

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 08-00783

ORDER ON CLAIMS OBJECTIONS

The relief set forth on the following pages, for a total of 5 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
01/29/2009



Entered: 01/30/2009

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:)	Chapter 11
)	Case No. 08-00783-dd
Protected Vehicles, Inc.)	
)	ORDER ON CLAIMS OBJECTIONS
Debtor.)	

THIS MATTER is before the court on the debtor in possession's objection to claims.

Each of the creditors noted below filed a proof of claim and attached documents in support of the claim.

Objection Docket No.	Claim No.	Claimant Name	Claim Amount
477	127	A.E. Petsche Co., Inc.	\$ 19,982.96
479	128	BAE Systems, Inc.	\$ 569,342.00
481	3	Charleston Rigging and Marine	\$ 44,074.36
489	87	Fuel Safe Systems	\$ 7,948.61
492	97	Lehavot Fire Protection, Ltd.	\$ 336,730.00
505	61	Marco Equipment Sales	\$ 12,421.25
507	16	Mayer Electric Supply	\$ 33,620.42
510	20	Mid-States Technical	\$ 152,235.16
517	56	Soil Consultants, Inc.	\$ 19,741.36
519	82	Southeast Industrial Components	\$ 163,074.17
520	130	UEC	\$ 157,854.78
521	17	Warren and Sinkler	\$ 19,388.32
522	59	W.W. Grainger, Inc.	\$ 174,113.90
523	31	Wulbern Koval Co.	\$ 12,899.84
525	291	Ramsey Manufacturing Company	\$ 532,191.00
564	112	Eyal Engineering and Industrial Company, Ltd.	\$ 56,804.00

The debtor objected to each claim on the ground that its books and records reflected a different amount owed to the creditor. The creditors did not respond to the objection.

After review, the objections are overruled and the claims are allowed as unsecured claims without priority in the amount filed.

In chapter 11 cases the schedule of liabilities establishes the amount and validity of creditor claims, unless the claims are scheduled as disputed, contingent or unliquidated. Fed. R. Bankr. P. 3003(b)(1)¹. Creditors with unscheduled claims or claims scheduled as disputed, contingent or unliquidated must file a proof of claim in order to receive a distribution or participate in voting on a plan of reorganization. Rule 3003(c)(2). If a proof of claim is filed it supersedes any scheduled claim. Rule 3003(c)(4). A claim supported by a properly filed proof of claim is established in amount and validity, “allowed” in bankruptcy parlance, unless a party in interest objects to the claim. § 502(a). A proof of claim filed in accordance with the Bankruptcy Rules is prima facie evidence of the validity and amount of the claim. Rule 3001(f).

Our Court of Appeals has held:

The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. The creditor’s filing of a proof of claim constitutes prima facie evidence of the amount and validity of the claim. 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f). The burden then shifts to the debtor to object to the claim. 11 U.S.C. § 502(b); *Finnman*, 960 F. 2d at 404. The debtor must introduce evidence to rebut the claim’s presumptive validity. Fed. R. Bankr. P. 9017; Fed. R. Evid. 301; 4 Collier at ¶ 501.02[3][d]. If the debtor carries its burden, the creditor has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence. *Id.* At ¶ 502.02[3][f].

In re Harford Sands, Inc., 372 F. 3d 637, 640 (4th Cir. 2004). In other words, a proper proof of claim enjoys an evidentiary presumption in the face of an objection. “A presumption imposes on the party against whom it is directed the burden of going

¹ Further reference to the Federal Rules of Bankruptcy Procedure shall be by rule number only and reference to the Bankruptcy Code, Title 11 of the United States Code, will be by section number only.

forward with evidence to rebut or meet the presumption. . . .” Fed. R. Evid. 301. *See generally* Barry Russell, *Bankruptcy Evidence Manual* § 301:14 (2009 ed.).

Here the debtor has produced no evidence to rebut the presumption of validity of the claim other than to state that its books and records reflect a different amount for the creditor claim. This bald assertion, especially in the face of the documentation attached to the proofs of claim², is insufficient to rebut the presumptive validity of the claims. In fact some courts have gone so far as to hold that, “[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).” *In re Campbell*, 336 B.R. 430, 433 (B.A.P. 9th Cir. 2005). The debtor declined the opportunity for a hearing on the objections in this case.³

Because a proof of claim that meets the minimum requirements of Bankruptcy Rule 3001 and the instructions for the official form⁴ enjoys a presumption of validity as to liability and amount, an objecting party must produce probative evidence of equal weight in order to shift the burden of production of evidence back to the creditor. Such evidence might consist of a recital from an officer, employee or financial professional for the debtor asserting a specific defense to liability, countervailing accounting summaries reflecting payments or other credits not acknowledged by the creditor, and similar evidence. Certainly, at minimum, more than mere recital of the ultimate fact, notice of

² All of the proofs of claim are supported by some document. In some instances the supporting document is merely a statement of account, in others, perhaps the majority, the support is in the form of invoices. In other instances purchase orders, delivery receipts and contracts are attached.

³ Hearings on objections to claims are scheduled on passive notice in this district. A hearing is scheduled only upon response of the opposing party or as directed by the judge. SC LBR 9013-4 and Exhibit A. The Debtor filed a number of other objections identical to those dealt with in this order. Those other objections were overruled in a series of individual orders. The Court provided the Debtor with an opportunity to request hearings and it failed to do so. Regardless, the Bankruptcy Code provides that an allowed or disallowed claim may be reconsidered for cause. § 502(j).

⁴ “A proof of claim shall conform substantially to the appropriate Official Form.” Rule 3001(a).

disagreement or the restatement of some conclusion of law is required. Moreover, the objecting party must allege some statutory basis for disallowance or reduction of the claim that finds its basis in § 502(b).

Bankruptcy law seeks to balance the rights of creditors with relief for debtors. Its rules are “construed to secure the just, speedy, and inexpensive determination of every case and proceeding.” Rule 1001. The bankruptcy claims process, in this vein, is designed to minimize the expenditure of scarce estate funds and preserve an equitable distribution to creditors. These principles are all the more important in cases, such as this, where the dividend to non-priority unsecured creditors is likely less than two percent (2%) and the cost of engaging counsel to respond to a claims objection⁵ will far exceed the small distribution the creditor is to receive. These creditors are entitled to the benefit of the presumption the law affords them.

IT IS THEREFORE ORDERED, that the objections to claim are overruled and the claims are allowed as filed.

⁵ Partnerships, corporations and other business entities (other than individuals or sole proprietorships) must engage counsel to appear or file pleadings and documents, other than proofs of claim and reaffirmation agreements, in this Court. SC LBR 9011-2. For this reason it is incumbent upon debtor’s counsel or a trustee to recognize any presumption in favor of the filer of a proof of claim, to carefully consider the benefit to the estate of an objection, and perhaps to object to presumptively valid claims only on notice with a hearing, rather than utilizing the passive notice procedure referenced in footnote 3.