

PROOF OF CLAIM

A proof of claim need not expressly enumerate on its face all aspects of and legal theories underlying a claim, so long as other circumstances apprise the debtor of additional elements of the claim. See *Plymouth Mills, Inc. v. FDIC*, 876 F. Supp. 439 (E.D.N.Y. 1995).

Where attachments to the proof of claim contain information not included on the face of the proof of claim itself, courts have found the proof of claim form sufficient. See *Plymouth Mills*, 876 F. Supp. At 441 (finding reservation of "damages to premises" in proof of claim sufficient to assert a claim for damages occurring after the bar date when after the bar date, creditor sent a letter discussing the damages to the premises).; *In re Avery*, 272 B.R. 718, 724 (Bankr. E.D. Cal. 2002) (holding that a proof of claim was adequate despite its omission of the amount and classification of the claim asserted where the promissory note and other documents attached to the proof of claim contained all of the relevant information); *Clark v. Wash. Mu. Home Loans (In re Clark)*, 299 B.R. 694, 698 (Bankr. S.D. Ga. 2003) (finding that despite failure to claim attorney's fees on face of proof of claim, it was sufficient that the attached exhibit to the proof of claim contained a footnote stating that attorney's fees could be added to the claim).

Amendments to claims is permitted. *In re Orion Refining Corp.*, 317 B.R. 660, 664 (Bankr. D. Del. 2004): "Amendments to timely proofs of claim are liberally allowed." See also *In re Edison Bros. Stores, Inc.*, No. 99-532, 2002 WL 999260 at *3 (Bankr. D. Del. May 15, 2002) ("absent contrary equitable considerations or prejudice to the opposing party, amendments to proofs of claim should be freely permitted"). Such amendments to a timely filed proof of claim are allowed to "cure defects in a claim already filed, to describe a claim with greater particularity, or to plead a new theory of recovery on the facts of the original claim."

The decision whether to allow amendment of a claim is within the sound discretion of the court and is guided by a two-part test: (1) whether an amendment relates back to the originally filed proof of claim; and (2) whether it is equitable to allow the amendment. *In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 94-95 (Bankr. S.D.N.Y. 2007).

The relation-back test is satisfied when the amendment is based on the same transaction or documents as the original claim. See *Edison Bros.*, 2002 WL 999260 at *4 (finding that an amendment adding claims for rejection damages was not a new claim because the rejection damages like the original claim, arose out of the same lease document); see also *Bond Opportunity Fund II, LLC v. Heffernan*, 340 F. Supp. 2d 146, 155 (D.R.I. 2004) (stating that under 15(c)(2), an amendment relates back when the claim asserted in the amendment relates to the same documents referenced in the original complaint); *Lind v. Vanguard Offset Printers, Inc.*, 857 F. Supp. 1561, 1566 (N.D. Ga. 1992) (amended complaint relates back to original complaint when based on the same misleading filings and statements); *Fry v. UAL Corp.*, No. 90 C 0999, 1992 WL 177086 at *16 (N.D. Ill. July 23, 1992) (amended complaint relates back when it relates to the same dividend distribution announcement as the original complaint)

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The second part of the test examines whether allowing an amendment would be equitable. *Enron Creditors Recovery*, 370 B.R. at 95. Courts consider the following 5 equitable factors in determining whether to allow an amendment:

- Undue prejudice to the opposing party
- Bad faith or dilatory behavior on the part of the claimant
- Whether other creditors would receive a windfall were the amendment not allowed
- Whether other creditors might be harmed or prejudiced
- The justification for not filing the amended claim at the time the original claim was filed

See *In re Calpine Corp.*, No. 05-60200 (BRL), 2007 WL 4326738, at *4 (S.D.N.Y. Nov. 21, 2007) (citing *Enron Creditors Recovery*, 370 B.R. at 101); see also *In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (considering prejudice in determining whether untimely claim could be allowed). In weighing the equities, "the critical consideration is whether the opposing party will be unduly prejudiced by the amendment." *In re Integrated Res., Inc.*, 157 B.R. 66, 70 (S.D.N.Y. 1993).

