

**PRESENTED AT**

44<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

April 20, 2018  
Houston, TX

## **We're Not Out of the Woods Yet: When is a Contract a Contract in the Bankruptcy Court?**

**W. John English Jr.  
Eric R. Goodman**

Author Contact Information:  
Eric R. Goodman  
Baker & Hostetler LLP  
Cleveland, OH

egoodman@bakerlaw.com  
216.861.7418

**BANKRUPTCY MATERIALS—CHAPTER 11**  
**Mr. Eric Goodman<sup>1</sup>**

I.	Proofs of Claim and Bar Dates .....	2
A.	Filing of Proofs of Claim (11 U.S.C. § 501).....	2
B.	Allowance of Claims or Interests (11 U.S.C. § 502) .....	3
C.	Administrative Claims (11 U.S.C. § 503).....	4
D.	Secured Claims and Priority Claims (11 U.S.C. §§ 506 & 507) .....	5
II.	Avoidance Actions.....	6
A.	Lien Creditor and Good Faith Purchaser (11 U.S.C. § 544).....	6
B.	Preferential Transfers (11 U.S.C. § 547) .....	7
C.	Fraudulent Transfers (11 U.S.C. § 548).....	8
D.	Application to Oil and Gas Industry .....	9
III.	Property of the Estate.....	12
A.	General Scope of Bankruptcy Estate .....	12
B.	Funds Held in Trust .....	12
C.	Application to Oil and Gas Industry .....	13
IV.	Executory Contracts.....	14
A.	Definition and Overview as Bankruptcy Tool.....	14
B.	Effect of Rejection .....	17
C.	Real Property Distinction.....	19
D.	Midstream Contracts.....	20
V.	Section 363 sales.....	22

---

<sup>1</sup> Mr. Eric Goodman is a Partner with Baker Hostetler LLP in Cleveland, Ohio and is a member of the firm’s Bankruptcy, Restructuring and Creditors’ Rights Practice Group. The views express herein shall not be attributed to Baker Hostetler LLP or any of its clients. The author would like to thank Mrs. Amanda Baker, an Associate with Baker Hostetler LLP in Cleveland, Ohio, for her assistance in preparing these materials.

A.	Free and Clear .....	22
B.	Transfer of Contract Rights .....	23

**I. PROOFS OF CLAIM AND BAR DATES**

A creditor’s ability to file and determine the treatment of its claims in order to share in any distribution are generally set forth in sections 501 (filing of proofs of claim or interests), sections 502 (allowance of claims or interests), section 503 (administrative claims), and sections 506 and 507 (secured claims and priority claims).

**A. Filing of Proofs of Claim (11 U.S.C. § 501)**

- Right to File Proof of Claim—Section 501 of the Bankruptcy Code gives a creditor the ability (but not the requirement) to file a proof of claim in order to establish the treatment of its claim and share in any potential distributions. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court and entitles a creditor to receive notices in the case (and may entitle the creditor to other rights in the case), provides notice of a creditor’s claim to other parties, and gives other parties the chance to contest the creditor’s claim. A claim that is executed and filed in accordance with the Bankruptcy Rules establishes prima facie evidence of the validity and amount of the claim. Generally, filing a proof of claim is a prerequisite for allowance of an unsecured claim. However, filing a proof of claim may not be a prerequisite for allowance of a claim in a Chapter 11 case; in a Chapter 11 case, claims are “deemed” filed if they are listed on the debtor or trustee’s schedules and remain uncontested.
- Official Form (Bankruptcy Rule 3001(a))—Under Bankruptcy Rule 3001(a), a proof of claim must substantially conform to the “Official Form.” Bankruptcy Rule 3001 provides that a proof of claim must: (1) be in writing; (2) be executed by the creditor or creditor’s authorized agent; (3) establish the creditor’s claim; (4) contain as attachments any writings upon which the claim or any security interest in the claim is based; and (5) contain as attachments any documentation establishing the perfection of a security interest. Certain types of claims, such as claims based on an open-end or revolving consumer credit agreement or claims made against a debtor who is an individual, require additional documentation under the Bankruptcy Rules.

Official Form 410 provides an easy-to-complete form for a proof of claim, approved as an Official Bankruptcy Form by the Judicial Conference. Bankruptcy Rule 3001(a) only requires that a proof of claim “conform substantially” with the Official Form. A proof of claim filed in improper form is generally not in itself independent grounds for disallowance of a

claim. Under the Bankruptcy Rules, the enforcement of Bankruptcy Rule 3001 and allowance of a proof of claim is a decision for the Judge alone.

- Time for Filing (Bankruptcy Rule 3002(c))—Generally, a proof of claim must be timely filed in order for the claim to be allowed. Under Bankruptcy Rule 3002(c), in a Chapter 7, Chapter 12, and Chapter 13 case, a claim is timely if it is filed no later than 90 days after the first date set for the Section 341(a) meeting of creditors. A governmental unit must file a proof of claim within 180 days of the first date set for the 341(a) creditors meeting. Bankruptcy Rule 3002(c) provides certain exceptions to the 90-day rule.
- Bar Date (Bankruptcy Rule 3003(c)(3))—Under Bankruptcy Rule 3003(c)(3), in Chapter 9 and Chapter 11 cases, the court must decide the time by which proofs of claim or interest may be timely filed. This cutoff date is the bar date. If a proof of claim is filed after the bar date, it will generally be disallowed as untimely. However, courts have held that a showing of “excusable neglect” may excuse a creditor who has filed an untimely proof of claim.<sup>2</sup>
- Bankruptcy Court Jurisdiction—In *Stern v. Marshall*, 564 U.S. 462 (2011), the petitioner, Vickie Marshall (also known as Anna Nicole Smith), filed for bankruptcy after her husband, wealthy oil magnate J. Howard Marshall, died. Prior to the bankruptcy, Vickie filed a claim against her husband’s son, E. Pierce Marshall, for tortious interference with trust assets, asserting that her husband had meant to provide for her in trust but because of Pierce’s interference had not done so. Pierce filed a claim for defamation in the bankruptcy case based on the previous lawsuit, and Vickie counterclaimed in the bankruptcy case with a claim for tortious interference with trust assets. The bankruptcy court granted Vickie summary judgment on the defamation claim and awarded her damages for her counterclaim. The Supreme Court found that Pierce’s filing of a proof of claim in the bankruptcy case did not give the bankruptcy court the authority to adjudicate Vickie’s counterclaim. After *Stern v. Marshall*, parties have had to more carefully analyze the scope of bankruptcy court jurisdiction based on the nature of the claim at issue.

**B. Allowance of Claims or Interests (11 U.S.C. § 502)**

- Exception to Allowance—Section 502(a) of the Bankruptcy Code provides that a proof of claim or interest is deemed allowed unless a party objects to the proof of claim or interest. Section 502(b) provides the various grounds upon which an objection to a proof of claim or interest can be based, although a court may disallow a claim for other reasons. The grounds for

---

<sup>2</sup> The Supreme Court concluded that the determination of what constitutes “excusable neglect” is an equitable determination that must take into account all relevant circumstances. See *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd. P’ship*, 507 U.S. 380 (1993).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: We're Not Out of the Woods Yet: When is a Contract a Contract in the Bankruptcy Court?

Also available as part of the eCourse

[2018 Ernest E. Smith Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the

44<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session

"We're Not Out of the Woods Yet: When is a Contract a Contract in the Bankruptcy Court?"