

From: Mayer, Thomas Moers
Sent: Tuesday, February 16, 2021 2:07 PM
To: Gibson, S. Elizabeth
Subject: Re: Suggestion for Rules Committee: Rule 3007(c)

Professor Gibson –

Rule 3007(e)(6) states that an omnibus objection cannot obtain objections to more than 100 claims. The Advisory Committee Note states that limitations in subdivision (e) reflect due process concerns (although the Note does not specifically mention subparagraph (6)).

Rule 3007(c) states that objections to more than one claim cannot be joined in an omnibus objection unless otherwise ordered by the court or permitted Rule 3007(d) provides. Rule 3007(d) is subject to 3007(e).

However, Delaware Local Rule 3007-1 provides that an omnibus objection may object to 150 claims, citing Rule 3007(c) as authority.

I read Rule 3007(c) as subject to Rule 3007(e) – that is, the Court may permit the joinder of objections to multiple claims in one omnibus, but not in excess of 100. If I am right, the Local Rule's 150 claim limitation is in direct conflict with FRBP 3007(e)(6). If I am wrong, FRBP 3007(e)(6) has no purpose.

This comes up in the Hertz case, where the Debtors have moved for authority to join objections to 250 claims, citing Local Rule 3007-1 as authority, apparently relying on Local Rule 3007-1's citation to FRBP 3007(c) as controlling authority that the Court can approve the joinder of objections to a limitless number of claims irrespective of Rule 3007(e)(6).

The risk is that a Delaware debtor joins 150 objections in one omnibus, the time to respond passes, and then a defaulting creditor shows up to allow its claim notwithstanding the default on the ground that the omnibus violated Rule 3007(e)(6) and was therefore not effective.

The debtor in Hertz has argued that even the Local Rule's 150-claim objection limit, at the rate of two-omnibus objections per month, will cause Hertz to take years (!) to object to all claims.

If so, it looks like Delaware Local Rule 3007-1 may be wiser than FRBP 3007. In any event, I think the two rules should be harmonized before a violation of FRBP 3007 has unfortunate consequences.

If the Advisory Committee believes that the 100-claim limitation is not subject to increase by court order, then I suggest that Rule 3007(c) be amended to read "Unless otherwise ordered by the court ***and subject to the limitations of subdivision (e)*** . . ."

If the Advisory Committee believes that the Delaware Local Rule is wiser than 3007, then I suggest that Rule 3007(e)(6) should be amended to read "***Unless otherwise ordered by the Court pursuant to paragraph (c)***, contain objection to no more than 100 claims."

I hope you and all members of the Committee are enjoying a healthy and happy 2021.

Tom

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