

# **CLAIMS GUIDELINES**

## **ALBERT RUSSO, STANDING CHAPTER 13 TRUSTEE**

### **PROPOSED DISTRIBUTION REPORT**

The Trustee's office will assert its best efforts to promptly docket a Proposed Distribution Report upon expiration of Government Bar Date and upon any Order Modifying Chapter 13 Plan. Debtor's Counsel (or Debtor, if *Pro Se*) and all Creditors must immediately review the Proposed Distribution Report and notify the Trustee's office, in writing, of any incorrect amount due, treatment, or classification of any claim.

**POLICY NOTE:** Debtor's Counsel (or Debtor, if *Pro Se*), must promptly review the Trustee's Proposed Distribution Report and Ramapo Information System to determine if a Modified Plan is required. Absent of Modified Plan, the Debtor(s) may be at risk of not completing the case, or may be subject to a Trustee's Motion to Dismiss.

### **TREATMENT OF CLAIMS**

#### **Filed Proof of Claim is Different from Amount in Plan/Schedules**

- If a claim is filed for a different amount than scheduled in Debtor's Petition/Schedules or Plan, or not originally listed in the Plan, the Trustee will pay the claim, as filed, unless Debtor obtains an Order Modifying the Claim.
  - ***EXCEPTION:*** With respect to a cramdown, if a Proof of Claim is filed for a different amount than scheduled on Debtor's Petition/Schedules or Plan, and the Plan properly provides for a cram/strip/lien avoidance, the Trustee will set up the secured amount per the Plan and use the Proof of Claim amount to set the cram balance as a general unsecured claim.

#### **Multiple Proof of Claims filed by same Creditor**

- If a Creditor files a duplicate Proof of Claim (on the same day with the same claim form and PDF attachment), the Trustee will mark the second filed claim as a "duplicate" in the Trustee's system and advise the creditor, the Court, and Debtor's Counsel (or Debtor, if *Pro Se*), by letter. Unless the Bankruptcy Court marks the Claims Register as "duplicate", Debtor's Counsel (or Debtor, if *Pro Se*) shall be required to take action to resolve the claim.
- If a Creditor files multiple Proofs of Claim for what appears to be the same debt, and cannot be readily classified as a duplicate claim as noted above, the Trustee will set up all Proofs of Claim and place a hold on those claims. A letter will be sent to Debtor's Counsel (or Debtor, if *Pro Se*) requesting that they review the claims and the appropriate action within 30 days, if deemed necessary, to remove the extra claim from the Court's Claims Register. If no action is taken within that time period, the holds will remain and neither claim will be paid until such action is taken.

### Late Filed Proof of Claims

- If a Creditor files a Proof of Claim after the applicable Bar Date, the claim will be set up to be paid. Debtor's Counsel (or Debtor, if *Pro Se*) must move to object to the late filed claim as soon as possible, if deemed warranted.

**NOTE:** The Trustee's accounting system allows for late filed general unsecured claims to be paid pro rata on a 'going forward' basis. Therefore, unsecured creditors filing late claims may not receive an equal distribution with other unsecured creditors in the case. If the creditor feels that this treatment is unwarranted, a motion must be filed by the creditor.

### Proof of Claim Asserting Both Secured & Unsecured Status

- If a Creditor files one Proof of Claim for both secured and unsecured loans, the Trustee will attempt to review the Proof of Claim, and when possible, bifurcate the claim as secured and unsecured. Debtor's Counsel (or Debtor if *Pro Se*) and/or Creditor must review the claims, the Trustee's set up and treatment of the claims, and advise if different treatment is intended.

### Stay Relief Order – Claim Holds

- If a Creditor obtains an Order Granting Relief from the Stay, Creditor's claim will be placed on hold and a letter issued to Debtor's Counsel (or Debtor, if *Pro Se*) regarding the claim. If the stay has not been reinstated, an amended claim has not been filed for the deficiency, or a Modified Plan has not been filed, the Trustee's office may, at its discretion, file a Trustee's Motion to Dismiss or file a Motion to Expunge the claim, which may include a request for sanction for the cost of the motion.

**NOTE:** Upon receipt of any Order Granting Relief for Stay, all claims for attorney fees related to the moving secured creditor shall be put on hold consistent with the Trustee's policy set forth above.

### Property Surrendered by Plan

- If a Creditor files a Proof of Claim in connection with property that Debtor has surrendered in the Plan, the Trustee will not pay this claim unless the claim clearly specifies that it is for an unsecured deficiency balance.

### Plan Provides for Payments Outside

- If a Creditor who files a Proof of Claim has been provided for in the Plan to be paid outside the Plan, the claim will be set up as follows:
  - Secured Claim without arrearages: The secured claim will not be set up.
  - Secured Claim disclosing arrearages: Arrearages only will be set up, unless the plan clearly states that arrears will not be paid in the plan.
  - Priority & Administrative Claims: Entire priority claim will be set up unless written consent to such treatment is received from creditor.
  - Unsecured Creditor: Entire unsecured claim will be set up, unless plan specifically and clearly identifies that such creditor will be paid outside.

### Rent Arrears Claims

- Unless otherwise provided by court order, residential rent arrears shall be set up as a prompt cure, in a time frame determined by the Trustee or the Court, and paid as such.

### Student Loan Claims

- Student loan claims will be set up in the full amount and disbursed as per the Proof of Claim, unless the claimant agrees in writing to a deferral of the claim or different plan treatment, or if Debtor's Counsel (or Debtor, if *Pro Se*) properly noticed thru the plan that claim is to be paid outside. Student loans as set up to be paid outside the plan shall be evaluated by the Trustee on a case by case basis.

### Domestic Support Obligation Claims

- All Domestic Support Obligation claims shall be set up to be paid through the Plan unless Debtor receives written consent from the Domestic Support Obligation recipient as to a different treatment.

### Adequate Protection Payments

- Adequate Protection Payments will be paid as a first administrative priority before Attorney Fees and other Administrative Claims until the Creditor receives regular payments pursuant to the Plan. Exceptions shall only be by Court Order.

Plan Provides for Strip/Cram/ Lien Avoidance but No Proof of Claim Filed

- If the Plan provides for a strip off, cramdown, or lien avoidance, and the Creditor does not file a Proof of Claim, the secured portion will be set up to be paid for the amount specifically set forth in Debtor's Plan and the unsecured claim will not be set up. If Debtor's Counsel (or Debtor, if *Pro Se*) determines that the unsecured claim should be paid, Debtor's Counsel (or Debtor, if *Pro Se*) must file a Proof of Claim on behalf of the Creditor.

Plan Provides for Strip/Cram/Lien Avoidance with Proof of Claim Filed

- If the Plan provides for a strip off, cramdown, or lien avoidance, and the Creditor files a Proof of Claim, the Trustee will set up the remaining unsecured portion of the claim as unsecured, whether or not such unsecured claim is addressed in the Plan.

Claim per Plan but No Proof of Claim Filed

- If Debtor's Plan provides for payment of a claim, including curing of a mortgage arrearage, payment of secured municipal tax lien, priority claim, or separately classified general unsecured claim, and the Creditor does not file a Proof of Claim, the claim will be set up per the Plan and placed on hold. Debtor's Counsel (or Debtor if *Pro Se*) may file a Proof of Claim on claimaint's behalf for the amount proposed in the Plan. In default of such Proof of Claim, the Trustee may file a Proof of Claim, release the hold and pay the claim, or such other action as deemed necessary.

Secured Claim for Personal Property Not Provided for in Plan with Secured Proof of Claim Filed

- If a Creditor is not provided for in the Plan and files a secured claim, the Trustee will set up the secured claim as follows:
  - For over the road motor vehicles: The Trustee will set up the secured claim for arrears, if so specified in the claim. If the Proof of Claim, or Plan, is unclear, the Trustee will set up the entire claim and place on hold for 60 days, pending resolution of the claim by Debtor.
  - For personal property and all other property: The Trustee will set up the full amount of the claim whether or not the arrears are specified.

Auto Loans & Leases Assumed in Plan with Proof of Claim Filed Asserting both Secured and Unsecured:

If the plan provides for an assumption of a loan or lease and a claim is filed as unsecured, the Trustee will set up a secured claim for arrearages only, if any, and will not set up the unsecured portion of the claim, unless clearly stated as a deficiency or cram balance.

Secured Claim Provided for in Plan with Unsecured Proof of Claim Filed

- If a Debtor classifies a claim in the Plan or Schedules as secured, and the Creditor files an unsecured claim, we will set up the claim as unsecured per the filed Proof of Claim.

EXCEPTION: Municipal Tax Lien – If a debtor classifies a claim for Municipal Taxes, water or sewer charges, in the Plan as secured and the creditor files an unsecured claim, the Trustee will set up the claim as secured per the Plan.

Unsecured Claim Provided for in Plan and/or Schedules with Secured Proof of Claim Filed

- If a Creditor was listed as unsecured in Debtor’s Petition/Schedules or Plan, and the Creditor files a secured or priority claim, we will set up this claim as secured per the filed Proof of Claim and disburse accordingly.

Supplemental Attorney Fee Orders or Order Adding Post Petition Arrears

- Upon receipt of an Order Allowing Supplemental Attorneys’ Fees or an Order Curing Post Petition Arrears that provide for creditor attorney’s fees and/or arrears, that are to be paid through the Plan, **and unless a Modified Plan is filed**, the plan payment shall be increased to accommodate for the adjustment to the unsecured creditor base. The Trustee’s office will review Counsel’s calculation of the Plan base adjustment, if any is set forth in the Order, and if the calculation is incorrect, a Consent Order fixing the plan payment shall be required.

Priority Classification for Payment of Debtor’s Attorney Fees, DSO Claim, and Rent Arrears Claim

- Debtor’s Attorneys fees, Domestic Support Obligations, and residential rent arrears will be paid concurrently with equal priority unless otherwise provided by court order.

Priority Classification for Payment of Creditor’s Attorney Fee Awards

- Attorney Fee awards for Creditor’s Counsel that are to be paid through the Chapter 13 Plan shall be set up in priority for payment after the other administrative fees.

Unliquidated Claim

If a claim is filed an unliquidated, the claim will be placed on hold with a letter to claimant and Debtor’s Counsel (or Debtor if *Pro Se*) to fix or resolve the claim. Unless the claim is not resolved timely, the Trustee shall set up the claim as filed or take other action as deemed appropriate.

Post Petition Claims

If a claim is filed for a post petition claim, it will not be set up or paid unless the plan specifically provides for the treatment or payment of such claim.