

Reviewing the Debtor's Petition

A bankruptcy case is commenced with the filing of a petition. Petitions can be voluntary (the debtor seeks the relief provided by bankruptcy) or involuntary (the creditors seek protection from a debtor's actions or inaction). Generally, the analyst will receive a voluntary petition as the announcement of a new Chapter 11 case. This is the first look at the new debtor and in just a few moments, you can learn quite a bit and begin focusing your approach to the case.

Name	Is this a high profile case? Is it a local business of which you are aware? Does the name sound familiar for another reason - e.g., has the debtor filed before, is there a related case?
DBAS	If there is a dba, are you really looking at a sole proprietorship or could there also be a separate entity involved? Are there a lot of dbas? Could that be an indicator of something? Could this be a franchise?
Social security/ Tax ID Number	Is there a valid ID number - e.g., enough numbers? (There is also an ACMS program available that picks up multiple filings by social security number as soon as a petition is entered on ACMS.)
Addresses: Street, mailing & location/principal assets	Do the debtors' addresses tell you anything - e.g., good commercial location? Out of state mailing address? Using lawyer's office address? Principal assets in another state? Watch out for P.O. Box addresses.
Venue	Could there be a venue problem? Sometimes debtors file in another location to make life difficult for their creditors. Venue is a legal issue. If you think there may be a venue problem, alert your case attorney as soon as possible.
Type of debtor	Individual, husband/wife, partnership, corporation? Depending on which, certain questions should already be forming in your mind. Is this a case of husband files first, then wife or vice versa? Has the other spouse already filed? Could there be separate/community property issues? If the debtor is a partnership, is it a general or limited partnership? Who is the general partner? If the debtor is a corporation, is it a C-corp, S-corp, LLC, wholly owned?
Type of business	What kind of business will you be dealing with? Certain businesses require quick or special attention. Is this a restaurant? Is this a business that involves high volumes of cash? What kind of monthly operating report format should this debtor use? Is this a single asset real estate case subject to special deadlines?
Small Business and the small business election.	The bankruptcy code defines a "small business" and provides for a special election to allow the small business to get on a fast track towards a plan. Fast track cases should get special attention quickly. Alert the case attorney.
Attorney	Whom the debtor hires for an attorney can tell you a lot about the debtor - good and bad. Is the attorney or firm one that is thorough, well-prepared, professional, experienced in bankruptcy? Is this a problem attorney? Is this an attorney/firm which handles special problems or special debtors?
	Break the news to your attorney. Pro per debtors rarely confirm a plan. Pro

Pro Per (No Attorney)

per cases require special attention and are generally difficult to monitor. If the petition appears to be printed on a software-generated form, you should question whether this is a pro-per debtor.

Rough Statistical Info

How many creditors are there & how many employees?

Prior or Pending
Bankruptcy Cases

The debtor is required to disclose prior bankruptcy cases filed within 6 years and any pending bankruptcies filed by a spouse, partner or affiliate. You may find that there is a related pending case in another venue. If you use the ACMS duplicate filings report or Infoteck, you may find that disclosure is lacking. It may be an instance of the attorney being unaware of the previous filing, the debtor's being less than forthcoming, or an oversight.

Signatures

Who is signing the petition? If a corporation or partnership, who is the authorized individual? Is the name familiar?

Reviewing the List of Creditors Holding the 20 Largest Unsecured Claims

The bankruptcy code provides for the appointment of a creditor's committee, comprised of creditors holding the seven largest claims. The Office of the U.S. Trustee appoints the committee and the appointment should be made as soon as practicable.

To expedite this appointment process, the debtor is required to file a list of the twenty largest unsecured creditors with their addresses. This list must be filed with the bankruptcy petition. It is important to note that the "20 Largest" list should not include persons who are insiders of the debtor. The list should also exclude secured creditors unless they are under collateralized.

The "20 Largest" is another source of early information for the bankruptcy analyst on a new case.

Names	<p>What's the make-up of the largest creditors? Suppliers, manufacturers? Lawfirms? These are the debtor's twenty largest creditors? That information tells you a lot.</p> <p>Are they already represented by counsel, implying probable lawsuits?</p> <p>Are there any names similar to the debtor which give an indication that a relative (an insider) may be included on this list? If so, advise your case attorney and paralegal.</p> <p>Where are most of the creditors located? <i>Remember the venue issue.</i></p> <p>Do taxing agencies appear on the list? Taxing authorities are generally hold secured or priority claims. Should they be on the list? Check with your case attorney.</p> <p>Do any of the creditors have the same address as the debtor indicating a possible insider? Again advise your case attorney and paralegal.</p>
Addresses	<p>Are there any incomplete or unknown addresses? This may be intentional.</p>

THE DEBTOR'S SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

Bankruptcy is intended to achieve an equitable balance between the debtor and creditors. In return for the privilege of a safe harbor, the Chapter 11 debtor-in-possession assumes certain fiduciary responsibilities including a full disclosure of their past and current financial condition. Within fifteen days of the filing of the Chapter 11 petition, the Bankruptcy Code requires the debtor to file *Schedules* listing assets and liabilities, as of the date of filing, and a *Statement of Financial Affairs*. The schedules and the statement are signed under penalty of perjury. The schedules and statement should be viewed as an indispensable tool for all parties involved in the bankruptcy case. After all, this is the information that provides the framework for a reorganization plan:

“These are absolutely all this company’s assets. This is what we believe they are realistically worth. Here’s a list of all our creditors with the amounts owed and the priority of their claims. Here’s a list of people we may owe but we don’t know how much. Here’s a list of all our leases - some we’ll assume, some we won’t. These are all the payments we made to creditors three months before filing and no one got any special treatment. These are all the payments we made to insiders and all of them were in the ordinary course of business. This is what we have to work with to formulate a realistic plan.”

Debtor and debtor’s counsel need to work closely together in order to file complete, accurate schedules and statements within the statutory time frame. The debtor is forced to get organized. The debtor’s attorney begins the process of sorting through the debtor’s affairs and keying on areas that will either help or hinder reorganization efforts.

For a number of reasons, the schedules and statements filed by Chapter 11 debtors are oftentimes inaccurate and incomplete. This is your first clue that there is a problem. The problem could be a disorganized debtor, a less than truthful debtor, an inexperienced attorney, or poor communication between the debtor and counsel. None of the scenarios bode well for creditors and all of them stand in way of a successful reorganization. At the initial debtor interview, ask the questions to ensure full disclosure, to get the debtor organized, and to bring debtor’s counsel up to speed.

Quick Summary - What Makes Up the Schedules & Statement of Financial Affairs

The debtor’s schedules consist of:

- A Summary of Schedules
- Schedule A - Real Property
- Schedule B - Personal Property
- Schedule C - Property Claimed as Exempt
- Schedule D - Creditors Holding Secured Claims
- Schedule E - Creditors Holding Unsecured Priority Claims
- Schedule F - Creditors Holding Unsecured (Non-Priority) Claims
- Schedule G- Executory Contracts and Unexpired leases
- Schedule H -Codebtors
- Schedule I - Current Income of Individual Debtor (s) [business forms also available]
- Schedule J - Current Expenditures of Individual Debtor (s)[business forms also available]

The Statement of Financial Affairs consists of 21 questions including important “look backs”¹: gross income earned during the year of filing & two years prior; payments to any one creditor in excess of \$600 within 90 days of the petition; payments to insiders looking back during the year prior to the petition; lawsuits during the last year; casualty losses; transfers of property made during the prior year; property held for others; prior addresses; location of corporate books and records; and it goes on.

Creditors & Their Claims

Creditors claims are listed by the debtor in separate schedules - depending on the nature and priority of the claim. Obviously, secured creditors have a secured interest in a particular property or have may have a blanket lien. The secured creditor (Schedule D) has a “call” on that particular asset and if the debtor wishes to use the asset in its reorganization, the secured creditor’s interest must be addressed. Priority creditors (Schedule E) receive a precedence in payment in a reorganization plan dependent upon the type of priority claim the creditor holds. General unsecured creditors (Schedule F) are at the bottom of the ladder and may receive only a small percentage of what is owed them - if anything at all.

So, as you review the debtor’s schedules at the IDI, ask enough questions to receive a level of assurance that creditors are listed on the correct schedule representing their correct priority . Be certain there has been no attempt to move certain creditors - whether affiliates and insiders - up into a higher priority than they are entitled to receive.

In reviewing Schedules D, E, and F, you will see that there is a column in which the debtor is asked to identify whether a claim is contingent, unliquidated or disputed. Ask questions about the claims that are so identified:

A contingent debt is a potential liability that may become an actual liability depending on whether or not a future event occurs - e.g., you co-signed a note for a friend and there is the possibility that your friend may default on the note.

An unliquidated debt is a liability which exists but the amount is uncertain and the amount owing cannot be determined at this time because of pending litigation or a pending transaction.

If a creditor is identified as having a disputed claim, the debtor is challenging either the existence of the claim and/or its amount.

As a case progresses towards a reorganization plan, these types of claims need to be resolved either by negotiation or litigation.

¹ The Bankruptcy Code contains provisions to recover preferential or fraudulent transfers for certain periods prior to the filing of the case and to bring the assets back into the estate. The recovery provisions ensure that a creditor or insider is not given preference but, rather, that all creditors treated even-handedly. Preferences should be fully disclosed and treatment outlined in the Chapter 11 disclosure statement.

The Schedules & The Issues/Questions They Raise

Let's look at just a few sample questions you might ask as you review the schedules with the debtor at the initial debtor interview.

<p>Schedule A - Real Property</p> <hr/>	<ul style="list-style-type: none"> ● Run a property search on Infotek. Is all property listed? Any recent transfers not disclosed in question 10 of Statement of Financial Affairs ("SFA")? ● How did the debtor arrive at the current market value of the real property? Recent appraisal? What was the date of the last loan & bank's appraisal? ● Is the property on the market? If so, what's the asking price, how long has it been on the market, who is the broker, has an employment application be filed with the court? ● What's the debtor's estimated equity? Is the property declared an exempt asset? How long has the debtor lived in the property? ● If there is a co-owner of the property, who is the co-owner? When was the property purchased and has it always been co-owned? Is the current market value shown at 100% of debtor's interest? Is the co-owner shown as a co-debtor to related debt on Schedule H? Is the secured claim shown at 100%? If it is a commercial property, is there a written agreement between the debtor and the co-owner. (Request a copy.) Does the co-owner have any potential claim against the debtor for amounts the co-owner paid in excess of its ownership share? Is the co-owner aware of the Chapter 11 filing? Is the co-owner willing to sell the property? Interested in purchasing it? ● Has the debtor sold any real property during the year preceding the bankruptcy? Request a copy of the escrow statement. How much were the net sales proceeds? Who was paid out of escrow? How were the funds used?
<p>Schedule B - Personal Property</p> <hr/>	<ul style="list-style-type: none"> ● Have all pre-petition bank accounts been closed & funds transferred to debtor-in-possession accounts? What accounts existed during the year prior to the bankruptcy? (Cross check to Question 11, SFA.) Is any third party holding funds on your behalf? ● If the debtor lists leases, there probably should be security deposits listed. Also, ask whether the state sales tax agency required a secured deposit? Any other type of prepayments? Cross check: debtor's financial statements. ● If your debtor lists a million dollar+ house on Schedule A, chances are
<p>2. Checking, savings accounts</p>	
<p>3. Security deposits</p>	
<p>4. Household furnishings</p>	

5. Antiques and art
7. Furs and jewelry
8. Gun, hobby collections

the values shown in 4, 5,7, & possibly 8 are understated. These types of assets are allowed exemptions - but within limitations. Ask enough questions to determine whether there is a considerable antique collection, valuable gun collection, etc. Ask if the debtor has a special rider on an insurance policy? Cross-check: insurance certificate may show special rider. If there is a valuable collection, request a detailed listing with estimated value.

9. Interest in insurance policies

- If it is a corporate or partnership debtor, is the debtor paying insurance premiums on a policy in which it is not the named beneficiary?

11. Interests in IRA, Keogh

- Again, this can be an exempt asset but it depends. You need to ask enough questions to determine location, any large increases/decreases in amount during last year? For example, the debtor may sell a large asset pre-petition & place the proceeds into the retirement account. Get the facts so you can refer the matter to the case attorney.

12. Stock and interests in incorporated and unincorp. businesses.

- Cross-check: Infotek and federal tax returns. Check for parent and subsidiary relationships. Watch out if debtor has several subsidiaries and only takes a few into bankruptcy. Amounts owed to/from. Identify wholly owned corporations: nature of business, when incorporated, tax returns current, request financial statements. Amounts owed to/from. Did debtor sign any guarantees on corporate debt?

13. Interests in partnerships or joint ventures.

- Cross-check: Infotek and federal tax returns. Request copies of partnership/joint venture agreements. General partner or limited partner? Any capital contributions which may become due? Assets of partnership? Buy-sell agreement or right of first refusal? Name and address of general partner. If general partner, did debtor sign any guarantees on partnership debt?

15. Accounts receivable

- Who owes the debtor money and for what? Are the receivables disputed? Why? Look for contract/product problems. What's the aging of the receivables? Request an aged listing. Does the debtor have a lot of customer or, precariously, just one large one?

17. Other liquidated debts owing debtor including tax refunds.

- Is the debtor expecting a tax refund? Cross-check: federal return? How about a state refund? Is the debtor expecting a refund from an insurance company? Insurance claim for loss incurred?

19. Inheritances, trusts

- Is the debtor a beneficiary of a trust or an estate? Did the debtor receive any funds during the last year from that trust or estate? Cross-check: Questions 1(b) - SFA - other income. Has the estate been closed? Who is the estate administrator (name/address) Who is the trustee (name/address)

21. Patents, copyrights

- If the debtor is a new technology company, software company or manufacturer, be certain to ask about patents and trademarks. Request

22. Licenses, franchises

a copy of the patent or trademark. Find out about the technology.
Can the patent/trademark be of value?

- Get copies of liquor licenses. Call the licensing agency to make sure the license hasn't been suspended. Oftentimes, the license is in another party's name. Usually, the state sales tax authorities have placed a lien on a liquor license. If the debtor owns a franchise, get a copy of the franchise agreement. Has the franchisor notified the debtor of a default?

23. Autos, trucks
24. Boats, motors
25. Aircraft

- Cross-checks: federal tax returns, Infotek, DMV, insurance certificates. If there is any question at all as to ownership, request to see the pink slips. If the debtor has rolling stock, get a list of vehicle, ID number, license number, location. Is the debtor involved in interstate business?

27. Machinery, equipment

- What's the age and condition of the debtor's machinery? Is the debtor dependent on a particular piece of equipment for its business? Cross-check: federal tax return, Schedule D - Secured Creditors, UCC-1s. Does the debtor list machinery and equipment it would need to run its type of business?

28. Inventory

- Determine if the debtor has inventory problems: old merchandise, missed selling season because of supplier problems. Request a list of inventory. Location? Warehouses? Insurance?

29. Animals

- A horse is not just a horse sometimes.

Schedule C - Exemptions

An individual debtor has the right to exempt certain types of property from being used to satisfy his or her debt. Exemptions are recognized both in state and federal bankruptcy law. There are standard federal exemptions. And each state has its own exemption statute. It is important that you understand which statute(s) are applicable to a debtor in your state. Check with a UST attorney in your office.

As you review the debtor's Schedule C, check that all exemptions claimed are allowable both as to nature and dollar limitations.

Also watch for situations where a debtor may be using non-exempt estate assets to pay the debt service on exempted assets.

Schedule D - Creditors

This is an important schedule to review with the debtor. You need to ensure that the debtor has identified secured creditors who may have a "call" on the debtor's

Holding Secured
Claims

cash flow. For example, the debtor may have executed an assignment of rents to a lender on a commercial property. If so, the debtor must either reach a stipulation or get a court order allowing for the usage of the rental income for other purposes.

A few other questions/issues that are raised in Schedule D:

- Are any relatives, insiders, affiliates of the debtor listed as a secured creditor? Ask for supportive promissory notes to establish dates and consideration given. Was a UCC-1 filed? When? Request copy.
- Does the schedule reflect any bank loans obtained within the year prior to filing? Shortly before filing? What was the purpose of the loan? How were the funds used? Were loan proceeds used to pay off any other creditors? If the debtor is a corporation or a partnership, were proceeds used to pay off another loan which was guaranteed by a principal?
- How many months behind is the debtor in payments to each secured creditor? Has any creditor commenced foreclosure? What was the status of the foreclosure proceedings at the time of filing the Chapter 11? Why did the debtor start getting behind the month of "x"?
- Is the debtor aware of any tax liens which encumber the personal property which should be listed?
- Is any of the debt identified as contingent, unliquidated or disputed? If so, why is it listed that way?

Be sure to tie each piece of real property, machinery and equipment to its underlying debt.

Cross check: D&B report, Infotek.

- This schedule is intended to identify wage claimants, amounts owed to employee benefit plans, customers who placed deposits with the debtor, amounts owed to an ex-spouse for alimony or support, and amounts owed all taxing authorities.

Things to note:

- If the debtor has an operating business and lists amounts owed to its employees at the time of filing, you should ask whether the debtor intends to file a motion to pay pre-petition wages.
- Taxing authorities claims are often shown with the nature of the claim and the amount "unknown". Hone in with questions. You need to know the magnitude of the tax debt and the period which is covered. You may need to call the IRS or the state taxing authorities to get a handle on the situation.

- Sales tax - were sales tax returns filed? If not, when was the last one filed? What kind of payment and reporting arrangement does the debtor have the state board of equalization? Was a bond required? Is it listed as an asset?

Schedule E - Creditors
Holding Unsecured
Priority Claims

Schedule E (Priority),
continued

Schedule F - Creditors
Holding Unsecured
Nonpriority Claims
(General Unsecured)

- Payroll taxes - how many quarters does the payroll tax debt represent? Did the debtor attempt to work out a payment schedule with the IRS? If so, what was the payment schedule and how much were the payments? Is the IRS asserting an estimated claim because the debtor failed to file payroll tax returns? When will the delinquent returns be filed? Does the debtor use a payroll service? Has the debtor opened a segregated payroll tax debtor-in-possession account? Is the debtor current on taxes post-petition?
- Income taxes - estimate or actual? Delinquent returns? When will delinquent returns be filed? Will an accountant have to be employed? Who will they employ? (Check to see if name appears as claimant in Schedule F. If so, alert UST case attorney.)
- Again, is a debt listed as contingent, unliquidated or disputed? Why is it listed that way?

There's lots of information here.

- First, do the largest creditors listed in Schedule F coincide with those identified earlier as the largest creditors on the 20 largest list? If not, identify the discrepancy and let the case attorney know. The attorney may wish to review the creditor committee solicitation.
- What kinds of creditors does the debtor owe? Suppliers? Law firms? Investors? Partners? Insurance companies? Former accountants?
- Does Schedule F list the "date the claim was incurred and the consideration for the claim"? If not, why not? You're trying to establish a timeframe as to when the debtor stopped paying certain creditors.
- If an insurance company is a creditor, determine if the debtor has all necessary insurance in effect.
- Again, are there creditors who are identified as contingent, unliquidated, disputed? Why is each listed that way?
- If law firms show up on Schedule F, find out what services they performed for the debtor.
- Look for same addresses, relatives, employees, affiliates. Ask questions to determine nature, validity of debt. You may need to ask for further documentation.

Schedule G - Executory
Contracts

Schedule G should identify all executory contracts and all unexpired leases of real or personal property, including timeshares - and should designate whether the debtor is the lessor or lessee. Interestingly enough, the Bankruptcy Code does not include a definition of "executory contract" in its definition section. A contract is an executory contract if, at the time the case was filed, both parties

had material obligations outstanding and the failure of either party to perform would be a material breach of the contract. This is not a black and white area.

You should just understand that there are very specific provisions in the Bankruptcy Code with respect to contracts and leases related to non-residential real property and personal property. Very early in a Chapter 11 case, a debtor needs to take a hard look at its leases and assess whether the lease is crucial to the reorganization and, if so, determine whether the money be raised or a negotiation be finalized to cure arrearages so that the contract/lease can be assumed in bankruptcy. Conversely, the debtor may want to shut down certain locations.

At the IDI, using Schedule G, attempt to determine whether you have been informed of all leases and contracts - whether or not they are executory. Are there employment contracts, union contracts, etc.

If debtor's counsel has identified certain leases as executory, ask whether the debtor intends to assume or reject the lease or contract? If the debtor intends to assume it, how much is owed in arrearages? If it's a lot, how does the debtor envision curing the arrearage?

If the debtor is the lessor, will the debtor be able to hold up its side of the lease or contract?

Cross-check to see whether co-debtors were "x'd" on other schedules & if so, are they identified by name and address on Schedule H. What is the co-debtor's relationship to the debtor?

Schedule H - Codebtors

YOUR FIRST LOOK AT CASH FLOW. Are the schedules realistic? Are there inconsistencies based on what you've learned? How far in the red is the debtor operating currently each month? How does that translate four months out? This is an area where you ask a lot of questions.

Schedules I & J - Current Income/Expenditures of Individual Debtors (Business Form Also Available)

Take a another quick look at the Statement of Financial Affairs. There are 21 questions. Pay attention to the ones marked none. An example of some of the things to keep in mind and questions you might ask:

1 (a) & (b) Gross income	<ul style="list-style-type: none"> Do not let this question remain answered as “none”. You need to know what the debtor’s gross income was in prior years to evaluate the business. Cross check: federal tax returns, bank statements.
3 (a) & (b) Payments to creditors and insiders	<ul style="list-style-type: none"> Do not let 3(a) & 3(b) remain answered as “none” if, in fact, there were such payments. Preferences and insider self-dealing are very common in bankruptcy. Cross-check: bank statements.
4 Lawsuits	<ul style="list-style-type: none"> Ask questions about the listed lawsuits. Were judgments entered? If so, are they listed on Schedule D. Who represented the debtor? What was the suit about? What are debtor’s intention regarding the suit? Request copies of significant lawsuits.
9. Payments related to bankruptcy, debt counseling	<ul style="list-style-type: none"> Who counseled the debtor to file bankruptcy? How much was paid? Why didn’t a certain practioner continue with the case? Did a well respected firm pull off the case?
10. Other transfers	<ul style="list-style-type: none"> Do not let this question remain answered as “none” if, in fact, there were transfers.
11. Closed financial accounts	<ul style="list-style-type: none"> Be certain you know what bank accounts existed for this debtor during the year preceding bankruptcy.
14. Property held for another person.	<ul style="list-style-type: none"> Watch out for debtors who take property on consignment. If the debtor is holding consigned inventory, find out now and identify it.
15. Prior addresses	<ul style="list-style-type: none"> Why did debtor leave former address? How much was owed landlord? Look for closed locations.
17. Books, records, financials.	<ul style="list-style-type: none"> Who were the debtor’s accountants? If the debtor is a partnership, does the partnership agreement call for audited financial statements? When were the last audited statements issued & by whom? Is there a pending audit? Has there been an audit with no statements issued?
18. Inventories	<ul style="list-style-type: none"> When was the last physical inventory taken? Ask for a copy of it. How often are physical inventories taken?
19. Current Partners, Officers, Directors & Shareholders.	<ul style="list-style-type: none"> Who are the people, what’s their experience, how long have they been there, what is their current role, how much do they make? Are there employment agreements?
20. Former partners, etc.	<ul style="list-style-type: none"> Who were the people, what was their role, why and when did they leave?

21. Withdrawals from a partnership or distributions by a corporation.

- Watch for special distributions or distributions that aren't pro-rata. Cross-check: prior years tax returns, audited financial statements, checks. Why was a special distribution made?