

# **“Navigating the New Claims Rules”**

2008 ABI Annual Mid-Atlantic Bankruptcy Conference

## **Participants:**

Moderator: The Honorable Richard Fehling, U.S.B.C. – Eastern District of Pennsylvania (Reading, PA)  
Panelist: Ashley Stitzer, Bayard, P.A. (Wilmington, DE)  
Panelist: Jack Fishman, Epiq Bankruptcy Advisory Services (Crystal Lake, IL)  
Panelist: Kevin Mangan, Womble Carlyle Sandridge & Rice (Wilmington, DE)  
Panelist: Ryan Routh, Jones Day (Cleveland, OH)  
Facilitator: Neil Glassman, Bayard, P.A. (Wilmington, DE)

## **Topic Outline:**

### **1. The Amendment of Rule 3007 (Amendment became effective December 1, 2007)**

- a. With the exception of the addition of subdivision (b), the amendments to Rule 3007 all deal with limitations and requirements pertaining to omnibus claims.
- b. 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.
- c. Subsection (b): “Demands for relief” must be brought as adversary proceedings and may not be included in a claim objection. Rule 3007 prohibits a party objecting to a claim from including a request for affirmative relief in a claim objection. Parties can no longer convert a claim objection to an adversary proceeding by making a demand for relief under Rule 7001. However, parties may include an objection to a claim as a cause of action in a separate adversary proceeding.
- d. Subsection (e): Claim objection pleadings and exhibits must include more detailed information. An omnibus objection must list all covered claimants in alphabetical order, cross-reference claim numbers, state the basis for the objection, and describe the objector and the reason for the objection in the title of the document.
- e. Subsection (d): There are limits on the type of objections that can be filed as omnibus objections. Under the amended rule, omnibus objections are allowed only if:
  - i. all of the claims subject to the omnibus objection were filed by the same entity;  
or
  - ii. the objections are based solely on the grounds that the claims should be disallowed because they are:
    1. Duplicate claims
    2. Claims filed in the wrong case
    3. Claims that have been amended
    4. Claims that were not timely filed
    5. Claims that have already been satisfied or released
    6. Claims filed in a form that does not comply with applicable rules
    7. Claims that should have been asserted as equity interests
    8. Priority claims that exceed the maximum amounts specified in the Code (Section 507)

- f. Subsection (c): There is a mechanism to request entry of an order approving tailored omnibus claim objection procedures in section 3007(c), which provides that "unless otherwise ordered by the court, objections to more than one claim may not be joined in a single objection." In short, if a claim is being challenged on substantive grounds, rather than more technical or procedural ones provided for in subsection (d), then a single objection must be filed. No more than 100 claims may be combined in a single objection.

## **2. Rationale / Policy Behind Amendments to Rule 3007**

- a. Designed to make it easier for the creditor to figure out whether its claim is included and the basis for the objection.
- b. Intended to ensure the protection of the due process rights of the claimants.

## **3. The Enactment of Rule 6003**

- a. Rule 6003 limits the granting of interim and final relief by the court during the first 20 days after commencement of a case on certain issues. Specifically, absent a showing of immediate and irreparable harm, a court cannot grant relief during the first 20 days of a case on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate, motions to assume or assign executory contracts and unexpired leases, or for relief to pay prepetition claims (which in effect would involve the use of estate property).

## **4. Rationale / Policy Behind Enactment of Rule 6003**

- a. Rule 6003 is intended to ensure that full and impartial consideration be given to matters that are likely to have an impact on the case or participants' perceptions of the system's fairness. The Rule limits a court's ability, in the absence of emergent conditions, to render significant decisions at the outset of the case which could be outcome determinative without full and fair consideration and a meaningful opportunity for parties to be heard, especially before statutory committee(s) (such as a creditors committee) are appointed and have had a chance to retain professionals.
- b. The Rule allows creditors and parties in interest to react to the filing and determine whether they want to be heard.

## **5. The Practical Effects of New Bankruptcy Rules**

- a. There are many positive practical effects of Rule 3007 which include increased transparency for creditors in claim objections and the resolution of potential problems arising from appeals of omnibus orders approving claim objections.
- b. The largest practical effect of amended Rule 3007 is that it does not permit omnibus objections to disallow, reduce or reclassify claims on a "books and records" basis.
- c. Rule 3007(c) amounts to a giant loophole that debtors are using to sidestep the impact of the rule to continue to permit debtors to file omnibus objections. Bankruptcy courts in

multiple cases outside of the Mid-Atlantic region, including in the *Dana*, *Delphi* and *Delta* cases, among others, have approved unopposed requests to use omnibus objections to expanded categories of claims by citing to Bankruptcy Rule 3007 and section 105 of the Bankruptcy Code.

- d. While debtors previously might have simply worked within the existing Bankruptcy Rules or Local Rules, strong incentives now exist to have separate claim objection procedures approved, and to have those procedures override Rule 3007's stringent omnibus objection requirements.
- e. The practical impact of Rule 6003 may be relatively minimal, as many courts already refuse to grant retention applications on a first day basis (other than on interim grounds) and would only grant other motions on shortened notice if factual grounds supported such shortened notice. Thus, the rule may be seen as a codification of sound judicial practice.
- f. Courts have begun holding that interim orders approving retention applications remain appropriate under new Rule 6003. See *In re First NLC Financial Services, LLC*, 382 B.R. 547 (Bankr. S.D. Fla. 2008) (overruling U.S. Trustee's objection to interim order approving employment of counsel for first 20 days of case even where no showing of immediate and irreparable harm was made).
- g. Outside of retention applications, the primary impact will be to require debtors to present additional evidence at first-day hearings in order to ensure that they satisfy the "immediate and irreparable harm" standard instead of simply relying upon a motion to shorten notice. In a normal bankruptcy case, however, it is likely that after a showing by the debtor, most bankruptcy courts will continue to grant properly-presented first day motions.
- h. Rule 6003 may give courts an additional reason to subject "critical vendor" or other similar motions to scrutiny and, thus, could result in the bar being slightly raised.

## **6. Issues Relating to Section 503(b)(9)**

- a. Section 503(b)(9) allows as an administrative expense the value of any goods received by the debtor within 20 days before the commencement of the case in which the goods were sold to the debtor in the ordinary course of the debtor's business.
- b. This section raises a number of issues, but for purposes of this forum, one key issue is whether the 3001 series of Bankruptcy Rules should apply to section 503(b)(9) claims.
- c. This issue bears on a number of subsequent questions, including whether a creditor should include its section 503(b)(9) claim in a proof of claim form or request it by motion like other administrative claims, or whether a creditor may seek immediate payment of claims or wait for plan confirmation.
- d. Section 101(10)(A) likely provides the answer. The answer also can be found by examining the practical impact of asserting section 503(b)(9) claims.

- e. Courts have seemed inclined to treat section 503(b)(9) claims more like prepetition claims than other administrative claims. *See In re Bookbinders' Restaurant, Inc.*, 2006 WL 3858020, Case No. 06-12303(ELF) (Bankr. E.D. Pa. Dec. 28, 2006).

**7. Local Bankruptcy Rule 3007 (Jurisdictional Comparison)**

- a. District of New Jersey
- b. Eastern District of Pennsylvania
- c. Middle District of Pennsylvania
- d. Northern District of New York
- e. Western District of New York
- f. District of Maryland
- g. District of Columbia
- h. Northern District of West Virginia
- i. Southern District of West Virginia
- j. Eastern District of Virginia
- k. District of Delaware