

Administrative Trade Creditors & Bankruptcy

Once a debtor has filed a petition in bankruptcy, an unsecured creditor who has shipped goods subsequent to the filing may have priority in the bankruptcy under 11 U.S.C. Section 503. The rationale for granting priority to this type of claim is that it tends to preserve the property in operation of the debtor.

The difficulty in administrative trade claims arises when the debtor is not financially healthy and is merely delaying the inevitable demise of the company. In a number of circumstances an administrative claim will be treated on behalf of a creditor and there will be no funds from which to pay the creditor. In such cases the administrative claim would be similar to an uncollectible judgment. Therefore, a creditor will want to consider this remedy only when it is holding a large claim or when the debtor is a large company in a Chapter 11 proceeding with a good chance of successful reorganization.

The filing of an administrative claim must be made through a motion. The Bankruptcy Court will then send out the 20-day notice to all creditors and should no one object, the Court will automatically enter the administrative trade order. If the debtor or other creditors object to the payment, a hearing is required and ultimately witnesses may be necessary to establish the claim.

Creditors should keep in mind that the sooner an administrative claim can be filed with the Court, the better its chances of getting paid. All administrative claims will be paid out of the same fund, along with attorney's fees for the debtor and the

creditors' committee, as well as all other professional fees allowed by the Court. If it appears that there will not be sufficient funds to pay the professional fees in the case, it is more likely that these parties will object to the administrative claim.

This publication is not a legal opinion of Greene & Cooper nor any partner thereof. You should consult with legal counsel prior to relying on any information contained herein.