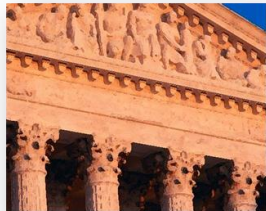


# Top 10 Chapter 11 Bankruptcy Case Pleadings to Watch for Employees

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

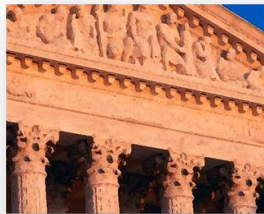


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# Introduction to Chapter 11 Bankruptcy

- 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

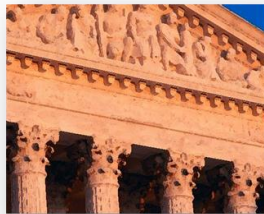


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# Introduction to Chapter 11 Bankruptcy

- 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

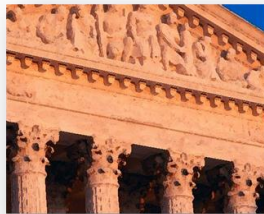


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# Introduction to Chapter 11 Bankruptcy

- 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
  - Employees will usually be paid in the ordinary course for post-bankruptcy filing work
  - However, debtors can seek to modify wages, benefits and retiree obligations
    - When employees are unionized, special rules apply

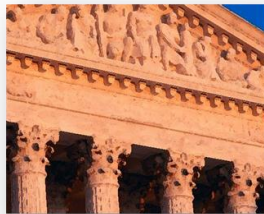


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# Top 10 Bankruptcy Pleadings to Watch

- Documents filed in bankruptcy cases are publicly-available and contain valuable information for 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

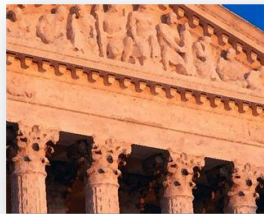


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# Why Be Proactive in Tracking Cases?

- 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*



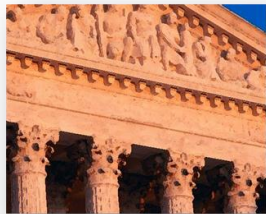
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# Pleading # 1: “First Day” Filing Declaration

- 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, employee payments, 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

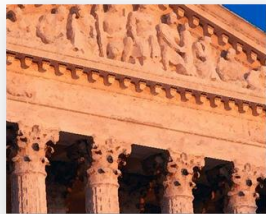


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# Pleading #2: “First Day” Employee Pleadings

- What is it?
  - In the first day or two of the bankruptcy case, debtors will often file motions seeking to pay certain obligations to employees
    - Wages and salaries
    - Employee benefits
- Why is it important?
  - These motions define the amount and type of employee compensation that can be paid early in the cases
  - Absent special court order, pre-bankruptcy wages and salaries are simply a claim to be paid later and only a portion may be entitled to priority status



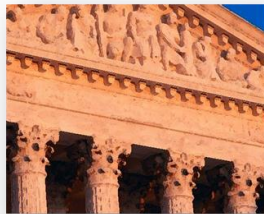
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# Pleading #3: Key Employee Incentive or Retention Plan Motions & Orders

- What is it?
  - Companies will sometimes seek to establish special incentive payment plans for certain groups of employees in order to encourage them to stay with the company through the bankruptcy case or a certain milestone
- Why is it important?
  - The motion will describe, either by category or specifically by name or position, the employees who are entitled to participate in the key employee incentive plan
  - The plan will include certain criteria that the employees have to meet in order to be eligible to receive their incentive payments



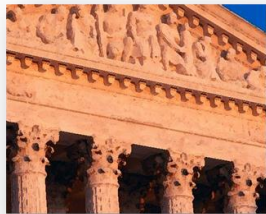
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# Pleading #4: Collective Bargaining Agreement

## Rejection or Retiree Benefit Modification

- What is it?
  - Special rules apply if a company wants to forcibly modify certain collective bargaining agreements and/or retiree benefits and those changes require court approval
- Why is it important?
  - Current unionized employees will normally be represented in these matters by their union and its counsel
  - However, a union may not represent the interests of retirees in negotiations with a debtor
    - In some cases, a separate committee may be appointed for retired employees or salaried employees where they are impacted

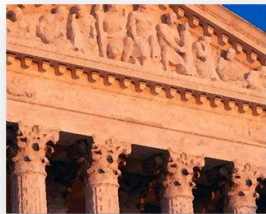


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# Pleading #5: Schedules & Statements

- 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 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

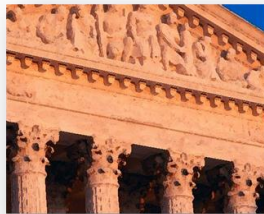


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# Pleading #6: Monthly Operating Reports

- 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?

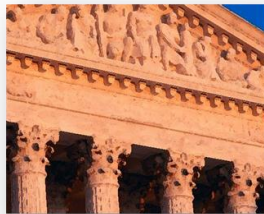


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# Pleading #7: Claims Bar Date Order

- 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)

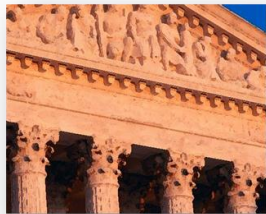


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# Pleading #8: Asset Sale Motions

- 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 some employee jobs moving 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 the assets being purchased are part of an under-performing business unit or division, the purchaser may only be acquiring certain parts of that business, which may impact the division's employees



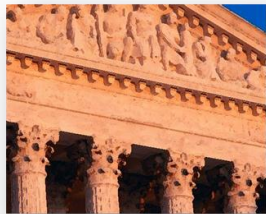
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# Pleading #9: Plan of Reorganization

- 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

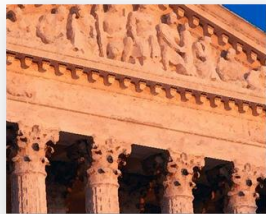


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# Pleading # 10: Claim Objections

- 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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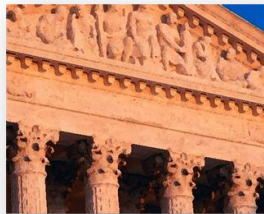
# How to Track Cases & Get Pleadings

- 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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# Special Offer

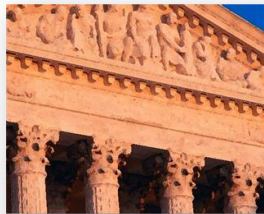
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