitive damages against a governmental unit the amount of fees and costs recoverable is also limited.

Section 106(b) – Compulsory Counterclaims

In instances where a governmental unit files a proof of claim (and *only* when a governmental unit files a proof of claim), Section 106(b) operates as a waiver of sovereign immunity relating to claims arising out of the same transaction or occurrence underlying the proof of claim. This is known as the compulsory counterclaim rule as Section 106(b) tracks the language of Rule 13(a) of the Federal Rules of Civil Procedure defining a compulsory counterclaim.

Section 106(b) further requires that the claim to be asserted against the governmental unit must be property of the estate. For example, if a municipality files a proof of claim in a corporate debtor's bankruptcy case, sovereign immunity is not waived by Section 106(b) for the personal claim of the debtor's president against the municipality, even if the president's claim arose out of the same transaction or occurrence. The president's claim, if personal to only him and not a claim of the corporation, would not be property of the bankruptcy estate.

It is important to note that Section 106(b) allows claims for prepetition nonbankruptcy causes of action that otherwise would be barred by the governmental unit's sovereign immunity. If the value of those claims against the governmental unit exceed the claims set out in the proof of claim, the estate can obtain an affirmative

recovery against the governmental unit, a recovery not subject to the judgment limitations found in Section 106(a).

Section 106(c) – Setoffs

Section 106(c) provides for the use of setoffs by the estate. Where a governmental unit has claims against the estate, the estate may under Section 106(c) setoff against those claims any claims the estate has against the governmental unit. This section is purely defensive, and unlike Sections 106(a) and 106(b), may not result in any affirmative recovery against the governmental unit. A setoff under Section 106(c) may arise from different transactions, but like Section 106(b), the claim must be a claim of the bankruptcy estate and not a personal claim of the debtor or some other person or entity.

An important distinction between this section and Section 106(b) is that the ability to setoff against a governmental unit's claim arises whether or not the governmental unit has filed a proof of claim.

RELEVANT CODE SECTIONS

11 U.S.C. § 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

11 U.S.C. § 101(27) – Definitions of “governmental unit” and “municipality”

(27) The term “governmental unit” means United States; State; Commonwealth; District; Territory; **municipality**; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(40) The term “**municipality**” means political subdivision or public agency or instrumentality of a State.

F. EMINENT DOMAIN

Question Presented: *One of our town’s residents filed bankruptcy just before we used the city’s eminent domain powers to take some of their land for construction of a new landfill. We went ahead with the condemnation and now the debtors’ attorney claims we violated the automatic stay. How can this be? I thought there was a police power exception!*

Answer: There is a police power exception found in Section 362(b)(4). However, that provision applies to only the *enforcement* of the governmental unit’s police or regulatory power. As one court wrote:

the legislative history supports the plain language of the statute indicating that we should treat the Section 362(b)(4) exception narrowly, and only apply it to situations in which a governmental entity is using its police power to prevent or

stop violation of fraud, environmental protection, consumer protection, safety or similar police or regulatory laws.

Bd. of Supervisors v. Royal (In re Royal), 137 Fed. Appx. 537, 541 (4th Cir. Va. 2005)

(internal quotations omitted). Even though the condemnation may be a perfectly valid exercise of police the court held

that a governmental entity does not *enforce* its regulatory or police power for purposes of Section 362(b)(4) merely through exercising it. Instead, enforcement requires the governmental entity to be correcting violations of or compelling compliance with pre-existing public benefit statutes or regulations.

Id.

TIP 1: Even if you think the police/regulatory power exception applies to your eminent domain action, it may be worth asking the court for relief from stay anyway.

TIP 2: Even if the stay applies to your eminent domain action, it doesn't mean that you can't do it. You just have to ask that the stay be lifted. The court will then balance the federal interest in allowing a debtor to use the property at issue in an attempt to reorganize (in reorganization cases) against the governmental unit's interest in obtaining the property. "[W]here an irreconcilable conflict appears between a debtor's opportunity to reorganize and the public interest to be served by a state's exercise of its eminent domain powers, the debtor's reorganization must yield." Maryland v. Amoruso (In re Quality Supplier Gen. Partnership), 176 B.R. 135, 141 (Bankr. D. Md. 1994).

Presumably this balancing analysis would not apply in liquidation cases.

FINAL THOUGHTS AND TRUSTEE TIPS:

1. **Communicate.** As with many areas of the law, bankruptcy involves a great amount of negotiation between the various parties in interest. Unlike some other areas of practice, the parties generally have a trustee who has been appointed in the case. The trustee can be a source of important information regarding the case and can assist in

the resolution of issues as they arise. Accordingly, it is important to communicate with the trustee if you have questions regarding pending motions or believe it will be necessary to take enforcement actions which may bring into play possible violation of the automatic stay provisions of § 362(a).

2. **Be active.** Bankruptcy cases have shorter notice periods, expedited hearings and other processes which work against parties in interest who do not actively participate in the case. Accordingly, cases where the city is involved should be actively monitored and affirmative relief requested when appropriate.

CONCLUSION

It seems clear that the current economic downturn will lead to an increased number of bankruptcy filings under all available chapters and throughout the State of North Carolina. Hopefully these materials will provide a starting point for addressing collection of taxes, preservation of ad valorem tax liens, and guidance in other areas which you may confront as city attorney after receiving notice of a bankruptcy filing. Please feel free to contact either of us with any questions or issues as they may arise in the future to help develop best practices for municipal attorneys dealing with the Bankruptcy Code.