

Why Serve on a Committee?

The existence and proper functioning of a committee is a key determinant of how unsecured creditors will be treated in a chapter 11 case. Service on a committee can give a creditor a direct role in the outcome of the case through the committee's monitoring of the debtor's business, participation in plan negotiations and other committee activities. A committee member will obtain knowledge and have influence on the plan negotiation and reorganization process, as well as other matters affecting the treatment of unsecured creditors, including, in appropriate cases, the sale of the business. Committee members also may gain valuable insight into the debtor's industry that could be helpful in their future business dealings. Further, some people gain a sense of personal satisfaction from participating in the chapter 11 process.

Not everyone should serve on a committee. Don't serve unless you are prepared to make the commitment of time and energy to do the job. Unless you will act fairly for the benefit of all unsecured creditors, you shouldn't serve. Remember, a bad committee is probably worse than no committee at all. A dysfunctional committee can give the court and the creditors the false impression that creditor interests are represented when in fact they are not. But effective participation on a committee can make a positive difference in the case.

Committee Powers and Duties

The committee is the watchdog for the unsecured creditors' interests, protecting the rights of all unsecured creditors. It acts as a check-and-balance system against the exercise of unrestrained discretion of the debtor. It can form alliances with the debtor to realize value from the secured creditors. It can form alliances with the secured creditors to maximize recoveries from the debtor. It can act independently. Under some circumstances, it can control the flow of a case. On the other hand, if its powers are not utilized effectively, it could be of no value to the unsecured creditors it is

supposed to represent. Ultimately, the committee must determine whether creditors will receive more through a plan of reorganization or through a liquidation of the debtor's assets.

What Should the Committee Do?

One of the most important powers of the committee is to investigate the debtor's affairs. A committee cannot decide whether reorganization, liquidation or any other action is in order without sufficient reliable information about the debtor. The committee should evaluate the ability of the debtor's management and recommend whether any changes need to be made. The committee should gain a full understanding of the debtor's assets and liabilities, cash flow and profitability. It should also gain an understanding of the debtor's operations.

The committee should ascertain whether the debtor has any claims against third parties and whether they should be pursued. It has the right to sue third parties if the debtor fails to do so. A debtor might not pursue preferences or claims against insiders, yet the committee has the power and might choose to do so. It should review and gain a thorough understanding of the debtor's schedules, statement of affairs, monthly operating reports and other court filings. Most importantly, the committee must learn sufficient information to evaluate alternatives for payment to creditors.

The committee has the ongoing right and duty to consult with the debtor concerning the administration of the case. If necessary, the committee can seek court appointment of a trustee or examiner. If a trustee is appointed, the committee has the right to participate in his or her selection. The committee can be heard in court on any matter.

Information can be gathered through informal channels, from the debtor, or through the court process by using the committee's subpoena power. As the committee gathers information, it has the power to act, in and out of court, to protect the interests of unsecured creditors.