

How to Prepare and File a Bankruptcy Proof of Claim

Issue: In the absence of the General Litigation Branch civilian attorney responsible for bankruptcy matters, you may be required to file a bankruptcy proof of claim with a U.S. Bankruptcy Court. This outlines how to prepare and file a Proof of Claim.

Discussion: It is not unusual for a government contractor to experience financial problems which may require that contractor to file for Chapter 11 bankruptcy protection. A listing of government contractors who have filed for bankruptcy are posted on the USALSA Bankruptcy Database on the JAGCNET Website. To access the Bankruptcy Database, go to the JAGCNET Website (do not log on using your CAC card) and access the FOIA button. NOTE: If you are logged into JAGCNET you will not be able to view the “FOIA” Button. The computer personnel designed this portion of JAGCNET to viewable by the general public. The “Bankruptcy Listings” will appear but will require you to log-in using your CAC card to view the database. Contractors who have filed for bankruptcy in the past ten years are listed in alphabetical order.

Generally, the U.S. Government has 180 days to file a proof of claim as an unsecured creditor from the date of the debtor filing for bankruptcy. The Government may have a potential claim for procurement costs, nonpayment for goods and services, or loss or conversion of government property, or environmental damages. The standard for filing a proof of claim is “some evidence” of a contingent or liquidated claim, i.e., the standard is fairly low.

Procedure:

1. Fill out Bankruptcy Form B-10. You can Google this form off the internet. Fill out the form per the attached example.
2. Prepare a Summary of the Claim. Generally, the contractor officer will provide this information in the form of a summary or a declaration. Note that the US Attorney’s office will not assist you in this process. They generally do not have an attorney versed in bankruptcy and will allow our office to file these claims directly with the US Bankruptcy Court. You should attach some evidence of the debt, e.g., a copy of the government contract.
3. Sign the Form B10, prepare a cover letter, and return envelope for the Clerk to mail the filed claim back to you with postage (if you can). See the attached sample proof of claim for further guidance.
4. If you need more information on a proof of claim, see the Bankruptcy Contracting Officer’s Guide to Bankruptcy posted on the General Litigation Branch website.
5. If you need technical assistance on general bankruptcy matters, contact Mr. Robert Simpson, DFAS Office of General Counsel, (317) 510-8618.



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LITIGATION DIVISION
GENERAL LITIGATION BRANCH
9275 GUNSTON ROAD, SUITE 3002
FORT BELVOIR, VA 22060-5546

REPLY TO
ATTENTION OF

June 19, 2012

Litigation Division

Clerk of Court
United States Bankruptcy Court
District of Nevada
300 Booth Street
Reno, NV 89509

RE: In re A&A Auto Wrecking, LLC, Case No. 12-50686 (btb)

Dear Sir or Madam:

Enclosed is a Proof of Claim submitted on behalf of the Department of the Army against debtor, A&A Auto Wrecking, LLC.

I respectfully request that your office file this Proof of Claim on behalf of the Department of the Army and mail me a copy of the filed/stamped Proof of Claim in the self-addressed stamped envelope provided. Our office is unable to file electronic versions of Proofs of Claim.

Please call me at (703) 693-1088 if you have any questions. Thank you very much for your cooperation and assistance.

Sincerely,

James M. Ives
Litigation Attorney

Enclosures

Summary of Proof of Claim
In RE A&A Auto Wrecking LLC
Case No. 12-50686 (Bankruptcy Nev.)

1. The attached Form B10 seeks payment of \$85,883.29 from debtor for an unsecured debt owed to the Department of the Army ("Army"). Tab 1 appended to the Form B10 contains documentation describing the debt owed to the Army. On April 5, 2012, Counsel for Debtor filed Motion for Order Authorizing Debtor to Pay Prepetition Obligation to Critical Vendor Sierra Army Depot and supporting Declarations from Liza Coronado and Mr. John Garland. Although the debtor's Motion was denied by this Honorable Court, the motion does note that the debtor purchased scrap metal and metal salvage material and products from the Sierra Army Depot, Department of the Army. In fact, Debtor's Amended Schedule B, Personal Property lists the current value of scrap metal/parts/cars for sale in the amount of \$100,000. Prior to filing for bankruptcy on March 28, 2012, debtor had purchased scrap metal from vendor Sierra Army Depot in the amount of \$85,883.29. Debtor has not paid the vendor Sierra Army Depot, Department of the Army for this purchased scrap metal.

2. Pursuant to 31 U.S.C. § 3716, Administrative Offset, the Army is entitled to collect a debt owed to the Army by use of administrative offset of any Army obligations to the debtor or other obligations owed by any agency or component of the United States. To date, the Army has not exercised its rights under 31 U.S.C. § 3716 to offset debtor's debt to the Army or other federal agency. The Army has not been paid for the debtor's obligation in an amount totaling, to date, \$85,883.29. The Army expressly reserves its rights pursuant to 11 U.S.C. § 553, to offset any prepetition obligation of Army or any other agency or component of the United States, whether fixed, contingent or the subject of litigation as of the debtor's petition date against any portion of this claim.

3. Due to the complex relationship between this Debtor and creditor, all debts may not necessarily have been discovered. This claim reflects the known liability of the debtor to the Army, an agency of the United States. The Army expressly reserves the right to amend this proof of claim to assert subsequently discovered liabilities.

4. Further, the filing of this claim is not: (a) a waiver or release of Army's rights against any person, entity or property; (b) a waiver or release of any right or claim of Army arising out of any other claim of any nature whatsoever, which Army has against the Debtor; (c) a waiver or release of any rights of Army under any provision of the Bankruptcy Code or other applicable non-bankruptcy law; (d) an election of any remedy to the exclusion, express or implied, of any other remedy; (e) a consent that this Claim is a debt which is subject to discharge in this or any other subsequent bankruptcy proceeding; (f) a ratification or consent to any obligation or liability based upon or arising out of any transaction between Army and the Debtor; (g) a waiver or release of any rights of Army to have any and all final orders in any and all noncore matters entered only after *de novo* review by a United States District Court; (h) a waiver or release of any rights of Army to trial by jury in any proceeding as to any and all matters so triable; or (i) a waiver or release of any rights of Army to have the reference in this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal. All of such rights are hereby expressly reserved by Army, without exemption and

with no purpose of confession or conceding any of the foregoing in any way by this filing or by any other participation in this case.

RECEIVED
AND FILED

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT		District of Nevada	2012	JUN 25 9 AM '12
Name of Debtor: A&A AUTO WRECKING LLC		Case Number: 12-50686		U.S. BANKRUPTCY COURT MARY A. SCHOTT, CLERK
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.				
Name of Creditor (the person or other entity to whom the debtor owes money or property): DEPARTMENT OF THE ARMY				COURT USE ONLY
Name and address where notices should be sent: J. MACKEY IVES, 9275 GUNSTON RD, SUITE 3002, FT BELVOIR, VA 22060-5546				<input type="checkbox"/> Check this box if this claim amends a previously filed claim.
Telephone number: (703) 693-1088 email: james.m.ives2.civ@mail.mil				Court Claim Number: _____ (If known)
Name and address where payment should be sent (if different from above):				<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number: email:				Filed on: _____
1. Amount of Claim as of Date Case Filed: \$ <u>85,883.29</u>				
If all or part of the claim is secured, complete item 4.				
If all or part of the claim is entitled to priority, complete item 5.				
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.				
2. Basis for Claim: <u>purchase of goods and services</u> (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)		3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.				Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:				Basis for perfection: _____
Value of Property: \$ _____				Amount of Secured Claim: \$ _____
Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)				Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.				
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).		<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).		Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).		
				<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).
				<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.				
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)				

B 10 (Official Form 10) (12/11)

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7. Documents: Attached are **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. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

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

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor.
- (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: JAMES M. IVES
 Title: LITIGATION ATTORNEY
 Company: DEPARTMENT OF THE ARMY
 Address and telephone number (if different from notice address above):


 (Signature)

June 19, 2012
 (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

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

Creditor's Name and Address:

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

1. Amount of Claim as of Date Case Filed:

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

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

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

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

3a. Debtor May Have Scheduled Account As:

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.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

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

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) 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 redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing 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. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. 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. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

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

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim

A claim is the creditor's right to receive payment for a debt 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).

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 must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

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.

Acknowledgment of Filing of Claim

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

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.