February 15, 2011

10-BK-024

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Dear Committee:

These comments are submitted on behalf of Resurgent Capital Services LP ("Resurgent") in connection with the proposed changes to Bankruptcy Rule 3001. Resurgent appreciates this opportunity to contribute to the rulemaking process by providing these comments.

Resurgent provides Account Receivable Management Services for creditors as well as purchasers of accounts receivables. These services include filing bankruptcy claims on behalf of our clients.

Avoid the Potential for Abuse and Confusion

The proposed inclusion of subsection (c) (3)(B) to Rule 3001 creates a number of ambiguities that left unresolved will:

(1) create a large volume of objections across all jurisdictions,
(2) allow for an untenable patchwork of disparate interpretations of the rule,
(3) unequal treatment of otherwise similarly situated claims, and
(4) the potential disallowance of valid claims.

It is our recommendation that section 3001(c)(3)(B) be removed or , at the very least, that "writing on which the debt was based" for purposes of compliance be defined expansively to provide clarity and uniformity with some recognition of the realities associated with credit card origination and use. We appreciate the committee's recognition of previous comments regarding the differences represented by credit card origination and records retention leading to the inclusion of section (c) (3) (B) as a limitation; however, the limitation does nothing more than reduce the likely instances of unequal treatment. The fact remains that these differences in the various debt instruments create a disparity in the treatment and value of closed end unsecured installment loans and unsecured revolving or open end instruments because of the differences in document retention. It is our belief that the current proposal fails to recognize the likelihood that a debt instrument for a loan of finite term will be available at the time of filing far more often than the instrument without limitation on term. While we agree that filing requirements for the different instruments should exist, we think the differences are better addressed by eliminating the writing requirement for a revolving debt instrument absent a bona fide dispute rather than using the same requirement for a writing but limiting its necessity to a specific request.

The inclusion of section 3001(c)(3)(B) does not serve to elucidate whether the credit was used, whether the balance is accurate or whether the right party has filed a timely claim. It risks only expanding the opportunities to challenge the validity of a claim or prayer for sanction without any requirement on the challenging party to show necessity or good faith in the request. The proposal allows the consumer to make a 3001(c)(3)(B) request without any precondition regarding good faith and takes no notice as to whether a

consumer disputes the debt in their schedules and takes no notice of the undisputed nature of credit reporting history or of charge statements provided to the consumer over the course of their card usage.

The continued inclusion of 3001(c)(3)(B) could be made more reasonable if used in conjunction with 3001(c)(3)(A) instead of as a potentially independent requirement to provide a completed proof of claim. A valuable compromise would be an acknowledgement that compliance with 3001(c)(3)(A) would entitle the claim filer to prima facie status of the filing and add a burden shifting mechanism as a precondition to a 3001(c)(3)(B) request.

Clarification Regarding Claim Based on a "Writing"

A requirement to provide a writing on which the open end credit agreement is based makes no attempt to define what constitutes sufficient documentation for its purpose. Were it to be determined by a single or multiple jurisdictions that such a writing refers to an application signed by the consumer or a wet signature document, otherwise valid claims could be challenged or disallowed for no other reason than:

(1) a bankruptcy is filed after the creditor's record retention period has expired and the document has been destroyed or, more importantly,

(2) a writing never existed because the method of application was telephonic or by online means.

Such a circumstance could open otherwise undisputed claims to challenge or disallowance based entirely on the inability to provide for a signed document thereby depriving creditors of claim allowance because of their origination mechanism or because a credit application is no longer available due to the passage of time.

An informal survey of Resurgent clients and credit card issuers indicates that signed credit card applications account for 30% or less of the issued accounts. Resurgent filed over 207,000 claims in 2010 on behalf of its clients and had less than one tenth of one percent (0.09%) of these claims disallowed. Such an interpretation could cause challenges to increase significantly and potential disallowance of claims to rise from less than 0.09% to 70% or more.

Since most credit card agreements are consummated through use, the terms and conditions mailings could be interpreted as the governing writing. If it is determined by some jurisdictions that Terms and Conditions from the issuer are the proper documentation, challenges become more untenable as parties fight about the effective date of various Terms and Conditions documents and their relevance to the subject credit account. Each jurisdiction will be left to interpret the temporal aspects of what constitutes a sufficient set of Terms and Conditions from Terms at issue to terms at the time of last use of the card or terms that were effective at charge off.

Some jurisdictions may determine that the touchstone for the necessary documentation lies with the specifics of an individual request pursuant to 3001(c)(3)(B). Absent removal of 3001(c)(3)(B) or adding a good faith or burden shifting requirement in the event of 3001(c)(3)(A) compliance, creditors would struggle to comply with the potentially infinite variations of 3001(c)(3)(B) requests.

In no case have these interpretations provided the courts or the consumer with anything that validates or invalidates the accuracy or propriety of a claim at the filing date of the bankruptcy. In no case has the rule provided for more efficient administration, any reduction in unnecessary adversarial filings or

increased uniformity of compliance for creditors. In fact, the inclusion of section 3001(c)(3)(B) as proposed serves to expand and elongate adversarial actions, multiply objections and made creditor compliance nearly impossible on a nationwide basis.

Removal of 3001(c)(3)(A)(iii)

The inclusion of last transaction date, in addition to being ambiguous, does not provide the debtor with information that will assist with the validity or timeliness of the claim. Whether a claim is timely is largely a function of the last payment date or the date of agreement breach. Accordingly, we suggest removal of the last transaction date from 3001(c)(3)(A).

Thank you for your consideration,
Michael Bahner