

Bankruptcy Rule Changes Take Effect

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Amendments to the Federal Rules of Bankruptcy Procedure (the “Rules”) became effective on December 1, 2007, after having been approved by the U.S. Supreme Court in April and transmitted to Congress in June. These amendments, which apply to cases already pending on December 1, 2007 as well as cases filed thereafter, make some significant changes that will directly impact debtors, creditors and other stakeholders.

Omnibus Claim Objections. Among the most significant changes is an amendment to Rule 3007, which concerns the form and notice of hearing on an objection to a claim filed in a bankruptcy case. In large bankruptcy cases, because the debtor-in-possession (“DIP”) or bankruptcy trustee is obligated to address such a large volume of claims, objections to dozens or even hundreds of different claims are commonly combined in a single “omnibus” objection or a series of them. This practice places a not insignificant burden on individual creditors whose claims are buried in a mass of documentation (typically in an attached list or chart) to ensure that they timely respond to the objection, failing which their claims will be disallowed.

Amended Rule 3007 is intended to help individual creditors deal with this problem. The new rule imposes formatting standards and restricts the use of omnibus objections to certain limited circumstances generally involving technical rather than substantive challenges to the claim in question. Otherwise, each claim must be the subject of a separate objection, unless the combined objection covers claims filed by the same person or entity. Under the amended rule, omnibus objections may be filed with respect to:

- Duplicate claims.
- Claims filed in the wrong case.
- Claims that have been amended.
- Claims that were not timely filed.
- Claims that have already been satisfied or released.
- Claims filed in a form that does not comply with applicable rules.
- Claims that should have been asserted as equity interests.

- Priority claims that exceed the maximum amounts specified in the Bankruptcy Code.

An omnibus objection based upon one or more of these grounds must list all covered claimants in alphabetical order, cross-reference claim numbers, state the basis for the objection (with a cross-reference to the text of the objection), and describe the objector and the reason for the objection in the title of the document. No more than 100 claims may be combined in a single omnibus objection.

Amended Rule 3007 is similar to the Delaware Bankruptcy Court's Local Rule 3007-1, which establishes limitations on "non-substantive" and "substantive" claim objections, but is less restrictive than the new federal rule. Speculation by practitioners and commentators concerning how the conflict between the local and federal rules would be resolved was put to rest by Chief Bankruptcy Judge Mary F. Walrath on November 27, 2007. Relying on language in Amended Rule 3007(c) that permits a bankruptcy court to opt out of the new requirements, Judge Walrath directed in a general order that amended Rule 3007(c) "shall not be applicable to omnibus objections that are filed in accordance with Local Rule 3007-1." As a consequence, unless another bankruptcy judge in Delaware directs otherwise in a particular case, omnibus objections in Delaware bankruptcy cases will continue to be governed by Delaware's local procedural rule.

Clearer Disclosure in Connection with DIP Financing and Use of Cash Collateral. Changes have also been made to Rule 4001, which governs motions and stipulations for the use of cash collateral and to authorize DIP financing. The amended rule requires that more detail be disclosed concerning the terms and conditions of cash collateral and DIP financing agreements in any motion seeking court approval, that a proposed form of order be submitted with the motion, and that cross-references be made in the motion to the location of key provisions in the operative agreements.

Limitations on "First Day" Orders. A significant change made by the amendments is the addition of Rule 6003. The new rule provides that "[e]xcept and to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief" with respect to three key areas:

- Requests for authority to employ professionals.
- Requests for authority to pay the pre-bankruptcy claims of "critical vendors" or other creditors, or to use, sell (*i.e.*, section 363 sales), lease or incur obligations regarding property of the bankruptcy estate, other than motions to use cash collateral or incur DIP financing.
- Requests for authority to assume or assign any executory contract or unexpired lease (including commercial real estate leases).

New Rule 6003 provides that the bankruptcy court should defer decisions on these matters until 20 days after the chapter 11 filing date, unless relief is necessary to avoid immediate and irreparable harm. Deferring rulings on these important matters was deemed necessary to afford adequate time for the appointment of a creditors' committee and its retention of counsel.

Assumption or Rejection of Executory Contracts and Unexpired Leases. Rule 6006 was amended to impose restrictions on the use of omnibus motions dealing with executory contracts and unexpired leases. Under new Rule 6006(e), without special court authority, omnibus motions may be used for multiple executory contracts or leases only when: (i) all of the executory contracts to be assumed or assigned either involve the same parties or are being assigned to the same assignee; (ii) a DIP or trustee seeks to assume real property leases, but not to assign the leases to more than one assignee; or (iii) the motion requests authority to reject multiple executory contracts or leases.

Under new Rule 6006(f), each omnibus motion permitted under Rule 6006(e) can list no more than 100 executory contracts or leases, and multiple motions must be numbered consecutively. The new rule also requires that permitted omnibus motions provide the following information:

- An alphabetical listing by party name.
- The terms of the assumption or assignment, including amounts necessary for curing defaults.
- If applicable, the identity of the assignee and the adequate assurance of future performance to be provided in connection with the assignment.

Other Changes. Other rule amendments effective December 1, 2007 include:

- Amendment of Rule 1014 to state explicitly that the bankruptcy court may order a change of venue on its own initiative rather than solely upon the request of a party.
- Amendment of Rule 7007.1 to clarify that a corporate debtor must file a statement of corporate ownership together with its initial filing (regardless of the nature of that filing) in an adversary proceeding.
- Addition of Rule 9005.1 to adopt new Federal Rule of Civil Procedure 5.1, addressing the procedures for constitutional challenges to statutes.
- Addition of Rule 9037 to address procedures for protecting social security numbers and other private information in court filings.