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# Unsecured Creditors' Committees in Chapter 11 Bankruptcy: Why Should You Be on Them?

Presented by: Michael VanNiel, Adam Fletcher, Joe Cashel, and Gregg Manternach

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## Why Creditors' Committees Matter to Credit Professionals

- Chapter 11 cases represent major credit events where unsecured creditors face high risk and uncertainty without collateral.
- Individual creditors often lack the resources to fully participate in a chapter 11 bankruptcy or the size of their claim does not warrant significant legal expense to participate.
- Creditors' committees represent the interests of unsecured creditors as a whole by influencing recovery and payment timing, and challenging debtor actions, including proposed debtor-in-possession financing and reorganization plans, for fairness.
- Credit professionals can track creditors' committee actions to forecast recoveries and manage risk in post-bankruptcy relationships.

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## The Real Question: Why Should I Serve?



This is not about participation—it's about **control and visibility**

If you are not on the committee:

- You are reacting to outcomes
- You are dependent on others' decisions

If you are on the committee:

- You help **shape recoveries, timing, and strategy**

**Committee service is the difference between being a passive claimant and an active stakeholder.**

**Serve if:**

- Exposure is **material**
- Recovery is **uncertain or contested**
- Customer is **strategically important**
- Case is **complex or contentious**

**Decline if:**

- Exposure is minimal
- Case is pre-packaged with limited upside
- Internal resources are constrained

This is an **investment decision**, not a courtesy

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## What is an Official Unsecured Creditors' Committee?



**Statutory Role and Formation**

An official unsecured creditors' committee is a legally recognized body formed under the U.S. Bankruptcy Code to represent the interests of unsecured creditors in Chapter 11 cases.

**Representation and Oversight**

An unsecured creditors' committee acts as a collective voice for unsecured creditors, overseeing debtor conduct and participating in negotiations with the debtor and other stakeholders.

**Right to Hire Professionals**

An official creditors' committee can hire legal counsel and financial advisors, and these and other committee expenses (such as travel by members to meetings) are paid out of the debtor's bankruptcy estate, not borne by individual committee members.

**Fiduciary Duty to All Creditors**

An official unsecured creditors' committee's duty is to all unsecured creditors, aiming to benefit the entire unsecured creditor group collectively.

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## How Official Unsecured Creditors' Committees Are Formed

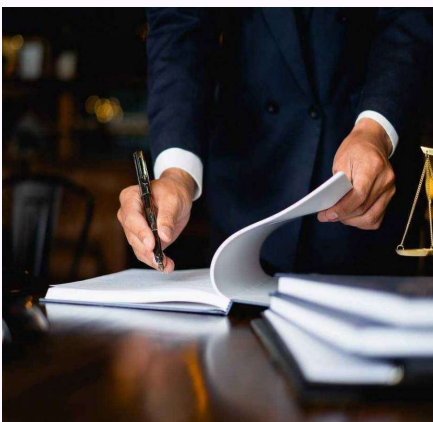


- The Office of the U.S. Trustee (a component of the Department of Justice) forms creditors' committees shortly after a chapter 11 bankruptcy filing.
- The U.S. Trustee typically solicits interest in serving on the committee by sending out a questionnaire to significant unsecured creditors (usually those appearing in the top 10 or top 30 largest creditors list).
- In selecting creditors to serve on the committee, the U.S. Trustee considers things like willingness to serve, claim size, claim type, potential conflicts (such as holding both secured and unsecured claims), industry knowledge, and active participation ability.
- By agreeing to serve on an official unsecured creditors' committee, members agree to act in good faith for the benefit of all unsecured creditors and devote sufficient attention to provide meaningful oversight.
- Creditors interested in serving on the committee should quickly evaluate and respond to U.S. Trustee questionnaires and related requests as formation often occurs very quickly.
- If initial responses to the U.S. Trustee's questionnaire are not sufficient, creditors may need to take it upon themselves to convince others to serve on a committee and then request that the U.S. Trustee appoint one.

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## How to Actually Get Selected for a Committee



Respond to U.S. Trustee immediately (within 24–48 hours)

Clearly articulate:

- Size and nature of claim
- Industry expertise
- Willingness to actively participate

Proactively:

- Contact the U.S. Trustee's office
- Engage with debtor's counsel / restructuring advisors

Leverage:

- Trade groups (e.g., NACM)
- Existing creditor relationships

**Selection is not passive—strong candidates advocate for their seat.**

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## Who Typically Serves on a Creditors' Committee



### Typical Committee Members

Members often include unsecured creditors with significant or representative claims, sometimes emphasizing ability to represent a specific sub-set of creditors (e.g., employees, landlords, vendors) over size alone.

### Preferred Candidate Qualities

Ideal candidates to sit on a committee usually have industry expertise, financial sophistication, and the ability to engage constructively in ongoing communications.

### Exclusions and Roles

- Governmental units and insiders are typically excluded;
- Credit professionals often sit on the committee for their company and coordinate with their legal advisors and senior management.

### Committee Dynamics

Understanding member composition helps manage differing priorities, negotiation strategies, and overall committee posture.

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## Why Companies Choose to Serve on Committees



### Access to Information

Committee membership provides significant insight into the debtor's business and its plans for reorganization, enhanced access to detailed financial data (sometimes non-public data), and often direct interaction with debtors and their advisors.

### Influence on Negotiations

Serving on a committee allows significant influence over plan terms, and the amount and timing of recoveries.

### Strategic Value Creation

Committee members often help shape strategies on asset sales and litigation to create additional value for creditors.

### Balancing Benefits and Costs

Companies must weigh benefits against time commitment and business relationship impacts before serving.

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## Legal Rights and Powers of the Committee



### Statutory Powers Overview

Committees have statutory rights to consult, investigate, and participate in debtor negotiations and motions.

### Professional Support Resources

Committees can retain legal counsel and financial advisors at the estate's expense for expert analysis.

### Litigation and Advocacy Role

Authorized committees may pursue litigation to protect estate interests, especially when the debtor is unwilling to do so, and challenge unfavorable actions or assumptions of the debtor.

### Impact on Case Outcomes

Committee involvement provides leverage, better information access, and shapes key case results for creditors.

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## One of the Most Important Decisions: Hiring Advisors



**The quality of your advisors will largely determine the outcome of the case.**

Even though the estate pays:

**You are accountable for the outcome**

Poor advisors = lost recovery opportunities

Initial proposals often come quickly after committee formation

Candidates may:

- Already be known to members

- Be recommended by the U.S. Trustee

- Committee interviews 1–5 firms (sometimes quickly)

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## Role of Committee Counsel



### Legal Advocacy and Strategy

Committee counsel acts as the legal advocate and strategic advisor for the unsecured creditors' committee throughout the case. When necessary, committee counsel will appear in the case through motions or objections, and at hearings.

### Analyzing and Advising

Counsel analyzes pleadings and advises committee members on their legal rights and options to support decision-making.

### Negotiation and Coordination

Counsel negotiates with the debtor and other stakeholders and coordinates with financial advisors to align legal and economic strategies.

### Facilitating Effective Communication

Strong counsel relationships enhance communication clarity and enable committees to focus on strategic objectives over procedure.

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## Selecting Legal Counsel



### 1. Relevant Experience

- Industry familiarity
- Similar case size/complexity
- Track record in unsecured creditor recoveries

### 2. Style & Approach

- Aggressive vs. collaborative
- Litigation posture vs. negotiation-focused

### 3. Resource Depth

- Partner attention vs. delegation
- Bench strength

### 4. Communication

- Can they translate legal complexity into business impact?

### 5. Conflicts

- Relationships with debtor, lenders, or other stakeholders

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## Role of the Financial Advisor to the Committee

### Economic and Analytical Support

Financial advisors review business reorganization or liquidation plans and analyze post-petition performance and liquidity to support the creditors' committee effectively.

### Valuation and Recovery Assessment

They assess recoveries under various scenarios and evaluate proposed transactions for creditor fairness.

### Strategic Negotiation Support

Advisors inform negotiation strategies and help formulate objections or counterproposals for better financial outcomes.

### Proactive Issue Identification

Engaged advisors identify issues early, enabling proactive committee actions that improve creditor outcomes.



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## Selecting Financial Advisors



### What They Actually Do (Credit Lens):

- Validate (or challenge) debtor projections
- Analyze liquidity and burn
- Pressure-test valuation assumptions
- Identify hidden value opportunities

### Key Selection Criteria:

#### 1. Analytical Rigor

Do they challenge assumptions or just react?

#### 2. Independence

No bias toward debtor or lenders

#### 3. Industry Knowledge

Understanding of margins, working capital, cycles

#### 4. Ability to Influence

Can they support negotiations with credible analysis?

#### 5. Responsiveness

Speed matters in bankruptcy

### Red Flags to look for:

- "Rubber stamp" behavior
- Overly academic / not practical
- Poor communication with non-lawyers
- Lack of urgency
- Excessive billing without clear value

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## Issues Committees Commonly Influence in Chapter 11

### Influence on Financing and Asset Sales

Committees influence debtor-in-possession financing terms and asset sales to protect creditor interests.

### Challenging Unfair Transactions

Committees challenge transactions favoring secured creditors or equity over unsecured creditors.

### Maximizing Estate Value

Committees push for improved disclosures, valuation assumptions, and alternative strategies to maximize estate value.

### Early Identification of Risks

Committees identify value erosion risks early and coordinate responses to protect recoveries.



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## Where Committees Actually Drive Value



### •DIP Financing Terms

- Fees, roll-ups, milestones
- → Impacts recovery for unsecured creditors

### •Asset Sales (363 Sales)

- Stalking horse protections
- Marketing process
- → Can materially increase proceeds

### •Valuation & Plan Negotiations

- Enterprise value disputes
- Recovery waterfalls
- → This is where recoveries are won or lost

### •Avoidance Actions / Litigation


- Preferences, fraudulent conveyance
- → Often a hidden recovery pool

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## What Serving on a Committee Is Really Like


- Weekly (or more frequent) calls
- Hundreds of pages of financial/legal materials
- Time-sensitive decisions (sometimes same-day)
- Internal reporting expectations:
  - CFO / Treasury updates
  - Reserve adjustments
  - Forecasting impacts
- Peak periods:**
  - DIP approval
  - Sale process
  - Plan negotiations



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## Time Commitment and Internal Resource Considerations




**Variable Time Commitment**

Committee service demands fluctuate, with intense periods during key milestones and lighter workloads in between.



**Coordination with Internal Teams**

Effective committee participation often requires close collaboration with legal, finance, and management departments within the member's own organization.



**Clear Communication and Expectations**

Establishing clear communication about roles, expectations, and decision-making authority helps manage commitments successfully.

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## Assessing Whether Committee Service Is Worth It



### Factors Influencing Committee Service

Key factors include claim size, expected recovery, debtor importance, and available resources when deciding on committee service.

### Visibility and Influence Benefits

Committee service often provides greater visibility and influence in the case despite not guaranteeing improved recoveries.

### Relationship Building, Industry Insight & Professional Development

For credit professionals, committee service can foster valuable relationships with sophisticated creditors, legal counsel, and turnaround professionals and deepen your expertise in bankruptcy law, financial restructuring, and negotiation strategy. You may gain insight into restructuring trends, best practices, and emerging risks across industries and strengthen your ability to navigate distressed situations.

### Strengthened Internal Credibility

Sitting on a committee helps demonstrate that a credit professional takes a proactive approach to risk management and stewardship of company assets, and reporting insights from the case can enhance your credibility with senior leadership, treasury, and finance teams.

### Cost and Risk Evaluation

Credit professionals should weigh the potential upsides against the cost and risks before committing time and attention. Sometimes declining service is wise, especially when exposure is low or internal resources are limited.

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## Going Beyond the Standard Committee Playbook

### Creative Value Addition

Effective committees go beyond routine roles by exploring alternative transactions and overlooked claims.

### Active Member Engagement

Engaged committee members and strong advisors are essential for questioning assumptions and driving success.

### Balanced Strategic Approach

Strategies must balance creativity with cost, realism, and fiduciary responsibility to enhance recoveries.

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## How Committee Composition Influences Behavior

**Impact of Creditor Makeup**

Committees dominated by trade creditors often prioritize business relationships and operational concerns in decision making.

**Financial Creditor Influence**

Financial creditor heavy committees emphasize valuation and legal leverage in shaping committee priorities.


**Diversity and Advisory Role**

Diverse committee perspectives strengthen outcomes when managed well; good advisors can help shape tone, direct focus and enhance efficiency of the committee.

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## Examples of Effective Committee Strategies



**Early Engagement**

Engaging early allows committees to understand key leverage points (such as debtor-in-possession financing or pre-packaged plans) and influence those points before positions harden, improving negotiation outcomes.

**Data-Driven Analysis**

Information access and credible financial analysis supports coordinated negotiation, helping secure better plan terms and value streams.

**Present Alternatives to the Debtor's Proposals**

Committees can create significant value by bringing other bidders to sales, presenting alternative reorganization or liquidation strategies, and challenging the debtor's narrative of how the case will play out.

**Keeping the Debtor Honest**

Effective committees challenge the debtor when it overreaches or aligns itself too closely with other constituencies like secured creditors.

**Playing the Squeaky Wheel**

Using the committee's influence as leverage can force the debtor or other stakeholders (like secured creditors or liquidators) to put more value on the table for unsecured creditors.

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## Examples of Ineffective Committee Strategies



### Passive Participation

Passive involvement by members reduces committee effectiveness and limits timely decision-making opportunities.

### Late Engagement

Delayed participation narrows options and weakens the committee's influence on outcomes.

### Internal Division Impact

Disagreements and unclear direction dilute committee influence and hinder cohesive action. If committee goals are unclear or are focused too heavily on one sub-set of unsecured creditors, the committee will not be effective overall.

### Turning Over Every Stone

Committees have limited resources and so heavily investigating or fighting on every issue can be counterproductive and leave the committee under resourced for the key battles.

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## Key Takeaways for Credit Professionals

### Role of Creditors' Committees

Committees significantly influence Chapter 11 outcomes for unsecured creditors.

### Strategic Committee Service

Serving on committees is a strategic decision requiring case-by-case evaluation of benefits and burdens.

### Preparation and Alignment

Realistic expectations and internal alignment enable credit professionals to protect company interests effectively.

### Enhanced Credit Risk Management

Understanding committee dynamics improves credit risk management even for those not serving on committees.

In Chapter 11, value doesn't disappear—it gets redistributed. The question is whether you are at the table helping decide where it goes.



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