

(德汇美国破产法问答系列之五) Dorsey U.S. Bankruptcy Law Q&A Series Five

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Dorsey & Whitney Bankruptcy Team for Foreign Suppliers

We hope that you found the four previous Q&A series regarding what to do when a U.S. customer files for Chapter 11 bankruptcy protection helpful. You can check them out here: [\[One\]](#), [\[Two\]](#), [\[Three\]](#), and [\[Four\]](#). This Series Five will address questions relating to the role of official unsecured creditors committees in bankruptcy and considerations of whether to join such a committee.

希望我们的美国破产法问答系列一、系列二、系列三和系列四“如何应对美国客户申请第11章破产保护”的文章对您有所裨益。本文为该系列第五篇文章，将针对官方无担保债权人委员会在破产案中的作用，以及在决定是否加入该委员会时的考量进行讲解。

1. Question: What is the official unsecured creditors committee and what role does it play in Chapter 11 bankruptcy cases?

问题一：什么是官方无担保债权人委员会？它在第11章破产案件中有何作用？

The official unsecured creditors committee (the “UCC”) is a statutorily authorized committee of unsecured creditors whose role is to advocate, as a fiduciary, on behalf of all unsecured creditors in a Chapter 11 case. The UCC is entitled to obtain valuable information in the case and advances the interests of all unsecured creditors to ensure such interests are represented in the bankruptcy process.

官方无担保债权人委员会（“债委会”）是法律明文授权的无担保债权人委员会，在第11章破产案中作为受托人代表所有无担保债权人发声。债委会有权获得案件重要信息并且推动所有无担保债权人的利益，确保该等利益在破产程序中得以体现。

The UCC is usually comprised of three to seven of a debtor’s largest unsecured creditors that are willing to serve. The UCC takes an active role in steering the Chapter 11 case and may, with court approval, investigate the debtor, its financial affairs, and its business operations. The UCC will usually participate in the formulation of a plan of reorganization and is afforded consultation rights in connection with any sale of the debtor’s assets.

Related People

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债委会通常由债务人的最大无担保债权人中愿意担任债委会职务的三到七位债权人组成。债委会在第 11 章破产案件中发挥积极的引导作用，且在法院批准情况下，可对债务人及其财务和商业运营情况开展调查。债委会通常会参与制订破产重组计划，并被赋予与债务人资产出售有关的咨询权。

The UCC is entitled to its own advisors, including counsel, and the related professional fees and other costs are borne by the bankruptcy estate and not the individual members of the UCC. While the costs of the UCC's advisors are paid by the bankruptcy estate, the UCC is not otherwise entitled to any compensation for its work in the case. Individual members may wish to retain their own counsel to assist them in their role on the UCC, and the cost for such individual counsel is borne by the individual committee member. 债委会有权聘请自己的顾问，包括法律顾问，相关专业费用和其他开支由破产资产而非债委会个人成员承担。虽然债委会的顾问费用由破产资产支付，但债委会无权另行就其在破产案件中的工作获得任何补偿。债委会个人成员可能会希望聘请自己的法律顾问协助其在债委会的工作，该笔费用则由债委会的个人成员承担。

2. Question: Should I join the UCC?

问题二：我是否应该加入债委会？

That depends. Being a member of the UCC means that you will have an active and important role in the bankruptcy case and serve the interests of unsecured creditors. The UCC typically negotiates recoveries under a plan of reorganization for unsecured creditors or, in less common instances, proposes its own plan of reorganization. 视情况而定。担任债委会成员意味着您在破产案件中将扮演积极重要的角色，为无担保债权人的利益服务。债委会通常为无担保债权人在破产重组计划下的追偿款进行谈判，或，在少数情况下会提出自己的破产重组计划。

Serving on the UCC requires some time commitment. The UCC and its advisors typically convene about once a week during periods of significant activity, and less often other times, until a plan is confirmed. As noted above, individual UCC members often retain their own counsel to assist and advise in connection with UCC obligations (e.g. participate in UCC meetings), in addition to representing the member's personal interests. Regardless of whether a member of the UCC acts on its own or through counsel, each member of the UCC owes a fiduciary duty to all unsecured creditors and must act for the benefit of all unsecured creditors. This means that members of the UCC cannot act solely in their own interests. Being a member of the UCC will also often involve receiving and reviewing confidential information about the debtor that must be kept confidential.

在债委会任职需要投入一定的时间。债委会及其顾问通常在破产重组计划确认前的重要时刻，大约每周召开一次会议，其他时间会议召开频率通常较低。如上所述，除了代表债委会成员的个人利益外，债委会个人成员还经常聘请自己的法律顾问就债委会的义务（例如，出席债委会会议）提供协助和法律建议。无论债委会成员亲自还是通过法律顾问行事，每位债委会成员均对所有无担保债权人负有受托责任，并且必须为所有无担保债权人的利益服务。这意味着债委会成员不能仅为了其自身利益服务。作为债委会的成员，还经

常会收到并审阅有关债务人的保密信息，必须严格保密。

3. Question: What role does the U.S. Trustee play with respect to the committee and in a Chapter 11 case generally?

问题三：美国受托人办公室通常在债委会和第 11 章破产案件中扮演何种角色？

The U.S. Trustee, which is part of the U.S. Department of Justice, oversees all bankruptcy cases filed throughout the U.S. At the outset of large and mid-size Chapter 11 cases, the U.S. Trustee will reach out to the debtors' largest unsecured creditors and ask whether they would be willing to serve on the UCC. If and once the U.S. Trustee has appointed the UCC, it plays no role on the UCC itself. Rather, the UCC determines what actions to take in the bankruptcy case, with the advice of counsel.

美国受托人办公室隶属美国司法部的下属机构，负责监督美国各地提交的所有破产案件。在大中型第 11 章破产案件伊始，美国受托人办公室将联络债务人的最大无担保债权人，并且询问其是否愿意在债委会任职。如果且一旦，美国受托人办公室任命成立债委会，美国受托人办公室本身不会对债委会起到任何作用。相反，债委会在法律顾问的建议下，对破产案中采取的行动作出决定。

The U.S. Trustee is often referred to as the “bankruptcy watchdog” and acts to ensure everyone plays by the rules – whether that be debtors, creditors, or other parties in interest. During the Chapter 11 case, the U.S. Trustee will actively monitor the case, with particular attention to the retention and payment of the debtor's professionals, compensation of debtor's management, and proposed plans of reorganization and whether they provide for releases for non-debtors.

美国受托人办公室经常被称为“破产案的守门人”，负责确保每个人依规则行事——无论是债务人、债权人还是其他利益方。第 11 章破产案期间，美国受托人办公室将积极监督案件进展，特别关注债务人专业顾问的聘用和付款、债务人管理层的薪资、拟议的破产重组计划及其是否为非债务人提供某种豁免。

4. Question: Can multiple creditors work together and retain the same counsel?

问题四：多个债权人是否可以共同聘用同一位法律顾问？

Yes, so long as there is sufficient disclosure to and informed consent by all creditors retaining the same counsel. Indeed, large Chapter 11 cases often feature a variety of ad hoc committees of similarly situated creditors and interest holders, in addition to the formally appointed UCC, which act in the interests of their respective groups. This can be an effective way for creditors to increase their leverage while keeping costs down. However, informal groups of creditors do not have the same powers and advantages as the UCC and, importantly, will not be entitled to have their costs and expenses paid by the bankruptcy estate.

可以，只要所有聘请同一位法律顾问的债权人获得充分披露，并且一致同意。事实上，除正式任命的债委会外，大型第 11 章破产案件通常还设有各种由类似情况的债权人和利益持有人组成的特别委员会，为其各自团体利益履职。对债权人而言，这样既可以有效增加谈判筹码，同时又可以降低成本。不过，债权人的非正式团体不具有与债委会同等的权力

和优势，更重要的是，其开支和费用无权由破产资产支付。

Please keep an eye out for Series Six which will address issues relating to the plan process, including the disclosure and solicitation process and what happens if a plan is or is not confirmed.

请您密切关注本系列的第六篇文章，该文章将解答有关破产计划程序，包括披露和招揽程序，以及破产计划是否通过所对应的不同后果。

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