Trustee Filing Proofs of Claim
Best Practice Considerations

For a variety of reasons, trustees may wish to file proofs of claim on behalf of creditors. While U.S. Trustee policy does not preclude the practice, extreme caution is urged.

The *Handbook for Chapter 7 Trustees* states in relevant part that:

> If the trustee determines that the funds to be distributed exceed the filed claims and anticipated administrative expenses, the trustee may contact creditors who have not filed claims. While section 501(c) and Fed. R. Bankr. P. 3004 give the trustee the ability to file proofs of claim on behalf of creditors, the trustee should exercise caution in doing so. In contacting creditors or filing claims, the trustee should exercise caution to treat similarly situated creditors equally.

See Handbook for Chapter 7 Trustees, at Section 4.F.3. (pg. 4-27).

A trustee's signature on a proof of claim is subject to the burdens and consequences of Rule 9011 of the Federal Rules of Bankruptcy Procedure. Accordingly, some measure of due diligence is required prior to signing and filing a proof of claim. Reliance on a debtor's schedules alone is not sufficient because unlike in chapter 11 cases, schedules filed in chapter 7 cases do not constitute *prima facie* evidence of the validity and amount of the claims. Rather, trustees may wish to obtain a credit report from the debtor, or verify the scheduled claim information directly with creditors. Alternatively, trustees may consider obtaining copies of documentation from debtor's counsel that was used to prepare the schedules, assuming the debtor was represented.

Case law regarding trustee filed claims is not abundant, although common themes in such cases include whether trustees should be filing claims in the first place and the scrutiny trustees open themselves up to in such circumstances. In *In re Davis*, 538 B.R. 368 (Bankr. S.D. Ohio 2015), the court addressed the issue of trustee filed claims in a lengthy, yet instructive, footnote. The cases compiled in the footnote include:

> *In re Drew,* 256 B.R. 799, 805–06 (10th Cir. BAP 2001) ("The factual circumstances in this case also demonstrate a variety of reasons why trustees should exercise caution in filing claims, as this Trustee did, on behalf of creditors who ... chose not to do so. The Trustee had no knowledge of the legal validity of or the actual amount owed on any of the claims, and he apparently made little, if any, inquiry about them.");
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> *In re VanCleef,* 479 B.R. 809, 819, 826 (Bankr.N.D.Ind.2012) ("There is no reason whatsoever why creditors who make a conscious decision in some manner or simply are so negligent that they fail to make a timely decision—should be benefitted by a distribution in a Chapter 7 case based upon a claim filed by a Chapter 7 trustee so that those creditors receive a distribution, and a debtor does not under 11 U.S.C. § 726(a)(6).... This practice raises *serious* issues as to effective case administration and the

> provability of any proof of claim filed by the Trustee, and in fact places the Chapter 7 Trustee in a position of not objecting to her own claim in a circumstance in which a similar claim filed by a creditor would be subject to her obligation to object under 11 U.S.C. § 704(a)(5).");
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> *In re McLaughlin*, No. 05–63927, 2007 WL 2571943, at *2, 4 (Bankr.N.D.Ohio Aug. 31, 2007) ("The bankruptcy trustee has a fiduciary duty to the bankruptcy estate and this duty is breached when a trustee files claims without any personal knowledge or investigation.... In this case, Trustee's fee increased significantly due to the claims he filed.... In sum, Trustee has not provided the court with sufficient supporting documentation or valid reasons for the filing [of] any of the claims.");
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> *In re Nettles*, 251 B.R. 899, 902 (Bankr.M.D.Fla.2000) ("[The Chapter 7 trustee] alleges that he had a duty to file these claims on behalf of the creditors.... [I]t is clear that [the trustee] filed the claims in order to maximize his fee, not to protect the debtor. As such, [the] claims must be disallowed because their purpose is inconsistent with the objectives of § 501(c)."). *But see In re Schmidt*, 333 B.R. 868, 870 (Bankr.N.D.Fla.2005) ("I do not agree with the interpretation of § 501(c) as set forth in *Nettles*. The statute clearly permits the Trustee to file a proof of claim on behalf of a creditor that failed to file one, and Rule 3004 sets the time limit. If the Trustee complies with that time limit, then there is nothing in either the Rules nor the Bankruptcy Code to support disallowance of the claim.").

See In re Davis, 538 B.R. 368, n. 13.

The importance of validating creditor information prior to the filing of a claim has practical implications, as well as legal. Verifying creditor information will help reduce or eliminate returned checks (which remain live assets of the estate), and the time and effort required to log and reissue those checks. Additionally, verifying creditor information (including addresses) can reduce or eliminate the misappropriation of estate funds.

Even in circumstances where a trustee has conducted due diligence and has validated creditor information, the decision to file proofs of claim nevertheless must be informed by the requirement that the effort result in a meaningful distribution to creditors. Like many decisions trustees are required to make, this one is dependent upon the sound exercise of a trustee's business judgment.