

THE PATH TO
CHAPTER 13 PLAN
CONFIRMATION
WITH A NEW TRUSTEE:

PRACTICE POINTERS FROM
A TRUSTEE AND
LOCAL PRACTITIONERS



Presented by the MBA's Bankruptcy Section

Friday, May 3, 2024, 12noon

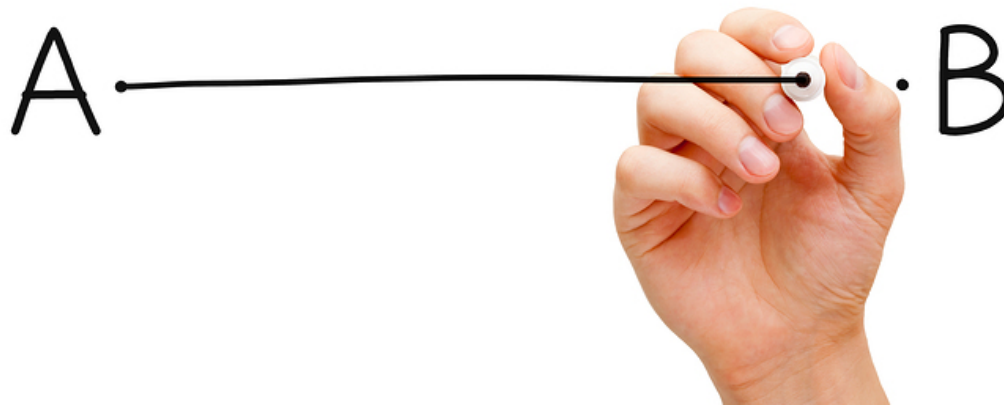
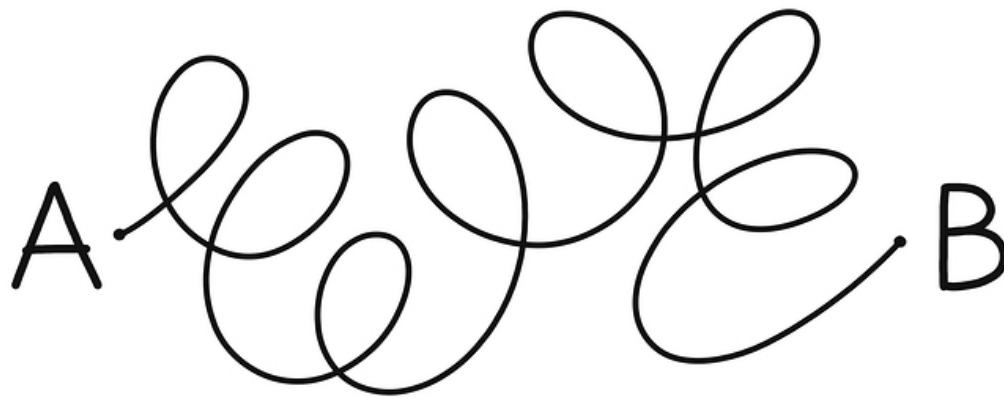
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How do you get from filing a plan to confirmation of a plan?



Bankruptcy Code Sections to Know



- 11 U.S.C. § 1322: Requirements for contents of the Plan.

- 11 U.S.C. § 1325: Confirmation of Plan
 - ▣ Section (a): Requirements for confirmation
 - ▣ Section (b): Projected disposable income and the applicable commitment period

You filed the plan, now what?



- Immediately following the 341 Meeting:
 - Review all priority and secured claims.
 - Calendar a reminder for the bar date.
 - Contact debtor to prompt them to file any unfiled priority tax returns.
 - Determine if an objection to any claim is needed and if so, file the objection now.
 - Determine treatment of secured and priority claims that need to be adjusted in or added to the plan.

The Trustee has Objected to Confirmation

- **READ THE TRUSTEE'S OBJECTION**
 - ▣ Check notes on 13Network
 - ▣ Review claims and Plan Calc tool on 13Network
- **Potential resolutions to the objections:**
 - ▣ Amend Plan, Schedules and/or Forms as necessary to address/resolve the objections; OR
 - ▣ Request that the matter be set at 10am before the court for a legal determination of the objections opposed by the Debtor.

Plan Amendment



- Consider waiting to file an amended Plan until after the objection deadline and non-government claims bar date have expired.
- Address all priority and secured claims and resolve all outstanding objections in one plan amendment, rather than amending multiple times.
- Include the terms of any consent orders in the amended plan.

Hearing on Confirmation

- Review the Court's calendar well in advance of the confirmation hearing date.
 - ▣ It is difficult for the Trustees and their staff to address your case the day before the hearing. Likely the case has already been reviewed and the status has already been conveyed to the chambers deputy.
- Consider sending an email with announcements and status updates on the Thursday or Friday of the week prior to the hearing date.



Hearing on Confirmation

- Be cognizant of how many times your case has been continued.
- Judge Barnett wants to hear any case that has been continued 5 times.
- Judge Hagan wants to hear any case that has been continued 3 times.
- Progress towards confirmation should be made between each setting.



Means Test in a Nutshell

- Form 122C-1 should contain ALL income received in the 6 months prior to filing the case, except for SS, VA, and limited exceptions in 11 U.S.C. 101(10A)(B)(ii).
- Form 122C-2 should contain expenses as established for HHS by IRS Collection Financial Standards.
- Take marital deductions for the non-filing spouse on Form 122C-1—but don't double dip on 122C-2 for above median debtors.
- Business expenses should not be deducted on Form 122C-1. Flaw in the form, take on Line 43 of Form 122C-2.
- Line 45 of Form 122C-2 x 60 months = plan pool for unsecured creditors (NOT plan payment...)

Means Test in a Nutshell

- What do you do if your client's income is not going to be the same during the case as it was during the 6-month period prior to filing?
- *In re Lanning*, 560 U.S. 505 (2010).
 - ▣ Line 46 of Form 122C-2 allows for consideration of **known or virtually certain** change in circumstances to justify deviation from the requirements of Line 45.
- Provide documentation to the Trustee to establish that the change is known and virtually certain.
 - ▣ Corporate mandate that overtime is no longer allowed.
 - ▣ Large sign-on bonus that will never be repeated.
 - ▣ New job with lower wages or less hours.

Bar date expired:

Do you need to object to a claim?

- ❑ Bases for disallowance of claims can be found in 11 U.S.C. § 502(b)(1-9) and procedure is set forth in F.R.B.P. 3007.
- ❑ Frequent Flyers: save your objections and re-use them, likely you'll see the same issue again. (Duplicate claim, stale debt, not your client's debt, etc.)
- ❑ Likely only going to see claim objection from Trustee where claim is facially invalid (late, no evidence of security perfection, math error, etc.).

Bar date expired: Are you missing a claim?

- ❑ What if no claim is filed for a debt secured by collateral the Debtor wants to keep?
- ❑ Consider filing a claim on behalf of the creditor, within 30 days of bar date, pursuant to F.R.B.P. 3004.
- ❑ You must wait until bar date has expired to file on behalf of creditor.



Bar date expired: Are you missing a claim?

- ❑ What if the creditor did not file a proof of claim for a debt secured by collateral the Debtor wants to keep AND you did not file a claim within 30 days on behalf of the creditor?!
 - ❑ Creditor can file a motion to allow a late claim. Debtor does not have standing to file this motion.
 - ❑ You may be able to work out a consent order with the creditor but the Trustee is unlikely to sign.
 - ❑ Request a hearing to ask the court to approve the consent order to allow the late filed claim.
 - ❑ (Just file the claim for the creditor within 30 days of the bar date and avoid this heartburn...)

Secured Claims: Common Concerns



- ❑ Generally three options to treat a secured claim in the plan: pay in full, value (cram), or surrender. 11 U.S.C. 1325(a)(5).
- ❑ A gamble: consider surrendering collateral for small claims for HHG—but just make sure your clients can live without it if the creditor does repossess the item.
- ❑ Secured POC from HUD: you don't need to object to the claim because usually the debt is owed, just not due. Consider providing for the claim in the plan with a payment of \$0.

Secured Claims: Common Concerns

- Keeping “toys” may prompt lack of good faith objection from the Trustee.



- Motorcycles, RVs, ATVs, Boats, 2nd/3rd/4th Vehicle
 - Balance amounts to be paid on claims secured by these debts versus treatment of unsecured creditors.
 - Unlikely that these are necessary and reasonable expenses required for effective reorganization.
- BUT, for instance: valuing a *de minimus* title loan on a second vehicle may present benefit to the debtor without significant impact on other creditors.

IRS Proofs of Claim

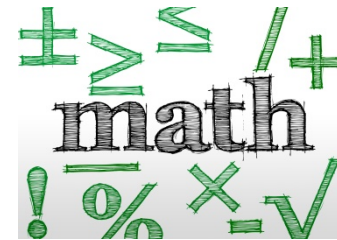
- Debtor must file all tax returns for priority years in order to achieve confirmation of a plan. 11 U.S.C. § 1325(a)(9).
- Filed proofs of claims from the taxing authorities will need to reflect all priority years are assessed.
 - ▣ Review footnotes for unassessed vs. received but not reviewed.
- Failure to file all priority tax returns is grounds for dismissal of the case under 11 U.S.C. §§ 1307(e) and 1308.

Speaking of the IRS, what about tax refunds?

- As of May 1, 2024, JKC and SFB have agreed to a procedure change as to tax refunds to be paid into cases filed in WDTN-Western Division (Memphis).
- Debtors may elect to (1) turn over tax return and tax refund each year OR (2) prospectively commit to an amount to be paid to creditors through the plan based on the tax refund for the last filed tax return.
 - Tax refunds that are not part of a tax credit constitute income that is not otherwise captured in the case.

Speaking of the IRS, what about tax refunds?

- Calculation as of 5/1/2024:
 - ▣ Tax Refund less Tax Credits less \$1,000 divided by 2 and multiplied by 3 or 5 year commitment period. (TR-TC-\$1000/2 x (3 or 5)=amount to plan pool)
 - ▣ Debtors retain all tax credits, first \$1,000 of income refund, and half of balance after those deductions.
 - ▣ For example: \$5,000 tax refund with \$2,500 CTC
 - $\$5,000 - \$2,500 = \$2,500$
 - $\$2,500 - \$1,000 = \$1,500$
 - $\$1,500 / 2 = \750
 - $\$750 \times 3 \text{ year ACP} = \$2,250$ to be paid into plan for unsecured creditors



Don't forget about Domestic Support Obligations

- DSOs are priority claims and all arrears need to be paid in full through the Plan unless the obligation has been assigned to a state agency and the Debtor elects a 60 month term. See 11 U.S.C. § § 1322(a)(4) and 507(a)(1)(B).
 - ▣ Or you can work something out with the recipient—should be part of the POC or filed on the docket.
- Debtor must be current on post-petition DSO payments in order to achieve confirmation of a plan. 11 U.S.C. § 1325(a)(8).

Don't forget about Domestic Support Obligations

- Trustee has a duty to send specific communications to the recipient of the DSO and the state agency if the DSO is administered by the state. 11 U.S.C. § 1302(d)(1)(A)(ii).
- What if your client doesn't know the recipient's address?
 - ▣ Have debtors sign a statement that they do not know the current contact information for the recipient and a brief explanation of why. Upload this to the Trustee with secured docs upload or send anytime prior to confirmation hearing.



National Data Center

- www.ndc.org

- Established by the NACTT.



- The NDC provides case information to Debtors and Debtor Attorneys for free. Creditors and Creditor Attorneys pay a small subscription fee.

- Encourage clients to sign up for an NDC account, as you can direct them to the NDC to obtain information about their case.

- NDC has claims information and plan calc tool, just like 13Network.

Bankruptcy Code

Rules of Bankruptcy Procedure



Cornell Law School, Legal Information Institute:

- Title 11:

- <https://www.law.cornell.edu/uscode/text/11>

- Federal Rules of Bankruptcy Procedure:

- <https://www.law.cornell.edu/rules/frbp>

- Federal Rules of Civil Procedure:

- <https://www.law.cornell.edu/rules/frcp>

QUESTIONS?

THANK YOU!

