

Rule 3001 Testimony

A) Introduction

My name is Carol Moore, and I am the Senior Vice President and Assistant General Counsel of Resurgent Capital Services. Resurgent was established in 1998 and is the master servicer for a group of affiliated debt buyers and some original issuers of credit. Headquartered in Greenville, South Carolina, Resurgent has just over 500 employees in 4 offices to handle the services the company provides for its clients.

In 2009, Resurgent filed 251,144 proofs of claim on behalf of its clients, the majority of which related to credit card accounts. Slightly less than 1% of claims filed by Resurgent received any sort of objection; and, of those objections, even fewer -- only point **YYY%** -- were actually upheld.

Our understanding is that the general intent of the proposed amendments is to enhance the ability of debtors to understand the claims filed and ensure that they in fact belong to that debtor and, more specifically, to address a perceived problem of inadequate documentation of claims, especially those filed by bulk purchasers. Resurgent believes that all parties to a bankruptcy case benefit from accuracy and completeness in filed claims and supports efforts to increase the effectiveness and efficiency of the bankruptcy process. However, Resurgent's experience in filing large numbers of claims with very low numbers of successful objections suggests that the process currently in place is providing that needed accuracy and completeness—that the current system (with the debtor objecting when they have cause to) already provides the appropriate checks and balances.

Resurgent believes that in reviewing proposed changes to the Bankruptcy process, the needs of debtors, the Court and creditors must all be considered. It is critical that changes take account of the way in which business is conducted, to permit creditors a practically achievable method to pursue claims to which they are legally entitled. Resurgent's concern is that, as currently drafted, the proposed Amendments would impose a substantial burden on creditors, both original issuers and subsequent purchasers, without a concomitant substantial benefit to debtors, the Court and creditors.

The proposed Amendment would result in adding thousands of documents to court dockets to support 100% of claims filed, when only a small fraction of claims are questioned and an even smaller number seem to need such support. In addition, because of privacy restrictions, the statements attached would in most cases require extensive often manual redaction, which is time consuming and burdensome.

B) Attachment of a Copy of the Last Pre-Petition Statement to the Proof of Claim

With respect to the requirement that the proof of claim include a copy of the last statement sent to the debtor before the petition was filed, we would make the following observations. First, the last pre-petition statement will often not include a great deal of substantive information about the account. For example, if the account was charged off before the petition was filed, the last statement may well contain only the balance and interest accrued since the previous statement. It may not include any transactions with the card such as purchases or cash advances. Further, because many creditors stop sending statements after an account is charged off, the last pre-petition statement may antedate the filing by a considerable time. The last statement would not include payments made or interest accrued since the last statement was sent, which, again, may have been a year or more previously; in such a case, the last statement would be of little value in assessing the current status of the debt. In fact, use of the last pre-petition statement will sometimes be misleading. Because the last statement may not reflect the most recent payment, it may give the incorrect impression that the applicable statute of limitations has expired.

C) Itemization of Principal, Interest, Fees, Expenses and Charges

We are also concerned about the application in the context of credit card accounts of the proposed requirement to itemize principal, interest, fees, expenses or charges that comprise a claim. The vast majority of credit card agreements, the terms of which the debtors accepted when they accepted the credit card, provide that interest earned in a given month, if not paid, becomes part of the principal balance of the card. If the borrower doesn't pay the bill in full every month, a credit card account balance at any given time has become a summation of hundreds -- possibly thousands -- of purchases, payments, finance charges and fees; separating those would impose a tremendous burden on creditors and frankly might not even be possible; the burden would be particularly difficult for account purchasers, as the "balance" purchased is generally a single number to which the new owner may add interest and, in some cases, other charges. For the reasons described above, that burden would not result in increased information for debtors and the Court.

D) Sanctions

Under the proposed Amendments, if a claim-holder, whether original issuer or subsequent purchaser, fails to comply with the proposed new requirements, the holder is precluded from presenting the omitted evidence in any dispute except in specified circumstances; monetary sanctions can also be imposed. Given that over 99% of claims are recognized as valid by the debtor, this provision essentially imposes strict liability and sanctions on creditors to comply with a burdensome requirement that provides limited benefits to the debtor, the Court and creditors.

E) Recommendations

Resurgent and many other creditors have developed and utilize sophisticated processes to allow it to manage large numbers of bankruptcy accounts accurately and efficiently. As an alternative to attaching the last pre-petition statement, Resurgent proposes that the Courts adopt an “Account Summary” approach. Under this approach, each claim would be accompanied by an Account Summary similar to the attached. The summary would include information necessary to identify and describe the account, such as the debtor name, truncated social security number and account number, account balance, and charge-off date. Because the summary would be electronically generated from creditor records, preparation of the summary would impose a relatively small burden, while still providing the debtor and the Court with ample information to understand and evaluate the claim. Use of the summary would eliminate the need for a separate itemization; the detail regarding principal and interest would be set forth in the summary. Additionally, the summary won’t include the borrower’s purchase history—or in the cases of medical accounts his treatment history—preserving the borrower’s need and right to privacy regarding his personal affairs.

We also recommend deletion of the itemization requirement; as discussed above, it is not practicable for credit card creditors to comply.

That concludes my comments. Thank you for this opportunity to share with the Committee some concerns and proposed alternatives regarding the proposed Amendments to Bankruptcy Rule 3001.