

# Understanding the Bankruptcy Process

An Accounts Receivable Guide to Bankruptcy

# Finance System of Green Bay, Inc.

A superior, full-service collection agency serving the Midwest.

Industries we currently service include but are not limited to:

- B2B
- Medical
- Property Management
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# TITLE

By Jeffrey Shavlik



Jeffrey Shavlik, Vice President of Finance System of Green Bay, Inc. has over 24 years of credit and collection experience starting with Credit Data Services (now known as Trans Union). Credit Data Services provided Jeffrey with the knowledge and work experience relating to credit reporting and the Fair Credit Reporting Act which he brought to Finance System of Green Bay, Inc.

For the past 20 years, Jeffrey has worked in the collection industry for Finance System of Green Bay, Inc. Initially hired as a debt collector, his job duties continually grew. He is currently the Vice President of Finance System of Green Bay, Inc. and has earned a Scholar Degree through the American Collectors Association (ACA International). He has been an active board member of the Wisconsin Collectors Association, an associate member of the Wisconsin Clinic Credit Managers Association and Wisconsin Credit Medical Association and an active member of the Wisconsin Apartment Association as well as a friend of IREM. He is a current member of the Green Bay Chamber of Commerce participating in a CEO Roundtable group program and being a mentor through the Green Bay education partnership for the past 20 years.

Jeffrey attends numerous national collection conventions to help continually educate his clients on current credit and collection issues. With this gained knowledge, he is also a sought out speaker to various regional industry groups including residential and commercial property owners, medical and financial institutions.

This information is not intended as legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure that this information is up-to-date as of the date of publication. It is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

# Receiving & Verifying Bankruptcy Notifications

If your business is listed on a list of creditors, your office may be sent a bankruptcy notice through the mail or electronically via fax or email when a bankruptcy has been filed.

If a customer tells you that they have filed a bankruptcy, you have a couple options to verify that information. First, you have the option of Voice Case Information System (VCIS), which allows anyone with a touch tone telephone to call the court, request information about a particular case and have the computer read the data directly from the electronic case filing database. VCIS numbers for the Wisconsin and Michigan area are listed below:

- ❖ Wisconsin Eastern district: 877-781-7277
- ❖ Wisconsin Western district: 800-743-8247
- ❖ Lower Michigan district: 877-422-3066
- ❖ Upper Michigan district: 616-456-2075

Another option is Pacer Service, which is an online site that enables you to look up bankruptcy case information. There is a fee of \$0.10 per page for this service. The website is [pacer.uscourts.gov](http://pacer.uscourts.gov).

# Bankruptcy Definitions and Remedies

## Chapter 7 Bankruptcy

A chapter 7 bankruptcy is also referred to as a no-asset bankruptcy. Usually, the petitioner has no assets to repay the debt and any assets available are sold and divided by the trustee.

### Remedies:

- ❖ Cease all collection efforts on the account.
- ❖ Review the notice for the schedule of creditors.
- ❖ If a sale of assets notice is received, file a proof of claim to the appropriate bankruptcy court.
- ❖ Review final notice of bankruptcy for final discharge of the debt.

# Bankruptcy Definitions and Remedies

## Chapter 11 Bankruptcy

A chapter 11 bankruptcy allows companies an “automatic stay” to protect itself from creditors. It permits a business to continue day to day operations while allowing the company to prepare a reorganization plan to pay outstanding creditors.

### Remedies:

- ❖ Cease all collection efforts on the account
- ❖ File a proof of claim by the claim’s filing date with the appropriate parties.
- ❖ Court approved plan is voted on by the creditors

# Bankruptcy Definitions and Remedies

## Chapter 13 Bankruptcy

A chapter 13 bankruptcy allows individuals to repay their debts and avoid a Chapter 7 bankruptcy by making periodic payments to a trustee over a period of 3-5 years. After completion of the plan, the remainder of the debts still owed is discharged. Historically, creditors can expect 15-40% of the debt be repaid before the full debt is discharged.

### Remedies:

- ❖ Cease all collection efforts on the account
- ❖ File a proof of claim by the claim's filing date with the appropriate parties.
- ❖ Schedule of creditors and repayment schedules are received by the creditor. Document the repayment schedule and wait for payments, if any, from the trustee on the case.



# Bankruptcy Definitions and Remedies

## **Wisconsin Section 128 Debt Amortization**

A Section 128 is not a bankruptcy. It is a Wisconsin statute that provides an “automatic stay” from creditors similar to a bankruptcy. The petitioner is obligated to repay 100% of the debt within a 1-3 year period.

### **Remedies:**

- ❖ Cease all collection efforts on the account
- ❖ Contact trustee to include all amounts owed to the creditor. A proof of claim form may not be needed to file, however, creditors may be asked to fill out a claim form to verify outstanding balances.
- ❖ Schedule of creditors and repayment schedules are received by the creditor.

# How to File a Proof of Claims

As explained in the previous pages, some bankruptcies allow for creditors to file a proof of claim on a bankruptcy account. There are two ways you can file a proof of claims.

The first option is to file electronically, which is a newer option. The notice of bankruptcy will direct you to the site you would need to go to. Otherwise, you can file a paper copy of which we have included a sample of on the next page.

When you are preparing and sending in a proof of claim and the supporting documentation, you want to provide minimal information and make sure any PHI information is blacked out or not included (*Ortiz v. Aurora Health Care, Inc.*).

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: _____		Case Number: _____
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: _____  Telephone number: _____		
Name and address where payment should be sent (if different from above): _____  Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ _____  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  Amount entitled to priority: \$ _____  <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: _____ <small>(See instruction #2 on reverse side.)</small>		
3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: _____ <small>(See instruction #3a on reverse side.)</small>		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <small>(See instruction 7 and definition of "redacted" on reverse side.)</small>  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: _____		
Date: _____	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	
	<b>FOR COURT USE ONLY</b>	

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

# *Oritz v. Aurora Health Care, Inc.*

In this case, it was found that although the provider appeared to have complied with the requirements of the federal court in filing the proof of claim, the district court concluded the release of itemized lists of services went, “beyond the extent needed for collections purposes under state law.” This ruling brings about requirements for filers to limit the disclosure of confidential health care information.

# Frequently Asked Questions

- ❖ I never received notification of a bankruptcy filing and our bill is not listed on the schedule of creditors. Can I legally collect on the debt?
  - ❖ See Exhibit B : Bankruptcy court recently holds that unlisted debts may still be discharged.
  - ❖ If the case doesn't have assets whether listed or unlisted on the schedule of creditors, the account is discharged.
- ❖ What is the difference between a Discharge and a Dismissal?
  - ❖ Discharge: The discharge order is issued by the court and permanently prohibits creditors from taking action to collect dischargeable debts.
  - ❖ Dismissal: Upon dismissal of a bankruptcy, the "automatic stay" ends and creditors may start to collect debts.

## Exhibit B

### BANKRUPTCY COURT RECENTLY HOLDS THAT UNLISTED DEBTS MAY STILL BE DISCHARGED

By David A. Ambrosch, Associate Attorney

It is a common misconception held by many, bankruptcy attorneys included, that debts not listed in a bankruptcy petition are not discharged. Often times a debtor subsequently learns that a particular debt was inadvertently unlisted in a closed bankruptcy case, and the attorney misguidedly advises the debtor that the case will need to be reopened and the petition amended to include the unlisted creditor. The United States Bankruptcy Court for the Eastern District of Wisconsin recently issued a memorandum decision in the case of *In re Guseck*, 310 B.R. 400 (Bankr. E.D. Wis. 2004) holding that reopening cases and amending the schedules to add unlisted creditors achieves no purpose, as the amendments will have no effect on whether the debts are discharged.

In the case of *In re Guseck*, Guseck filed a Chapter 7 petition on September 7, 2001. Based on his bankruptcy schedules, the clerk of bankruptcy court concluded that this was a no-asset case, and notice was issued to all listed creditors advising that they should not file proof of claims until further notice. The trustee subsequently agreed with the clerk's assessment, and filed a trustee report indicating that no assets would be available to pay creditors. In cases involving assets, the trustee would schedule a date by which all creditors must file proof of claims. This date is called a "claims-bar date." No claims-bar date was scheduled in this case because this was a no-asset case. On January 3, 2002, Guseck received a discharge. On April 5, 2004, Guseck filed a motion to reopen to add two unlisted creditors to his bankruptcy schedules.

The court, in citing to sections 727(b) and 523(a)(3) of the Bankruptcy Code, held that reopening the case and amending the schedules would not affect whether those debts were discharged. Section 727(b) of the Code provides in relevant part that "[e]xcept as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter. ...". There is nothing in section 727 about whether the debt is or is not scheduled. Accordingly, unless section 523 provides otherwise, the discharge covers every pre-petition debt, whether or not the debt is scheduled by the debtor. Stated another way, the

Chapter 7 discharge is "good against the world," including unlisted creditors.

If an unsecured debt is a "garden variety debt" (i.e., it does not arise from potentially non-dischargeable misconduct, such as fraud or malicious injury), the next question becomes whether a claims-bar date was set in the bankruptcy case. If a claims-bar date was set, and the unsecured creditor did not have notice or actual knowledge of the case in time to file a timely proof of claim, the unlisted debt is not discharged. Debtors must make reasonably diligent efforts to give notice to creditors to ensure that the creditors' due process rights have been protected. If the creditor did receive timely notice or had actual knowledge of the claims-bar debt, the debt is discharged. However, if a claims-bar date was not set, a garden variety debt is discharged. Under the plain language of section 523(a)(3)(a), in a no-asset, no-bar-date bankruptcy case, there is no reason for a debtor to move to reopen the case to amend the schedules to add omitted garden variety debts. These debts already were included in the discharge.

For the reason expressly set forth by the court in the *In re Guseck*, a number of questions must be answered before a creditor can proceed with collection on particular debts in which the debtor has filed bankruptcy. Creditors and collection agencies too often end their analysis after they've determined whether a particular debt was listed in the petition. If the debt was incurred prior to the date on which the petition was filed, and the debt was listed and discharged in bankruptcy, the analysis ends. However, if a debt is unlisted, a comprehensive analysis must take place before determining whether a creditor can pursue the debt. Creditors and collection agencies all too often presume that unlisted debts are not discharged, and therefore they can aggressively pursue the debt. To the contrary, as held by the court in the case of *In re Guseck*, it is more likely that the unsecured debt was discharged, and the collector is precluded from actively engaging in collection of that debt. But this determination cannot be made without first applying the multi-step analysis set forth by the court in *In re Guseck*.

1. Section 523(a)(3)(a) covers debts in cases where a claims-bar date is scheduled but certain debts are not listed in time for the creditor to file a proof of claim. Section 523(a)(3)(b) applies to debts that are not discharged because of fraud and malicious injury debts. If an unlisted debt does not fall within these two categories, the general rule is that the debt is discharged.
2. Generally, it should be noted that the Bankruptcy Code does not prohibit a creditor from accepting voluntary payments from a debtor for debts that have been discharged in bankruptcy.

# Frequently Asked Questions

- ❖ How many times can a customer file bankruptcy?
  - ❖ Chapter 7: Once every 8 years
  - ❖ Chapter 13: Once every 4 years
- ❖ Customer has filed bankruptcy in the past. Can I collect on any past due amounts, included in the bankruptcy filing, if the customer is making another appointment?
  - ❖ No, all accounts discharged in the bankruptcy are uncollectable. To bill or ask for any monies would violate the bankruptcy order.

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