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## Winter Leadership Conference

# The Claims-Allowance Process: Standing, Timing, Calculations and Other Cutting-Edge Issues

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**THE CLAIMS ALLOWANCE PROCESS:  
STANDING, TIMING, CALCULATIONS, AND  
OTHER CUTTING EDGE ISSUES**



### Our Panelists:

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## TIMELINES AND TIMELINESS



## Timeliness of Claims Under Rule 3002 and Best Practices

- Federal Rule of Bankruptcy Procedure 3002(a): Creditors “must file a proof of claim or interest for the claim or interest to be allowed.”
- Timing
  - Chapters 7, 12, and 13: 70 Days after the order for relief is entered or the date of the order of conversion to a case under chapter 12 or chapter 13.
  - Chapters 9 and 11: The court will establish the time for filing the proof of claim, and the creditors will be notified of the bar date.



## Effect of Late Claims

- Disallowance
- Subordination
- Note: Late-filed claims are still allowable unless and until objected to by a party in interest.



## Exceptions to Proof of Claim Deadline: Examples

<ul style="list-style-type: none"><li>• Infancy or Incompetence</li><li>• Newly Entered Judgment</li><li>• Rejection of an Executory Contract</li></ul>	<ul style="list-style-type: none"><li>• Governmental Units</li><li>• Lack of Notice of Claims Bar Date</li><li>• Newly Discovered Chapter 7 Asset(s)</li></ul>
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## Extension of Proof of Claim Deadline for “Cause Shown”

<ul style="list-style-type: none"><li>• Federal Rule of Bankruptcy Procedure 9006(b)(1): Excusable Neglect Standard</li><li>• Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership Factors<ul style="list-style-type: none"><li>• danger of prejudice to the debtor;</li><li>• length of delay and its potential impact on judicial proceedings;</li><li>• the reason for the delay, including whether it was within the reasonable control of the claim holder; and</li><li>• whether the claim holder acted in good faith.</li></ul></li></ul>
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## Informal Proofs of Claim

- A late-filed proof of claim may be allowed if it is found to relate back to a timely filed claim or an "informal" proof of claim that was filed prior to the bar date.
- Five-part Test:
  1. In writing
  2. Contains a demand by the creditor on the estate
  3. Expresses an intent to hold the estate liable
  4. Filed with the Bankruptcy Court
  5. Equitable Considerations



## Best Practices

- Stay on top of claims deadlines/ monitor the docket for an order setting a claims bar date.
- Do not rely on a possible informal proof of claim.
- File the proof of claim earlier rather than later.



Judge Tanabe on Late Claim Issues  
*In re Shannon Lee Smith*  
September 30, 2024  
Case No. 22-42232



## Domestic Dispute Litigated Through Bankruptcy Claims

- Non-Debtor spouse filed a timely GUC claim for various marital expenses.
- Debtor objected to claim after the bar date, saying expenses were not owed to the creditor. Debtor made allegations of domestic and financial abuse.
- Creditor responded to objection and amended claim numerous times (3<sup>rd</sup> amendment added mutual abuse claims-most of these claims sounded in tort).
- Court sustained the first claim objection, and then the parties settled for \$9k.



## A New Claim is Filed

- Well after the bar date, creditor filed a new claim in the amount of \$400k.
- The claim attached an unfilled complaint seeking damages arising from the marriage, including emotional injury, etc.
- Once the objection to the first claim was filed, Debtor came into assets, making her estate have value that could have provided a full recovery to this creditor.



## IMPORTANT TAKE AWAYS

- 1) The Bankruptcy Court cannot take jurisdiction over the liquidation or litigation of personal injury claims.
- 2) Tardily filed claims versus Time-Barred Claims—untimely claims are not automatically disallowed in a chapter 7 bankruptcy case. Untimely claims receive distributions after all timely claims are paid in full. See section 726(a)(2).
- 3) A claim asserted after the statute of limitations is time-barred. If a claim is disallowed under non-bankruptcy law, it is not enforceable in a bankruptcy context. Claims that may be barred by laches are not necessarily time barred.
- 4) Res judicata? Judicial estoppel? Allowed proofs of claim are equivalent to a final judgment. Claim preclusion covers anything that was or could have been raised in an action. Here, in the claim that was resolved, the parties addressed all of the issues between them.





### A few additional thoughts:

Federal Rule of Bankruptcy Procedure 3002(c) strictly prohibits late-filed proofs of claim in Chapter 13 unless expressly authorized thereunder. *This, of course, makes sense, given how Chapter 13 cases function.*

*See Brenner's Renovation, Inc. v. Sommerville (In re Sommerville), 605 B.R. 700 (Bankr. D. Md. 2019) (J. Hamer) (providing a detailed discussion of late filed claims in Chapter 13 cases).*

*See also In re Tesch, 628 B.R. 60 (Bankr. W. Mich. 2021) (J. Gregg) (holding that if a plan sets out a deadline for filing deficiency claims after collateral is liquidated, that deadline cannot be enlarged).*

Of course, as a practical matter, a creditor cannot benefit from amending its claim after the assets have been distributed.



## CLAIMS OBJECTIONS & RECONCILIATION



## CLAIM OBJECTION

11 U.S.C. § 502(a) states that a claim or interest... is deemed allowed, unless a party in interest... objects.

Rule 3007 governs objections to claims. An objection must be filed in writing and served on the claimant, debtor, and trustee at least 30 days before the hearing. Claim objections are contested matters which are governed by Bankruptcy Rule 901.



## CLAIM OBJECTION

Section 502(b) lists grounds for which a party in interest may object to a claim and have a claim disallowed, including:

1. Untimely claims under section 502(b)(9);
2. Unenforceable claims under section 502(b)(1);
3. Insider and attorney claims under section 502(b)(4);
4. Unmatured interest claims under section 502(b)(2); and
5. Lease rejection claims under section 502(b)(6).



## CLAIM OBJECTION STANDING

- Any "party in interest" can object to a claim. 11 U.S.C. § 502(a)

- For purposes of the Bankruptcy Code, a "party in interest" is anyone who has a legally protected pecuniary interest that could be affected by a bankruptcy proceeding.



## CLAIM OBJECTION STANDING

A Chapter 7 debtor is usually not a "party in interest" with standing to object to claims. The success of his objection cannot affect him because the debtor receives a distribution only after all creditors have been paid in full, and an estate will rarely have enough assets to do even that.

Although, a Chapter 7 debtor will have standing to object to claims if there is a reasonable possibility of a surplus once all claims are paid.



## CLAIM OBJECTION STANDING

*In re C.P. Hall Co.*, 513 B.R. 540 (Bankr. N.D. Ill. 2014)

Creditor's interest in the outcome of bankruptcy proceedings is "pecuniary," and so a creditor is a "party in interest" with standing to object to the claims of other creditors.



## CLAIM OBJECTION STANDING

*In re DVR, LLC*, 582 B.R. 507 (Bankr. D. Colo. 2018)

The Court held that the mandatory language that upon objection to proof of claim the court "shall determine" the amount of the claim and "shall allow" the claim in the determined amount, did not prevent the court from approving a compromise that the Chapter 7 trustee had negotiated with first resolving the claim objection.



## CLAIM OBJECTION STANDING

*In re Team Systems International, LLC* (Bankr. D. Del. Oct. 21, 2024)

The Court grafts the broad meaning of “party in interest” as articulated in the Supreme Court case of *Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.* 602 U.S. 268 (2024), to section 502(a) and concludes that it must be read to permit not only the chapter 7 trustee, but “all parties with a direct financial stake in the outcome of a claims allowance dispute, to object to the allowance of claims.”



## CLAIMS ESTIMATION





## CLAIM ESTIMATION

Section 502(c) states that claims shall be estimated for purpose of allowance –

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.



## CLAIM ESTIMATION

In estimating a claim, the bankruptcy court may use whatever method is best suited to the circumstances, including summary trial, an evidentiary hearing, or the review of pleadings and briefs.

However, the court should avoid time-consuming proceedings as it would defeat the purpose of section 502(c)(1) to avoid undue delay.



## CLAIM ESTIMATION

*In re Fin. Oversight and Mgmt. Bd. For Puerto Rico*, 678 F.Supp. 3d 269 (D.P.R. 2023)

- The goal of claim estimation is to reach a reasonable valuation of the claim as of the bankruptcy filing date.
- The bankruptcy court is only required to provide a rough estimate of the claim.



## REJECTION DAMAGES



## Rejection Damages Claims: Is the landscape changing?

For Landlords: The Traditional Calculation of section 502(b)(6) Claims= The Greater of 1 year's rent or 15% of the remaining term, not to exceed 3 years' rent.

- "Time Approach" versus "Rent Approach" has been an area of debate for some time.
- The time approach allows for the rent coming due in the next year to 15% of the term (without escalation clauses).
- The rent approach allows for escalation in rent over time to be included in the math.



## Rejection Damages Claims

*In re Courtland Liquidating LLC*, 2023 Bankr. LEXIS 266 (Bankr. S.D.N.Y. 2023) (Wiles, J.)

The opinion departs from recent SDNY precedent in favor of the "time" approach.



## Rejection Damages Claims

- Whatever scheme a court uses, section 502(b)(6) sets the cap of damages a landlord may claim after rejection.
- Any lease-related damages arising out of rejection are capped by this figure. Clean up, attorneys' fees, damages to a location, etc. – ALL CAPPED.



## Rejection Damages Claims: What damages aren't capped by section 502(b)(6)?

Damages that occurred under a lease regardless of rejection. Examples: mechanics' liens, tenant negligence (if it can be proved), and, I would argue, damages that occurred during the administration of a case (again, proof is required).



## Rejection Damages Claims

What is included as "Rent" for purposes of the section 502(b)(6) cap?

Depending on how your lease is drafted, Common Area Maintenance Charges, Taxes, etc. If a charge due under the lease is not part of "Rent," a landlord is likely to find that category of damages is limited due to the section 502(b)(6) cap.



## PRESERVING LITIGATION CLAIMS





## Preserving Litigation Rights Through Filed Claims: Relevant Statutes

- 11 U.S.C. § 108(c): If a deadline for a civil action against the debtor hasn't expired before the bankruptcy was filed, it is extended to the later of the original deadline or 30 days after notice of the automatic stay's termination.
- 11 U.S.C. § 502(b): If an objection to a claim is made, the court must determine the claim's amount as of the petition date and allow the claim in that amount, unless exceptions apply.



## *In re Promise Healthcare Group, LLC*

Recently, the Bankruptcy Court for the District of Delaware ruled that litigation claimants in bankruptcy cases can rely on filed proofs of claim to preserve causes of action.

*In re Promise Healthcare Group, LLC*, 2023 WL 3026715 (Bankr. D. Del. Apr. 20, 2023)



## In re Promise Healthcare Group, LLC

- **Holding:** Creditors need not initiate non-bankruptcy proceedings to preserve their claims in the bankruptcy.
- **Policy:** Forcing creditors to initiate actions in a non-bankruptcy forum contravenes the goals of the Bankruptcy Code.
- **Distinguishing purpose of 11 U.S.C. § 108(c):** Non-dischargeable debts in Chapter 7.



## Best Practices

- **Better Safe than Sorry:** Seek relief from the automatic stay to file a complaint to ensure the claim is preserved.
- OR
- **Wait and Watch:** One could avoid the expense of seeking stay relief to file a complaint; however, it would then be essential to closely monitor the docket for the automatic stay's expiration.



# WHAT'S NEW WITH “MAKE WHOLES”



## What is a “Make Whole”?

A make-whole premium calls for a lender to receive payments inclusive of unmatured interest that were called for in their loan documents.

In 2022 the 5<sup>th</sup> Circuit, in *Ultra Petroleum*, held that make-whole premiums should be disallowed as the equivalent of unmatured interest, unless we have a case with a solvent debtor. In such an instance, make-whole premiums are required to be paid by the solvent debtor. Similarly, unsecured creditors are entitled to interest at their contract rates, rather than the lower federal judgment rate. See *id.*, 2022 WL 8025329 (5<sup>th</sup> Cir. Oct. 14, 2022), affirming *In re Ultra Petroleum Corp.*, 624 B.R. 178 (Bankr. S.D. Tex. 2020).



## *In re Hertz Corp.*

September 10, 2024, the Third Circuit in the *Hertz Corp.* bankruptcy case followed *Ultra Petroleum*.

This is, for the first time, controlling law in the 3<sup>rd</sup> Circuit.

Two questions were answered:

- 1) Does the section 502(b)(2) prohibition on unmatured interest get applied to “make whole” premiums’?
- 2) Does the Bankruptcy Code require unimpaired creditors to receive post-petition interest in at their contract rate or the federal interest rate?



## *In re Hertz Corp.*

In *Hertz*, the Debtors tried to pay noteholders and unsecured creditors interest at the federal judgment rate rather than their contract rates. This proposal allowed existing equity to receive a huge distribution.

While Judge Ambro, writing for the majority, relied on *Ultra Petroleum* in reaching his conclusion, he was also persuaded by *Jevic*, and its discussion of the requirements of the absolute priority rule.

Ambro explained that equity should not receive a recovery at the expense of general unsecured creditors receiving the full benefit of their bargain.

Ambro also explained that the “make whole” was both interest and the economic equivalent of interest— “mathematically equivalent to the unmatured interest the Noteholders would have received had Hertz redeemed their notes on their Redemption Dates.”



## *Absolute Priority and Hertz*

The big takeaway from the majority opinion is that absolute priority rule is the backbone of this ruling.



## *Hertz: Early Redemption Fees*

In *Hertz*, the Third Circuit agreed with the Bankruptcy Court and found that early redemption fees are not proper.

Further, because maturity happened automatically with the filing of bankruptcy, there was no redemption before maturity, and thus, no fee was proper.

This result came straight from the terms of the notes.





## *Hertz: The Dissent*

Judge Porter explained that the Absolute Priority Rule is not a “right” protected by section 1124(1). The Absolute Priority Rule is a procedural protection. Judge Porter did not think the *Jevic* opinion applied to the facts in this case.

***THE CLAIMS ALLOWANCE PROCESS: STANDING, TIMING, CALCULATIONS, AND  
OTHER CUTTING EDGE ISSUES***

**ABI WINTER LEADERSHIP CONFERENCE**

**December 12-14, 2024**

Panelists:

Hon. John T. Gregg (Bankr. W.D. Mich. – Grand Rapids, MI)  
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**I. Timeliness of Claims under Rule 3002**

**A. General Requirements**

1. Proof of Claim Requirement: Bankruptcy Rule 3002(a) mandates that a creditor must file a proof of claim for the claim to be allowed.
2. Chapter-Specific Deadlines:
  - Chapters 7, 12, 13: Proof of claim must be filed within 70 days after the order for bankruptcy relief or conversion order. Fed. R. Bankr. P. 3002(c).
    - a. Note: In cases pending under Chapter 7, 12, or 13, a proof of a claim held by a “governmental unit” must be filed not later than 180 days after the entry of the order for relief. 11 U.S.C. § 502(b)(9).
  - Chapters 9 and 11: The court sets the bar date, and creditors receive notification of the claims bar date. Fed. R. Bankr. P. 3003(c).

**B. Consequence of Late Claims**

1. Claims may be disallowed or subordinated.
2. Note: Late-filed claims remain allowable until objected to by a party in interest.

**C. Statutory Exceptions and Extensions for Claim Filing Deadlines<sup>1</sup>**

1. **Infancy or Incompetence:** In cases pending under all chapters, the court may extend the time for filing proof of a claim held by an infant or

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<sup>1</sup> Fed. R. Bankr. P. 3002(c).

incompetent or the representative of either “in the interest of justice and if it will not unduly delay the administration of the case.”

2. **Newly Entered Judgment:** The time for filing proof of an unsecured claim is extended until 30 days after a judgment becomes final if the creditor becomes entitled to the unsecured claim due to the entry of the judgment and the judgment is for the recovery of money or property from that creditor or denies or avoids the creditor’s interest in property.
3. **Rejection of an Executory Contract or Unexpired Lease:** a claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within the time directed by the court.
4. **Newly Discovered Asset in Chapter 7:** Finally, in a Chapter 7 case, if the Clerk has given creditors notice of insufficient assets to pay a dividend, and “subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days’ notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.”

**D. Exception to Late Claims: Excusable Neglect Standard**

1. Creditors in Chapter 9 or 11 cases may request an extension after the passing of the claims bar date if they can show the delay was caused by excusable neglect. *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993).
2. Excusable Neglect Factors:
  - Danger of prejudice to the debtor,
  - The length of the delay and potential impact on judicial proceedings;
  - the reason for the delay, including whether it was within the reasonable control of the movant; and
  - whether the movant acted in good faith.

**E. Informal Proofs of Claim**

1. A late-filed proof of claim may be allowed if it relates back to a timely filed claim or an “informal” proof of claim filed before the bar date. To qualify as an informal proof of claim, a document must meet the following criteria:
  - Written Document

- Contains a Demand Against the Estate
- Expresses Intent to Hold the Estate Liable
- Filed with the Court
- Equitable Considerations

**F. Best Practices**

1. Monitor the docket for claims bar date deadlines and ensure proofs of claim are filed on time.
2. Avoid relying on informal proofs of claim to mitigate the risk of disallowance or other adverse outcomes.

**G. Judge Tanabe on Late Filed Claims - *In re Shannon Lee Smith*, September 30, 2024, Case No. 22-42232**

**1. Domestic Dispute Litigated Through Bankruptcy Claims**

- Non-Debtor spouse filed a timely GUC claim for various marital expenses.
- Debtor objected to claim after the bar date, saying expenses were not owed to the creditor. Debtor made allegations of domestic and financial abuse.
- Creditor responded to objection and amended claim numerous times (3<sup>rd</sup> amendment added mutual abuse claims-most of these claims sounded in tort).
- Court sustained the first claim objection, and then the parties settled for \$9k.

**2. A New Claim is Filed.**

- Well after the bar date, creditor filed a new claim in the amount of \$400k. The claim attached an unfiled complaint seeking damages arising from the marriage, including emotional injury, etc.
- Once the objection to the first claim was filed, Debtor came into assets, making her estate have value that could have provided a full recovery to this creditor.

3. Important Takeaways

- The Bankruptcy Court cannot take jurisdiction over the liquidation or litigation of personal injury claims.
- Tardily filed claims versus Time-Barred Claims—untimely claims are not automatically disallowed in a chapter 7 bankruptcy case. Untimely claims receive distributions after all timely claims are paid in full. *See* section 726(a)(2).
- A claim asserted after the statute of limitations is time-barred. If a claim is disallowed under non-bankruptcy law, it is not enforceable in a bankruptcy context. Claims that may be barred by laches are not necessarily time barred.
- Res judicata? Judicial estoppel? Allowed proofs of claim are equivalent to a final judgment. Claim preclusion covers anything that was or could have been raised in an action. Here, in the claim that was resolved, the parties addressed all of the issues between them.
- Federal Rule of Bankruptcy Procedure 3002(c) strictly prohibits late-filed proofs of claim in Chapter 13 unless expressly authorized thereunder.
- This, of course, makes sense, given how Chapter 13 cases function.
- *See Brenner's Renovation, Inc. v. Sommerville (In re Sommerville)*, 605 B.R. 700 (Bankr. D. Md. 2019) (J. Harner)(providing a detailed discussion of late filed claims in Chapter 13 cases).
- *See also In re Tesch*, 628 B.R. 60 (Bankr. W. Mich. 2021) (J. Gregg)(holding that if a plan sets out a deadline for filing deficiency claims after collateral is liquidated, that deadline cannot be enlarged).
- Of course, as a practical matter, a creditor cannot benefit from amending its claim after the assets have been distributed.

**II. Claims Reconciliation**

- A. Bankruptcy claim reconciliation is a process that occurs during the early stages of a bankruptcy filing.
- B. It involves the debtor comparing their debt schedules with the claims filed by creditors to verify the accuracy and validity of the filed claims. This process may



lead to the debtor filing objection(s) to claim(s) or seeking estimation of contingent or unliquidated claims.

### III. Claims Objections

#### A. Code Sections and Rules

##### 1. § 502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of--

- (i) the date of the filing of the petition; and
- (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
- (B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;
- (7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—
  - (A) the compensation provided by such contract, without acceleration, for one year following the earlier of--
    - (i) the date of the filing of the petition; or
    - (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus
  - (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;
- (8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or
- (9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that--
  - (A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide; and
  - (B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

2. Federal Rules of Bankruptcy Procedure, Rule 3007

(a) Time and manner of service

(1) Time of service

An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.

(2) Manner of service

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

(b) Demand for relief requiring an adversary proceeding

A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) Limitation on joinder of claims objections

Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) Omnibus objection

Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

(1) they duplicate other claims;

(2) they have been filed in the wrong case;

(3) they have been amended by subsequently filed proofs of claim;

(4) they were not timely filed;

(5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;

(7) they are interests, rather than claims; or

(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.

(e) Requirements for omnibus objection

An omnibus objection shall:

- (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;
  - (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;
  - (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;
  - (4) state in the title the identity of the objector and the grounds for the objections;
  - (5) be numbered consecutively with other omnibus objections filed by the same objector; and
  - (6) contain objections to no more than 100 claims.
- (f) Finality of objection

The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

#### B. Standing to File Claim Objection

1. Any “party in interest” can object to a claim. 11 U.S.C. § 502(a). For purposes of the Bankruptcy Code, a “party in interest” is anyone who has a legally protected pecuniary interest that could be affected by a bankruptcy proceeding.
2. A creditor's interest in the outcome of bankruptcy proceedings is “pecuniary,” and so a creditor is a “party in interest” with standing to object to the claims of other creditors, provided no trustee has been appointed or the trustee has been asked to object but has refused. 11 U.S.C. 502(a); *In re Ulz*, 401 B.R. 321 (Bankr. N.D.Ill. 2009); *In re C.P. Hall Co.*, 513 B.R. 540 (Bankr. N.D.Ill. 2014).
3. A Chapter 7 debtor is usually not a “party in interest” with standing to object to claims. The success of his objection cannot affect him because the debtor receives a distribution only after all creditors have been paid in full, and an estate will rarely have enough assets to do even that. *In re Kieffer-Mickes, Inc.*, 226 B.R. 204 (B.A.P. 8th Cir. 1998); *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 706-07 (8th Cir. 1979); *In re Koshkald*, 622 B.R. 749 (B.A.P. 9th Cir. 2020); *An-Tze Cheng v. K&S Diversified Invs., Inc.*, 308 B.R. 448 (B.A.P. 9th Cir. 2004).
4. Although, a Chapter 7 debtor will have standing to object to claims if there is a reasonable possibility of a surplus once all claims are paid or when the claim involved will not be discharged. *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 706-07 (8th Cir. 1979); *McGuirl v. White*, 86 F.3d 1232, 1234

(D.C.Cir. 1996); *In re El San Juan Hotel*, 809 F.2d 151 (1st Cir. 1987); *In re Kieffer-Mickes, Inc.*, 226 B.R. 204 (B.A.P. 8th Cir. 1998); *In re Choquette*, 290 B.R. 183 (Bankr. D. Mass. 2003); *In re Baker*, 2022 WL 677455 (Bankr. C.D. Ill. 2022); *In re McKeever*, 588 B.R. 649, 653 (Bankr. N.D.Ga. 2018); *In re Caserta*, 175 B.R. 773, 775 (S.D. Fla. 1994); *Wellman v. Zilno*, 378 B.R. 416 (B.A.P. 9th Cir. 2007).

#### IV. Claims Estimation

##### A. 11 U.S.C. § 502(c)

There shall be estimated for purpose of allowance under this section--

- (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or
- (2) any right to payment arising from a right to an equitable remedy for breach of performance.

B. Pursuant to 11 U.S.C. § 502(c), a claim must be contingent or unliquidated for purposes of estimation. *Matter of Continental Airlines*, 981 F.2d 1450 (5th Cir. 1993).

C. Neither Bankruptcy Code nor rules prescribe any method for estimating claim, and therefore it is committed to reasonable discretion of bankruptcy court, which should employ whatever method is best suited to circumstances of case. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771 (Bankr. S.D.N.Y. 1996); *In re Aspen Limousine Serv., Inc.*, 193 B.R. 325 (D. Colo. 1996).

D. The purpose of estimating claims is to avoid undue delay in the administration of a bankruptcy case. *In re Porter*, 50 B.R. 510 (Bankr. E.D.Va. 1985).

#### V. Rejection Damages Claims

##### A. Is the landscape changing?

1. For Landlords: The Traditional Calculation of section 502(b)(6) Claims= The Greater of 1 year's rent or 15% of the remaining term, not to exceed 3 years' rent.
2. "Time Approach" versus "Rent Approach" has been an area of debate for some time.
3. The time approach allows for the rent coming due in the next year to 15% of the term (without escalation clauses).

4. The rent approach allows for escalation in rent over time to be included in the math.
- B. *In re Courtland Liquidating LLC*, 2023 Bankr. LEXIS 266 (Bankr. S.D.N.Y. 2023)
1. Judge Wiles’ opinion departs from recent SDNY precedent in favor of the “time” approach.
- C. Whatever scheme a court uses, section 502(b)(6) sets the cap of damages a landlord may claim after rejection.
1. Any lease-related damages arising out of rejection are capped by this figure. Clean up, attorneys’ fees, damages to a location, etc.
  2. ALL ARE CAPPED BY 502(B)(6).
- D. What damages aren’t capped by section 502(b)(6)?
1. Damages that occurred under a lease regardless of rejection. Examples: mechanics’ liens, tenant negligence (if it can be proved), and, I would argue, damages that occurred during the administration of a case (again, proof is required).
- E. What is included as “Rent” for purposes of the section 502(b)(6) cap?
1. Depending on how your lease is drafted, Common Area Maintenance Charges, Taxes, etc.
- F. If a charge due under the lease is not part of “Rent,” a landlord is likely to find that category of damages is limited due to the section 502(b)(6) cap.

## VI. Preserving Litigation Rights Through Filed Claims

### A. Overview and Key Statutes

1. 11 U.S.C. § 108(c): Governs the extension of deadlines for creditors to commence lawsuits when the applicable statutes of limitations would expire during the bankruptcy case.
2. 11 U.S.C. § 502(b): Establishes that if an objection to a claim is raised, the court will determine the claim amount in U.S. dollars as of the petition date, except where specific exceptions apply.

### B. Case Study: *In re Promise Healthcare Group, LLC*<sup>2</sup>

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<sup>2</sup> *In re Promise Healthcare Grp., LLC*, 2023 WL 3026715 (Bankr. D. Del. Apr. 20, 2023).



### 1. Background Facts

- Claimant filed a timely proof of claim based on damages allegedly caused by the debtor.
- Claimant filed a petition in state court to extend the applicable state law statute of limitations for his claim and subsequently filed a complaint alleging damages against the debtor without seeking relief from the automatic stay.
- The liquidating trustee of the bankruptcy case challenged the claim, arguing that the claimant's state court complaint was void *ab initio* as it violated the automatic stay and that the claim was time-barred under 11 U.S.C. § 108(c) due to failure to file a valid complaint within the limitations period.

### 2. Ruling:<sup>3</sup>

- Judge Goldblatt rejected the trustee's argument, holding that 11 U.S.C. § 502(b) and "longstanding principles of bankruptcy law" establish that the validity of a claim is determined as of the petition date.
- Since the statute of limitations had not expired as of the petition date, Judge Goldblatt concluded that the claim was not barred by state law and was not subject to disallowance.

### C. Practical Advice

1. Better Safe than Sorry: Seek relief from the automatic stay to initiate an action in the applicable non-bankruptcy forum to avoid potential issues under Sections 108(c) and 502(b).
2. Wait and Watch: One could avoid the expense of seeking stay relief to file a complaint; however, it would then be essential to closely monitor the docket for the automatic stay's expiration.

## VII. What's New with "Make Wholes"?

### A. First, what is a "make whole" premium?

1. A make-whole premium calls for a lender to receive payments inclusive of unmatured interest that was called for in their loan documents.

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<sup>3</sup> On March 11, 2024, Judge Goldblatt's decision was certified for direct appeal to the Third Circuit, where it is currently pending.

2. In 2022 the 5<sup>th</sup> Circuit, in *Ultra Petroleum*, held that make-whole premiums should be disallowed as the equivalent of unmatured interest, unless we have a case with a solvent debtor. In such an instance, make-whole premiums are required to be paid by the solvent debtor. Similarly, unsecured creditors are entitled to interest at their contract rates, rather than the lower federal judgment rate. *See id.*, 2022 WL 8025329 (5th Cir. Oct. 14, 2022), affirming *In re Ultra Petroleum Corp.*, 624 B.R. 178 (Bankr. S.D. Tex. 2020).
- B. September 10, 2024, the Third Circuit in the *Hertz Corp.* bankruptcy case followed *Ultra Petroleum*.
1. This is, for the first time, controlling law in the 3<sup>rd</sup> Circuit.
  2. Two questions were answered:
    - 1) Does the section 502(b)(2) prohibition on unmatured interest get applied to “make whole” premiums”?
    - And 2) does the Bankruptcy Code require unimpaired creditors to receive post-petition interest in at their contract rate or the federal interest rate?
- C. In *Hertz*, the Debtors tried to pay noteholders and unsecured creditors interest at the federal judgment rate rather than their contract rates. This proposal allowed existing equity to receive a huge distribution.
1. While Judge Ambro, writing for the majority, relied on *Ultra Petroleum* in reaching his conclusion, he was also persuaded by *Jevic*, and its discussion of the requirements of the absolute priority rule.
  2. Ambro explained that equity should not receive a recovery at the expense of general unsecured creditors receiving the full benefit of their bargain.
  3. Ambro also explained that the “make whole” was both interest and the economic equivalent of interest—“mathematically equivalent to the unmatured interest the Noteholders would have received had Hertz redeemed their notes on their Redemption Dates.”
  4. The absolute priority rule is the backbone of this ruling.
- D. What about early redemption fees?
1. In *Hertz*, the Third Circuit agreed with the Bankruptcy Court and found that early redemption fees are not proper.

2. Further, because maturity happened automatically with the filing of bankruptcy, there was no redemption before maturity, and thus, no fee was proper.
3. This result came straight from the terms of the notes.

E. What about the dissent?

1. Judge Porter explained that the Absolute Priority Rule is not a “right” protected by section 1124(1).
2. The Absolute Priority Rule is a procedural protection. Judge Porter did not think the *Jevic* applied to the facts in this case.

# Faculty

**Hon. John T. Gregg** is a U.S. Bankruptcy Judge for the Western District of Michigan in Grand Rapids, appointed on July 17, 2014. He currently serves on the Bankruptcy Appellate Panel for the Sixth Circuit. Previously, Judge Gregg was a partner with the law firm of Barnes & Thornburg LLP, where he focused on corporate restructuring, bankruptcy and other insolvency matters. Judge Gregg served as chair of the education committee of the National Conference of Bankruptcy Judges for 2022, serves on ABI's Board of Directors, and is a Fellow of the American College of Bankruptcy, and he is a member of the American Law Institute. He is a frequent writer and speaker on bankruptcy and other commercial issues, and he has written and co-edited numerous secondary sources, including *Collier Guide to Chapter 11*, published by LexisNexis; *Strategies for Secured Creditors in Workouts and Foreclosures*, published by ALI-ABA; *Issues for Suppliers and Customers of Financially Troubled Auto Suppliers*, published by ABI; *Michigan Security Interests in Personal Property*, published by the Institute of Continuing Legal Education; *Handling Consumer and Small Business Bankruptcies in Michigan*, published by the Institute of Continuing Legal Education; *Interrupted! Understanding Bankruptcy's Effects on Manufacturing Supply Chains*, published by ABI; and *Receiverships in Michigan*, published by the Institute of Continuing Legal Education. Judge Gregg received his B.A. in 1996 from the University of Michigan and his J.D. in 2002 from DePaul University College of Law.

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