You just received a bankruptcy notice. Now what?

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As we all know far too well, all the letters we receive seem to be filled with either bills or junk mail. The Notice of Bankruptcy, unfortunately, is one piece of mail that looks like junk mail, but should be taken seriously.

A Notice of Bankruptcy informs you that you or your company may be owed money by a company that just filed bankruptcy (a debtor). Since you've been given notice, you're now expected to comply with the deadlines and restrictions imposed in bankruptcy. This article will provide you with six steps that you should consider every time you receive a notice of bankruptcy in order to maximize your potential recovery and prevent unforeseen consequences.

1. Determine the debtor's relationship to you

The notice gives you the name of the debtor, along with its address, and the court where the bankruptcy is pending. You may not recognize the name of the debtor because the actual debtor may be a parent company or operating under a trade name. However, if you're receiving a notice, you likely have been identified as a company to whom the debtor owes money (a creditor), or you may have an outstanding contract with the debtor. You should be sure to investigate any name of a debtor that you do not recognize. You'll want to determine exactly how the debtor is related to your business and identify any outstanding invoices, contracts, or suits involving any of the debtors.

2. Do not violate the automatic stay

Now that the debtor is in bankruptcy, you (and your employees and other agents) must comply with the automatic stay. The automatic stay means that immediately upon a debtor filing bankruptcy, its creditors cannot take any action to deprive the bankrupt of its property. The debtor does not have to do anything to get this protection other than file bankruptcy (that is why it is called "automatic"). If anyone is attempting to collect outstanding debts from the debtor on your behalf, you must instruct them to immediately stop collection efforts. The automatic stay affects not only your ability to collect debts, but also will prevent you from cancelling many contracts and force you to temporarily stop a lawsuit involving the debtor (including an eviction or foreclosure). The application of the automatic stay is very nuanced and there are serious consequences for violating it, including contempt, fines, and other penalties. You should consult a bankruptcy attorney before taking any actions that may be adverse to the debtor.

3. Determine what you're owed and why

You should determine exactly what the debtor owes you, the nature of the debt, and when the debt was incurred. It is important to pay close attention to these questions because you may be able to qualify for priority treatment and get paid at a higher priority than the other general unsecured creditors. The most common priority claim will be a payment of goods received by the debtor within 20 days of the bankruptcy filing. You may also have a right to set off certain debts that you owe the debtor, or the control of certain assets may give you a lien on the debtor's property. The application of these priority claims are very technical and you should contact counsel if you believe that you have a priority claim.

4. File a proof of claim

Even if you do not have a right to a priority claim, you should file a simple document known as a "proof of claim" to establish your rights as a creditor. Filing a timely proof of claim will ensure that you are able to participate in the possible distribution to unsecured creditors. You should also attach as much documentation for your claim as possible to the proof of claim. This may prevent you from having to respond to an objection later on. If you do not file a proof of claim, you may not be eligible to receive any payment for your claim and may permanently lose your rights. Deadlines to file a proof of claim will vary, but all proofs of claim are timely if they are filed within 90 days after the debtor filed bankruptcy. It is important that your proof of claim is timely or you may lose your right to payment.

5. Monitor the case

You should receive notice of certain important filings and other filings that could adversely affect your rights. You should carefully review every mailing that you receive to determine if you need to respond. Also, if your company changes addresses, it is important to file a notice in each case to alert the court of your new address. The deadlines in bankruptcy can be very short and if you do not speak up, the court will enter an order without your input. As a result, it is important to assess each filing and contact your counsel quickly if you receive something that concerns you.

6. Seek advice of counsel

Bankruptcy law is a complex and often-times intimidating area of the law. If you find that you are not comfortable with what you are doing, then consider seeking the counsel of experienced bankruptcy practitioners.

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ATTORNEYS MENTIONED

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