

To: Advisory Committee on the Bankruptcy Rules
From: Alane A. Becket, Becket & Lee LLP
Date: January 22, 2010

Re: Summary of Testimony Regarding Proposed Amendments to Bankruptcy Rule 3001.

1. Background and experience of witness with claim objection litigation.
2. The proposed amendments were initially drafted in response to problems with mortgage claims.
 - The problem to be addressed was originally described in the August 27, 2008 Memorandum from the Subcommittee on Consumer Issues to the Advisory Committee on Bankruptcy Rules as follows: “whether there was a need for a national rule that would provide procedures for the disclosure and adjudication of disputes regarding postpetition mortgage fees and charges in Chapter 13 cases.”
 - Despite the lack of any stated problem with unsecured claims, the original proposed amendments were made applicable to all claimants.
 - The Reporter’s Memorandum to the Advisory Committee dated February 17, 2009, issued after consideration of Judge Small’s suggestion “regarding filing of claims by consumer debt buyers” and the resulting amendment to Rule 3001(c)(1), contains no showing that any attempt was undertaken to assess validity of the statements made by the debtor in *In re Andrews*, 394 B.R. 384 (Bankr. E.D.N.C. 2008) or the conclusion reached by Judge Small in that case that a problem exists.
3. The record does not show that any member of the unsecured creditor community was consulted or asked for comments regarding: (i) any perceived problems with unsecured claims, (ii) the burden the proposed amendments might inflict on unsecured creditors or (iii) workable, non-burdensome alternatives to the proposals. As described in the February 19, 2009 memorandum from the Subcommittee on Consumer Issues to the Advisory Committee on Bankruptcy Rules, the proposed rules were “circulated informally to two groups with which the Subcommittee had conferred during the drafting process: the group of bankruptcy judges chaired by Judge Ray Lyons ... that was assembled to draft a model local rule to deal with mortgage charges in chapter 13 cases, and the National Association of Chapter Thirteen Trustees ... group of chapter 13 trustees, mortgage servicers, and attorneys that drafted the best practices document.” The Memorandum stated that, “Everyone who commented is supportive of the creation of national rules to govern mortgages in chapter 13 cases”

4. The Reporter's Memorandum dated February 17, 2009 notes that Judge Small and many other courts acknowledge that failure to comply with a bankruptcy rule is not one of the grounds specified under 11 U.S.C. §502(b) for disallowing a claim. The amendments, specifically the sanction prohibiting use of omitted documents in a later proceeding, will result in a disallowance of claims for failure to comply with a bankruptcy rule.
5. The proposed amendments do not adequately address the perceived problems and will lead to more litigation.
 - The requirements are vague.
 - Attaching account statements to claims may lead to disclosure of personal, medical or embarrassing information.
 - Even if an unsecured creditor were to comply with the proposed amendments, debtors would still have the ability to object to claims on the familiar basis of "lack of documentation."
6. Recommendations
 - Further study should be conducted to determine whether Rule 3001(c), as applied to unsecured creditors, should be amended or repealed as unnecessary. The Committee should invite constituents from the unsecured creditor community to participate.
 - Bankruptcy courts should be directed not to enact local versions of the proposed amendments before any comparable federal bankruptcy rules are approved and enacted.
 - If the proposed amendments are enacted, they should also include a provision that compliance with the amendments satisfies the "writing" requirement of Rule 3001(c).
 - The bankruptcy rules should be amended to include a provision that a debtor's listing of a debt on Schedule F is *prima facie* evidence of the existence of the obligation. To the extent that the debt is not disputed, such listing should also be *prima facie* evidence of the validity of the obligation.
 - Other recommendations.