

Top 10 Chapter 11 Bankruptcy Case Pleadings to Watch for Customers

*Plus Bonus Tips for Protecting Your Interests
When Your Supplier Files for Bankruptcy*



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Introduction to Chapter 11 Bankruptcy

- Chapter 11 is reorganization, not necessarily liquidation
 - This is a general rule and Chapter 11 can also be used for liquidation
 - Chapter 11 cases can also be converted to Chapter 7 liquidations
- Management generally stays in control
- The debtor has initial exclusive right to propose a plan to restructure and emerge from bankruptcy
 - Most common restructuring alternatives are asset sales, funding from new investors for reorganized equity, and restructuring of senior debt and conversion of unsecured debt to equity
 - Exclusive right to control reorganization is limited and can be lost



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Introduction to Chapter 11 Bankruptcy

- Claims arising before bankruptcy are generally not paid immediately & creditors are stayed from pursuing collection
 - Some debtors seek court authority to pay certain types of claims immediately (relevant common exceptions discussed later)
 - Creditors generally get paid in one of two ways:
 - Pursuant to a plan of reorganization/liquidation, which will provide that different classes of creditors (secured, unsecured, etc.) will be paid a percentage of the face amount of the claim; payment may be in cash, but may also be in equity securities
 - If claim arises under a contract or lease, debtor may “assume” the contract/lease, which requires payment of claims in full as cure



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Introduction to Chapter 11 Bankruptcy

- Most obligations arising after bankruptcy filing entitled to priority
 - These “administrative priority” claims must be paid in full in cash for a plan of reorganization to be confirmed
 - However, claims may not be paid in full if company liquidates



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Top 10 Bankruptcy Pleadings to Watch

- Documents filed in bankruptcy cases are publicly-available and contain valuable information for strategic planning
 - Most significant actions (non-ordinary course transactions) require court approval
 - Debtors are required to disclose extensive information about their financial and operational condition in court documents
 - Examples: lists of all contracts/leases; detailed listing of all outstanding obligations/claims; and details of every asset owned
 - Disclosure obligations in bankruptcy exceed even disclosures required of public companies in SEC filings



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Why Be Proactive in Tracking Cases?

- Bankruptcy cases move fast (even when it doesn't seem like it)
 - These days, many major bankruptcy cases are seeing most important decisions made in the first few months of the bankruptcy case
 - Claims matters, however, will typically take much longer to be finally resolved
 - Courts will often allow debtors to file motions **less than three weeks** before the court hearing (sometimes, much less)
 - You may have less than two weeks to file an objection
 - If you fail to object by the deadline, you may lose your chance
- *Relying upon getting pleadings by mail can be dangerous*



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Pleading # 1: “First Day” Filing Declaration

- What is it?
 - Many large companies will file a declaration of an executive which describes the history of the company, its operations, its financial structure, the key reasons that forced it to file for bankruptcy, its plans for how it will reorganize, and summarizes the other initial court filings (DIP financing, honoring customer obligations, etc.)
- Why is it important?
 - Provides great information about the company and what it plans to do – reorganize as a stand-alone company, try to find a buyer, or liquidate
 - Reviews other first day pleadings - which are discussed next



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Pleading #2: “First Day” Customer Pleadings

- What is it?
 - In the first day or two of the bankruptcy case, debtors will often file motions seeking to honor certain obligations to customers, such as
 - Warranties
 - Gift certificates or gift cards
- Why is it important?
 - These motions define the types of customer programs and obligations that the debtor intends to honor
 - If your obligations aren’t included, you may end up with just a claim
 - Often, the debtor will seek the authority to honor customer obligations, but ask not to be directed to honor them (i.e., the debtor can still choose not to honor some obligations)



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Pleading #3: Schedules & Statements

- What is it?
 - Debtors are required to file Schedules of Assets & Liabilities and a Statement of Financial Affairs within the first several months of a case
 - Includes very detailed financial and operational detail, such as itemized lists of the amount each creditor is owed and every contract that the company has in effect
- Why is it important?
 - Often, a great deal of valuable competitive information is disclosed
 - The amount that the debtor lists as owing you in its Schedule of Liabilities will be the amount of your claim unless you challenge it by filing your own proof of claim
 - If the debtor lists your claim as contingent, disputed or unliquidated, you will get nothing unless you file a proof of claim



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Pleading #4: Monthly Operating Reports

- What is it?
 - Every month while operating in bankruptcy, a debtor must file a monthly operating report with the bankruptcy court
 - This report provides monthly financial statements, operating results, and other information such as accounts receivable aging reports
- Why is it important?
 - Monthly operating reports will provide the first, best indications of how the bankruptcy is impacting the company's operations – are customers abandoning the company, is it having trouble collecting on A/R, did its payment terms get cut significantly, and is it running out of cash?



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Pleading #5: Claims Bar Date Order

- What is it?
 - The claims bar date order sets the deadline for the filing of proofs of claim against the debtor
 - The order also sets out the exact procedures that must be followed in filing a proof of claim
- Why is it important?
 - If you fail to file a proof of claim by the deadline, you will most likely either be stuck with the amount listed in the Schedule of Liabilities or, if nothing is listed, lose out on your claim entirely
 - In addition, if you do not comply with the filing procedures, your claim is much more likely to be disallowed by the court (i.e., not paid)



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Pleading #6: Asset Sale Motions

- What is it?
 - Selling company assets requires prior court approval, so a debtor will file a motion if it wants to sell assets
 - Generally, asset sales will include the assignment of customer contracts to the purchaser
- Why is it important?
 - The motion will often be the first notice that the assets are being sold and to whom
 - If a customer does not want its contracts assigned to the buyer or disagrees with the amount owed under the contract (which will be paid as a “cure” payment), it must file a timely objection



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Pleading #7: Contract Assumption/Rejection

- What is it?
 - Periodically during a case (and as soon as the first day of the case), debtors will file motions seeking to assume or reject contracts
 - Assumption means that the contract will be honored and pre-bankruptcy amounts owed will be paid; rejection means the opposite
- Why is it important?
 - Assumption motions will set forth the terms of the assumption, including the any amounts owed under the contract
 - The customer must object if it disagrees with the amounts listed
 - Rejection motions can often propose onerous terms that the customer will want to challenge, requiring a timely objection



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Pleading #8: Plan of Reorganization

- What is it?
 - The plan of reorganization (or liquidation) provides the debtor's plan for resolution of its bankruptcy case, including when and how it proposes to pay creditors
 - An accompanying document, the disclosure statement, explains the plan of reorganization in more reader-friendly terms
- Why is it important?
 - If you have a claim against the debtor, this document tells you what and when you will get paid for the claim
 - Additionally, many contracts will be assumed or rejected pursuant to a plan of reorganization



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Pleading #9: Claim Objections

- What is it?
 - For creditors who file proofs of claim, the debtor has the opportunity to object to the claim
 - Frequently, these begin as blanket objections to multiple claims simultaneously
- Why is it important?
 - If you fail to file a timely response to a claims objection, your claim will likely be disallowed (in other words, you will receive no payment)
 - The filing of a claims objection is normally an excellent opportunity to begin negotiations with the debtor on getting your claim allowed and receiving payment for the claim



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Pleading # 10: Adversary Complaints

- What is it?
 - Under the Bankruptcy Code, certain payments made in the months before a company files for bankruptcy can be recoverable from creditors as preferential payments and/or fraudulent transfers
 - The debtor, the Creditors' Committee or a trustee will often file dozens or even hundreds of complaints to try to recover these funds
- Why is it important?
 - A creditor could be required to return 90 days or more of payments to a debtor, although multiple potential defenses exist
 - A complaint may also ask that the creditor's claims be disallowed



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How to Track Cases & Get Pleadings

- Chapter 11 Cases.com makes it easy to follow pleadings in a case and quickly get copies of the documents that you need

- From our homepage:

- Search for pleadings using the Google search box, or
- Browse for pleadings using the Products menu on the left side of the screen

The screenshot shows the Chapter 11 Cases.com homepage. At the top, there is a navigation bar with links for 'about us', 'my account', and 'bankruptcy news'. Below the navigation bar is a search box with a 'Search' button. To the left of the search box is a 'Products' menu with options like 'Locate by Debtor Name' and 'Locate by Document Topic'. Below the search box is a 'Featured Products' section with three document thumbnails. To the right of the featured products is a 'Limited Time Offer' banner with text: 'Get 10% Off Your First Order', 'Enter Offer Code NEW10 in Shopping Cart', and 'Complete a Quick Offer, Get a Free \$25 Credit!'. The shopping cart icon in the top right corner shows '0 item(s) in cart/ total: 50.00 view cart'.



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