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Amended Bankruptcy Rule 3007: Omnificent Omnibus Objections or Objectionable Annoyances?

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On Dec. 1, 2007, a number of rules will take effect that significantly amend the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure¹ and Federal Rules of Criminal Procedure.² With respect to the Federal Rules of Bankruptcy Procedure, among the most significant amendments regard omnibus objections to claims (Amended Rule 3007) and omnibus motions to assume or assign executory contracts and unexpired leases (Amended Rule 6006). Since these two rules establish procedures that are similar in concept, this column will focus its discussion on the new omnibus objections to claim procedure under Amended Rule 3007.

Bankruptcy Rule 3001



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Under Bankruptcy Rule 3001(f), the filing of a proof of claim that complies with the bankruptcy rules constitutes *prima facie* evidence of its validity, both in terms of amount and basis.³ If a party-in-

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interest objects to the claim, the objecting party has the burden to introduce evidence regarding the excessiveness of the amount or the invalidity of the claim itself to rebut the *prima facie* presumption of the proof of claim.⁴ If the objecting party fulfills this burden and overcomes the *prima facie* effect of the proof of claim, the ultimate

Notwithstanding the foregoing, the U.S. Supreme Court held in *Raleigh v. Illinois Dep't of Revenue* that "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it."⁶ Accordingly, a claimant does not have the burden of proof if the claimant did not have it under applicable non-bankruptcy law. This is consistent with the case law holding that a proof of claim is akin to a federal complaint and an objection to the claim is analogous to the answer.⁷



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Under the current set of bankruptcy rules regarding proofs of claim, there is neither authority nor prohibition

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burden normally remains with the claimant to establish the validity of the claim. This burden shifting process was succinctly summarized by one court as follows:

A properly executed proof of claim constitutes *prima facie* evidence of its validity, and parties objecting to a claim bear the burden of going forward to meet, overcome or, at minimum, equalize the valid claim... Once an objection is made and the burden of overcoming the claim is met, the ultimate burden of persuasion always rests on the claimant...⁵

regarding objections to multiple proofs of claim in a single pleading.⁸ Accordingly, in large chapter 11 cases or other cases in which a large number of proofs of claim are filed, many debtors file omnibus objections to multiple claims based on conclusory statements. One objection commonly used in omnibus objections is that the claim is not supported by the debtor's "books and records." Notwithstanding whether this is sufficient under evidentiary standards to overcome the *prima facie* validity of a proof of claim under the current rules, this type of

¹ Bankruptcy Rules 1014 (Dismissal and Change of Venue), 3007 (Objections to Claim), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 6006 (Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease), and 7007.1 (Corporate Ownership Statement) have been amended. Bankruptcy Rules 6003 (Interim and Final Relief Immediately Following Commencement of the Case—Applications for Employment; Motions for Use, Sale or Lease of Property; and Motions for Assumption and Assignment of Executory Contracts), 9005.1 (Constitutional Challenge to a Statute—Notice, Certification and Intervention) and 9037 (Privacy Protection for Filings Made with the Court) have been added.

² For a comprehensive list of the new rules, visit www.uscourts.gov/rules/newrules6.html.

³ Fed. R. Bankr. P. 3001(f); see, also, *In re Fidelity Holding Co. Ltd.*, 837 F.2d 696 (5th Cir. 1988).

⁴ *In re Reilly*, 245 B.R. 768, 773 (B.A.P. 2d Cir. 2000).

⁵ *In re Be-Mac Transport Co. Inc.*, 83 F.3d 1020, 1025 (8th Cir. 1996) (quotations and citations omitted).

⁶ 530 U.S. 15, 21 (2000).

⁷ *O'Neill v. Continental Airlines (In re Continental Airlines)*, 928 F.2d 127, 129 (5th Cir. 1991) ("[T]he filing of a proof of claim is analogous to the filing of a complaint in a civil action, with the bankrupt's objection the same as the answer.")

⁸ Certain districts have promulgated local rules to address omnibus objections to claims. See, e.g., Del. L. R. Bankr. P. 3007-1(d) (contrasting "substantive" vs. "non-substantive" claim objections and setting forth requirements for each).

objection, as will be discussed below, is clearly not appropriate or authorized under Amended Rule 3007(d), but may be authorized if the bankruptcy court “orders otherwise” under Amended Rule 3007(c).

Reasons for Amended Rule 3007

The most often stated criticism of omnibus claims objections, and one of the reasons for Amended Rule 3007, is the concern for appropriate notice and due process concerns for the creditor. A creditor is sometimes required to suffer through multiple omnibus objections to claims, each with multiple exhibits, and each exhibit may include hundreds, if not thousands, of claims. Amended Rule 3007 provides significant protections that prevent a debtor, or other objecting party, from hiding its objection, and guards against a claimant unknowingly missing its claim in an omnibus objection and failing to respond due to the lack of notice.

Amended Rule 3007

It has been common practice in many large or complex chapter 11 cases, or any case in which multiple proofs of claim are filed, for the debtor, trustee or other objecting party to file omnibus objections to claims and attempt to disallow and expunge hundreds, if not thousands, of claims by a single objection. The current rules do not address this practice, and it currently is left to the individual court to determine the acceptability of the procedures. This will change Dec. 1, 2007.⁹ Amended Rule 3007(d) provides for the filing of omnibus objections to claims, but places certain limitations on their use.¹⁰

Under Amended Rule 3007(c), omnibus objections to claims are generally not allowed, unless of course (1) they are permitted under Amended Rule 3007(d) or (2) the court orders otherwise. Under subsection (d) of Amended Rule 3007, an omnibus objection is authorized if all the claims included within the objection were filed by the same entity or the objection is “based solely on the grounds that the claims should be disallowed, in whole or in part, for the one or more of the following reasons:

1. they duplicate other claims;
2. they have been filed in the wrong case;
3. they have been replaced by subsequently filed proofs of claim;
4. they have been transferred in accordance with Rule 3001(e);
5. they were not timely filed;
6. they have been satisfied or released during the case in accordance with the Code, applicable rules or a court order;
7. they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;
8. they are interests, rather than claims; and
9. they assert priority in an amount that exceeds the maximum amount under §507 of the Code.

Notably, a “books and records” objection is not included in the list.

The commonality of the bases provided in subsection (d), the committee notes, often can be resolved without material factual or legal disputes. Thus, it makes sense to allow a debtor to file an omnibus objection to claims when the objection is based, for example, on the fact that the claim duplicates another filed claim or if the claims were filed by the same creditor. The bankruptcy court and the debtor-in-possession (DIP) may be able to resolve these types of omnibus objections quickly and less expensively than if the debtor had to file a separate claim objection to each and every filed proof of claim.

But if a debtor is filing an omnibus objection under subsection (d), the omnibus objection must also satisfy the requirements under subsection (e). Under Amended Rule 3007(e), all omnibus objections must:

1. state in a conspicuous place that claimants receiving the objection should locate their names and claims as listed in the objection;
2. list claimants alphabetically, provide a cross-reference to claim numbers and, if appropriate, list claimants by category of claims;
3. state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;
4. state in the title of the omnibus objection the identity of the objector

- and the grounds for the objections;
5. be numbered consecutively with other omnibus objections filed by the same objector; and
6. contain objections to no more than 100 claims.

The clear purpose of subsection (e) is to ensure that claimants are able to locate their claim and readily determine whether the objecting parties are objecting to their claims and the bases for the objections. This purpose and procedure is intended to ensure that the due process rights of claimants are protected. Indeed, many claimants who have been subjected to an omnibus objection in which thousands of claims are included with dozens of different bases for such objection have expressed their frustration and criticism for being forced to play a game of “Where’s Waldo” with the objecting party.

Although the six requirements for every omnibus objection in subsection (e) of Amended Rule 3007 are mandatory if the omnibus objection is being filed under Amended Rule 3007(d), they may not be required if the bankruptcy court allows omnibus objections under Amended Rule 3007(c) by “ordering otherwise.”¹¹ Amended Rule 3007(c) specifically provides that “[u]nless otherwise ordered by the court, or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.”¹² Given the bankruptcy court’s apparent unfettered discretion to develop such procedures, and depending on the type of case and the composition of the parties, a debtor may consider establishing claim-objection procedures and requesting the court to approve the proposed procedures. For example, after the case has been filed (but surely not as a first-day motion), the debtor could file a Motion to Determine Procedures for Omnibus Objections to Claims. The debtor can obtain significant benefits from establishing these procedures in light of Amended Rule 3007 and reduce costs of reconciling and resolving a multitude of claims. Moreover, the debtor may be able to obtain procedures under Amended Rule 3007(c) that allow it to object to numerous claims in one omnibus objection based on its “books and records.”

Indeed, given the prefatory language in Amended Rule 3007(c), a debtor could propose not only certain procedures for objecting to and resolving proofs of claim, but also procedures for deviating

⁹ Unlike BAPCPA, the Amended Bankruptcy Rules do not provide that they only apply to cases filed after the effective date. Thus, it can be induced that the Amended Bankruptcy Rules apply to *all* cases—regardless of when they were filed—beginning on Dec. 1, 2007.

¹⁰ The Committee Note to Amended Rule 3007 notes “[s]uch filings present significant opportunity for efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.”

¹¹ But there is no reason that the bankruptcy court would not require the debtor to satisfy the requirements under subsection (e).

from the Amended Rule 3007, while maintaining the due process protections and spirit of the amendments.

By way of example, if the claims pool of a debtor included a significant number of trade vendors, the debtor may be able to request that it be allowed to include such claims in an omnibus objection under Amended Rule 3007(c), provided that each creditor is given specific notice of the objection. A reasonable approach may be to allow omnibus objections to other types of claims and on various bases within one omnibus objection provided:

1. each claimant is given a cover sheet to the omnibus objection that identifies only that claimant's claim;
2. the cover sheet gives a unique specified and detailed explanation of the basis for the objection;
3. the cover sheet explains the debtor's proposed treatment of the claim; and
4. the objection otherwise complies with the other Bankruptcy Rules.

From the standpoint of the creditor, the creditor can easily determine if the debtor is objecting to its claim, and therefore is not burdened with locating its claim or deciphering the basis of the objection amongst hundreds of other claims. If the creditor receives the omnibus objection, its claim is under objection in that omnibus objection. Moreover, although the pleading objects to multiple proofs of claim, it is completely individualized for each claimant and there is no issue of attempting to discern whether the claim is included within the omnibus objection, the basis of the objection and the debtor's proposed treatment of the claim. Indeed, this procedure for giving notice to a creditor clearly satisfies the Amended Rule 3007(e) requirements, and therefore the bankruptcy court may allow an omnibus objection on other bases than those listed in subsection (d), even if the bases within the omnibus objection differ. A sample of this type of cover sheet that would accompany the omnibus objection and sent to the individual creditor is in the chart.

Further, by proposing specific procedures for objecting to claims, the debtor may also receive the benefit of having the bankruptcy court prospectively approve the manner in which claims are the subject of an omnibus objection and the mechanism for satisfying notice and service issues. Indeed, a due-process

concern that continues to divide certain courts is the proper method for serving an objection to claim. Some bankruptcy courts require the objection to claim to be served under Bankruptcy Rule 7004 and not on the person signing the proof of claim. Bankruptcy Rule 7004 provides, in relevant part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Other courts, however, interpret Bankruptcy Rule 7004 to allow service of the objection on the person who signed the proof of claim because under Rule 7004, service is proper if served on an "authorized agent" of the corporation, and the person who signed the proof of claim is considered an authorized agent of the creditor.¹³ In any event, the best practice in proposing procedures for omnibus objections is to include a provision in the procedures motion and order providing that the debtor need only serve the claim objection on the party who signed the proof of claim and any counsel of record who filed an appearance on behalf of the creditor in the case. If this is not sufficient, the bankruptcy court can order otherwise, and the debtor can save time and money down the road by following procedures that the court has already approved.

Conclusion

Bankruptcy courts and Amended Rule 3007 should ensure that creditors whose claims are objected to in a bankruptcy case receive proper notice of the objection—rather than having to sift through thousands of claims in many

different claims objections. The amendments, however, allow bankruptcy courts great flexibility—and depending on the facts and circumstances of the case, the bankruptcy court is allowed to authorize omnibus objection procedures that differ from those provided in Amended Rule 3007(d). As such, it would be good practice for debtor's counsel to file a Motion to Determine Procedures for Omnibus Objections to Claims shortly after the case is filed in order to efficiently and effectively resolve objections to claims. ■

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¹² Emphasis added.

¹³ *In re State Line Hotel Inc.*, 323 B.R. 703, 711-13 (B.A.P. 9th Cir. 2005). In addition, it could easily be argued that mailing the objection to the person who signed the proof of claim is proper because Bankruptcy Rule 3007 requires the objection to be "mailed or otherwise delivered" to the claimant. If the objection is mailed to the person who signed the proof of claim, then the objection has been "delivered" to the claimant.