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EFFECTIVE DECEMBER 1, 2011

If You Are Owed Money by A Bankruptcy Debtor, Beware of New Rule Changes!

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On December 1, 2011, major changes will occur to the Federal Rules of Bankruptcy Procedure relating to the filing of claims in bankruptcy cases. Creditors need to understand these changes because these changes will impact all creditors. Previously, creditor attorneys could simply sign and file a Proof of Claim form reflecting that some amount of monies were claimed as due and owing by the Debtor to the claimant, calculated as of the date of the filing of the Debtor's bankruptcy petition (the "Petition Date"), with little or no supporting documentation attached to the filed claim. No longer will such practice be acceptable---the new bankruptcy rules now change that practice considerably.

Whether it is a contract, invoices for the sale of goods, or some other writing, effective December 1, 2011, a copy of *all* writing(s) in support of such filed claims *must* be filed *with* the Proof of Claim. Additionally, in an individual's bankruptcy case, whether it is a Chapter 7, 11, or 13, an itemized statement of *each* component of the filed Proof of Claim, including principal, accrued interest, late charges, fees, expenses, or other charges, *must* be filed *with* the Proof of Claim, calculated as of the Petition Date. If it is part of the claim, accrued interest *must* be calculated on a prorated basis as of the Debtor's Petition Date. If a security interest is claimed in the Debtor's property (home, car, etc.), then the "cure amount," calculated as of the Debtor's Petition Date, *must* also be filed *with* the Proof of Claim. This "cure" amount is the amount of monies necessary to be paid to the claimant in order to satisfy any existing default and bring the claim "current," as of the Petition Date.

If the creditor has a mortgage interest in the Debtor's principal residence, then further detailed information must be included with the new official Proof of Claim form as an appendix, when such claim is filed. If there is an escrow account associated with that specific residential mortgage, then an "Escrow Account Statement," prepared as of the Debtor's Petition Date, must also be filed with the attachment to the filed Proof of Claim. In short, after December 1, 2011, when a Proof of Claim is filed, each and every component of that claim must be itemized and disclosed, with each such claim component calculated as of Debtor's Petition Date. These detailed disclosures and calculations are evidentiary support for the filed claims.

The changes do not stop there! With respect to the new Proof of Claims forms, after December 1, 2011, when such forms are filed with the Court, they must be signed by the creditor or by the creditor's authorized agent. If the creditor's authorized agent signs the Proof of Claim form, then a copy of the corresponding Power of Attorney ("POA") must also be attached to the filed claim. Some creditors have previously elected to directly file those claims with the appropriate Bankruptcy Court. After December 1, 2011, under the new Rules, it is anticipated that creditors will rely more upon their attorneys to review their claims for accuracy and completeness when such claims are prepared, but the creditors themselves will ultimately have to sign the Proof of Claim forms, absent an executed and sufficient POA. All of these necessary efforts will take some amount of time to accomplish, pre-filing. After December 1, 2011, creditors will no longer be able to request that their attorneys file a simple claim in a bankruptcy case at the last minute, on the eve of the expi-

ration of the claims bar date; as a practical matter, creditors will have to prepare their claim(s) for filing, and must now gather all supporting documentation, well in advance of that claims bar date.

Additionally, in Chapter 13 bankruptcy cases, when the claim is secured by a mortgage on the Debtor's principal residence, that creditor must file each Payment Change Notice no later than twenty-one (21) days before a payment in the new amount becomes due, in order for that payment to become effective. Separately, a creditor with a mortgage interest in the Debtor's principal residence in a Chapter 13 bankruptcy case must file an appropriate notice within 180 days after the date when postpetition fees, expenses, or charges are incurred, which notice must itemize all such fees, expenses or charges, if that creditor is seeking to recover such fees/costs from the Debtor. After such filing, the Debtor or the Trustee then has one (1) year thereafter within which they may file a motion seeking to disallow or to determine whether such fees, expenses, or charges are required to be paid through the Debtor's Chapter 13 Plan.

If the creditor fails to file the required evidentiary support with their Proof of Claim, the Court may sanction the creditor who has filed an inaccurate or incomplete claim. The Court can preclude that creditor from amending the claim further (if any information or amount is omitted), or the Court can deny the creditor any opportunity to present additional evidence in support of its filed claim. The harsh consequences of a detrimental evidentiary ruling by the Court could be quite severe. Moreover, the Court can further award expenses and attorneys' fees to be paid by the creditor to the Debtor or Trustee if the Debtor or Trustee successfully objects to an incomplete or inaccurate claim. Finally, the Court could partially or entirely disallow the filed claim as a sanction.

Other changes to the Bankruptcy Rules have occurred, but these are the primary changes that impact each and every creditor in all bankruptcy cases. Clearly, the requirements for filing a Proof of Claim are substantially more demanding, effective December 1, 2011, and it is absolutely imperative that any creditor filing a Proof of Claim after December 1, 2011, must: (1) attach all of the appropriate documentation substantiating that filed claim; (2) verify the mathematical accuracy of that filed claim; (3) disclose and itemize each component of that filed claim; and (4) attest (under oath, under penalty of perjury) to the factual accuracy of that filed claim, in its entirety. Congress has given the Bankruptcy Courts much more discretion now to sanction claimants for their failure to comply with these new rules; failure to comply can trigger harsh consequences. There remain many unanswered questions about the application of these new rules – so, claimants beware!