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Consumer Counterpoint

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Late-Allowed Vehicle Claims: Striving for a More Just Result

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Whether you are a judge, chapter 13 trustee, debtor's counsel, debtor, creditor or creditors' counsel, we can all agree on the importance of a timely filed secured motor vehicle claim. While there are instances where a creditor or other interested party can seek additional time to file a late proof of claim, and those are absolutely essential to explore and exhaust, the endpoint that many discussions arrive at in the absence of such a remedy is this: What are the debtor and creditor left to do regarding the vehicle when a late claim is not allowed? How about when a late claim is not allowed and the vehicle was provided for in the previously confirmed chapter 13 plan?

Unfortunately, it is and has been the ongoing stance of many a court and chapter 13 trustee to tell the parties "tough luck, you can deal with the problem after discharge, potentially five years in the future." While nobody is imputing harmful intent to any court or chapter 13 trustee that possesses this no-exceptions stance, all of us in the bankruptcy world really need to have a frank and blunt discussion regarding whether this is really the best approach. What happens in such situations after discharge, and whom is such a practice really serving best? One can confidently say neither the subject debtor nor the creditor are being put in an appropriate position when this predominant outcome is realized.

Secured Creditors Must Take Proactive Steps to Ensure Proof of Claim Is Filed Timely

A secured vehicle creditor should always strive to alleviate any potential problems in a chapter 13, at least where they can prevent such, by filing a timely secured proof of claim. According to Rule 3002(c) of the Federal Rules of Bankruptcy Procedure, the deadline for a nongovernmental proof of claim in a chapter 13 case is 70 days after the date the case is filed, or from the conversion date from chapter 7. One may think that this goes without saying, but creditors should not rely on a mailed proof of claim, and if they do not have electronic-filing ability, they should seek their counsel's help. Diving headfirst into this conundrum due to lost or delayed mail is unfortunate and completely avoidable.

If a situation should arise where a creditor fails to timely file a secured vehicle claim, debtor's counsel or the chapter 13 trustee may file such a claim within 30 days of the creditor's claim deadline.[1] Unfortunately, the experience of secured creditors shows that this is not a practice that happens all the time, for one reason or another, and as a result, a creditor and debtor alike are left with perhaps the easiest path of resolution of the matter taken off the table.

Secured Creditors Might Possess a Limited Remedy Under Bankruptcy Rule 3002(c)(6)

Bankruptcy Rule 3002(c)(6) provides a potential remedy for a creditor, whereby an extension of up to 60 days to file its claim may be granted by the court if the creditor did not receive notice that was sufficient for it to file a timely proof of claim.[2] While the more specific standard (the most recent amendment) to the rule is helpful, one could have hoped for even more certainty. Arguably, were a creditor to fall into such situation, the trustee, creditor and debtor would be able to agree to allow the late claim, and if not, the creditor should be able to request such an extension permission from the court via a motion.

1 11 U.S.C. § 501(c).
2 Fed. R. Bankr. P. 3002(c)(6).

However, specific words matter. Where the rule states that a court may grant such an extension, it is plausible to argue that the term that the amended rule would have been better off using is "shall." Had this happened, the debtor and secured creditor would have had much more certainty that a rogue court would not have the ability to deny such relief. At the end of the day, a court is unlikely to treat such an exception as possible but not required.

Are the Best Interests of the Debtor and Secured Creditor Best Served by Rigidity?

What is a secured creditor and debtor to do in a situation where the trustee and debtor — for one reason or another — fail to file a secured claim for the vehicle during their 30-day ability and either the court did not grant the creditor an extension, or the creditor did not meet the standard for such an extension?

Let's set the factual basis for the predicament we have now arrived at. A creditor provided a debtor a loan for the purchase of a vehicle, and the lien was timely perfected. However, the debtor files for chapter 13 and includes the creditor's vehicle in their petition, and proposes to pay the secured claim through their plan via the trustee. More than likely, plan confirmation has come and gone, and a confirmation order entered prior to the claims deadline has passed.

Back up for a second here: Is there any point where a party involved in the confirmation process could raise their hand and put the parties on informal notice that as of that date, the vehicle claim has not yet been filed by the creditor? I have attended numerous meetings of creditors and initial confirmation hearings in the Western District of Pennsylvania where the trustee or trustee's staff attorney will proactively mention to debtor's counsel that they are still in need of a secured claim for a particular creditor that is listed in the schedules and plan. This is of great assistance when multiple sets of eyes make sure that we do not arrive in the unfortunate predicament later. Granted, there is nothing requiring a trustee to perform this additional task, but it sure helps everyone involved now, doesn't it?

We now have a situation where a confirmed plan provides for payment of the creditor's vehicle claim, but the creditor who has received timely notice of the bankruptcy has not filed a timely claim, and trustee and debtor have also failed to file a claim. Occasionally, it has been seen that the trustee proceeds to still pay the secured claim of the creditor via the terms and amount in the confirmed plan; this is simple enough. However, many trustees will, as a matter of practice, file a motion to modify the confirmed plan to remove the vehicle claim that is lacking a timely filed claim. The plan funding that was earmarked for this secured claim will be reapportioned to unsecured creditors, raising their dividend and causing them to benefit from the unfortunate situation. While the unsecured creditors benefit, this does no favors for the secured creditor or debtor who has the car in their possession — well, for now, at least.

The situation is now that the secured creditor will not receive a penny on their vehicle loan for up to the next five years, but their vehicle — with perhaps the exception of during a generational pandemic — will continue to depreciate via time and usage, with just compensation for such depreciation on top of the loan not being paid down. Great for the debtor, right? One might think that they obtain the free use of a car for a term of years, but this is not exactly true, as the creditor's lien will remain, and the debtor will still in practicality remain on the hook for the loan after the discharge is entered.

Further, the loan will continue to accrue arrears during the bankruptcy time period in question. The debtor aims to position into a fresh start when they exit their chapter 13 case but is now far from such a fresh start. Instead, a creditor is left chomping at the bit for a discharge so they can pursue recovery that was forestalled, and almost immediately repossess the subject vehicle. Is this truly the best we can do here?

The bankruptcy court essentially put on paper in 2017 via its holding in *Burns* that this is the best that it thinks we can do, stating that "courts should not be devising alternative solutions to problems [that] the Bankruptcy Code and applicable rules of procedure already address," and that "the debtors' plan is not an informal proof of claim. It was designed to serve a very different purpose ... and does not validate an otherwise untimely claim."[3] Everyone surely recognizes that we must respect statutes and court decisions, as that is our professional responsibility for a well-functioning bankruptcy system. However, is this really the best we can do for both parties involved?

A party in such a predicament might ask the court for relief from the bankruptcy stay so that the creditor can pursue recovery and liquidation of its vehicle, as the parties no longer can agree to have it paid for through the bankruptcy plan. As former football coach and football analyst Lee Corso would say, "Not so fast, my friend." For example, in 2023, the Northern District of Indiana checked in again on this predicament.

In *Flores*, the secured creditor had failed to file a timely claim, and the debtor's confirmed plan provided for payment in full on the vehicle with interest. As discussed in practice earlier, the trustee later filed a motion to modify the plan, eliminating payment to the secured creditor and redirecting funds to other creditors. The secured creditor subsequently filed a motion for relief from stay, to which the trustee objected. The court denied the motion for relief from stay, stating essentially that a creditor's failure to file a timely claim — and the resulting lack of distribution in a confirmed plan — did not rise to exercising a right to seek relief from the stay.

The court, while seeming to recognize the consequences, stated that a "lien will survive the bankruptcy and after these proceedings have been concluded the debtor will have to deal with that lien," as well as the creditor's "right to enforce it at that time."[4] The decision follows and echoes an earlier decision in *Jones*, where the bankruptcy court also held that relief from the stay is not allowable in this situation at hand, stating that in such a situation the creditor is "complaining about a self-inflicted wound."[5] Certainly, no

3 *Matter of Burns*, 566 B.R. 918 (Bankr. N.D. Ind. 2017).
4 *Matter of Flores*, 649 B.R. 534 (Bankr. N.D. Ind. 2023).
5 *Matter of Jones*, 555 B.R. 869 (Bankr. N.D. Ind. 2016).

one is arguing that the creditor does not bear blame in such a situation, but the parties are arguably seeking to remedy the unfortunate situation for the betterment of both parties involved. How many times have we been encouraged by bankruptcy courts to negotiate matters? Why is this situation rigidly different?

Can the Bankruptcy Universe Strive for a More Just Result?

We can do better than this as practitioners when seeking to assist our clients on both sides of the proverbial aisle. In a situation where a secured vehicle creditor does not file a timely claim nor avail itself of any available remedy, and the confirmed plan does not provide for the claim, we can concede that the creditor dropped the ball by not timely filing a plan objection and, for the term of the bankruptcy case, should rightfully bear the results of its inaction. However, when the only reason to strip a secured claim out of a confirmed plan is due to the lack of a proof of claim being timely filed, we take the debtor's word for the matter they are keenly aware of — namely, the secured claim status, creditors' name and secured claim amount regarding the very vehicle they likely use to get to and from work on a daily basis to fund their chapter 13 plan.

In 2016, the bankruptcy court found in *Hrubec* that "nothing in the Bankruptcy Code or the Rules prevents a debtor from proposing treatment of a secured creditor's debt, whether or not that creditor has filed a proof of claim. If it fails to object, it will be bound by the plan's provisions under 11 U.S.C § 1327."[6] This is a fair and just result for all parties involved, and the failure to modify the plan to remove the secured vehicle claim here does not injure other creditors. Namely, the debtor had already provided for such a secured claim for their vehicle, and the creditor was not seeking to have their confirmed plan modified at a later date due to a failure to timely file a proof of claim.

Conclusion

While the predominant case law is not in our favor at this point in time, and creditors, debtors and trustees are strongly urged to keep a keen eye on vehicles that are provided for in subject chapter 13 plans to ensure that one of the parties timely files a claim, all of us should have a healthy and deep discussion about the issue at hand. As shown by the cases discussed herein, we can do better for clients on all sides and ensure that creditors and debtors are left satisfied in such unfortunate situations.

Nothing will make both sides happier than a creditor's car being paid for, to some extent, during the bankruptcy case, and the debtor emerging from the bankruptcy without fear that the car will be picked up by the creditor immediately after the case has concluded. Where there seems to be a remedy at hand, we do not need to succumb to stubbornness or rigidity when the heart of the bankruptcy process has been and will continue to be cooperation and negotiation amongst the parties at issue. Perhaps the result of such important discussion will be a call for legislation from Congress to remedy the issue in the Bankruptcy Code. If that is the case, so be it. Let's apply pressure where needed to discourage courts from throwing up their hands where we all can agree to offer a solution to an unfortunate situation. abi

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6 *In re Hrubec*, 544 B.R. 397 (Bankr. N.D. Ill. 2016).