

B-3002-1
Filing and Allowance of § 503(b)(9) Administrative Claims

(a) A creditor whose claim may include amounts entitled to priority under 11 U.S.C. § 503(b)(9) (value of goods delivered during the 20 days prior to the commencement of the case) may file a proof of claim within the claims deadline established by the court. The amount of the claim entitled to priority, and the basis for the claimed priority, shall be stated on the proof of claim.

(b) Unless the court orders otherwise, a motion for the allowance of a § 503(b)(9) administrative expense must be filed no later than the expiration of the claims deadline. This motion shall state, with particularity, the goods delivered to the debtor during the 20 days prior to the petition, the date or dates of delivery, and their value. Movant shall be responsible for serving all creditors and parties in interest with notice of the motion, in accordance with Local Bankruptcy Rule B-2002-2(a)(7), and making due proof thereof. Absent objection within the time required by that rule, *see*, N.D. Ind. L.B.R. B-2002-2(b), the court will consider the motion without a hearing.

Commentary

Section 503(b)(9) administrative claims are something of a chimera. They have all the attributes of a prepetition claim, *see, e.g.*, 11 U.S.C. §§ 101(5), 501, and as such are subject to the requirements for those claims. *See, e.g.*, 11 U.S.C. § 502(a), (b). Yet, having been given administrative, not just priority, status, *compare* 11 U.S.C. § 507(a) with 11 U.S.C. § 503(b), they are also subject to the requirements of administrative claims, including allowing them “[a]fter notice and a hearing.” The proposed rule tries to recognize both aspects of these claims and by doing so preserve the creditor’s rights.

As a right to payment arising before the date of the petition, the Proof of Claim form (Official Form 410) may be used to assert a claim which might be entitled to administrative status under 11 U.S.C. § 503(b)(9). In doing so, the creditor should, in section 5 of that form regarding priority status, mark the box labeled “Other” and specify that the claim is filed pursuant to 11 U.S.C. § 507(a)(3) and § 503(b)(9), and then state the amount so claimed in the blanks provided. Among other things, using the claim form and following the usual claims process will preserve the creditor’s rights to a general unsecured claim in the event any issue of administrative status would be resolved against it. To receive administrative status, the claimant must also satisfy the procedural requirements of 11 U.S.C. § 503(b) which require “notice and a hearing” before administrative claims – including § 503(b)(9) claims – can be allowed. This does not require an actual hearing, only the opportunity for one, 11 U.S.C. § 102(1), but it does require something more than whatever “notice” might come from simply filing something on the docket. The language of § 102(1)(B)(i) that no hearing is required if “a hearing is not timely requested” suggests that some type of formal notice of the deadline for requesting a hearing needs to be given.

This Rule also establishes a deadline for requesting the allowance of § 503(b)(9) administrative claims. *See*, 11 U.S.C. § 503(a). Unlike other administrative claims, which do not exist as of the date of the petition, a § 503(b)(9) claimant can determine the amount of its administrative claim early in the case, and so the rule establishes a deadline for it to do so and to file the required motion. Absent a timely motion for allowance, the claim may still be allowed as a general unsecured claim under 11 U.S.C. § 502(a).

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated November 25, 2015, the commentary was amended to change the phrase "Official Form 10" to "Official Form 410."

By Order Amending Local Bankruptcy Rules dated May 5, 2011, this new rule was adopted effective immediately.