UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA

ROBERT E. GRANT, JUDGE

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February 15, 2006

05-BK- 011

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice & Procedure
Administrative Offices of the U.S. Courts
Thurgood Marshall Federal Judiciary Bldg.
One Columbus Circle, N.E.
Washington, DC 20554

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Dear Mr. McCabe:

I would like to take this opportunity to comment upon proposed changes to Bankruptcy Rule 3007 concerning objections to claims. Paragraphs (c) and (d) effectively authorize the use of omnibus objections to claims in all cases. As the committee must be well aware, while the use of omnibus objections may have certain efficiencies they also create problems, can be confusing and may be easily misunderstood by the creditors who receive them. This reality is undoubtedly what lies behind the limitations which proposed paragraphs (d) and (e) place upon their use, including (e)(6) which would prevent an omnibus objection from addressing more than 100 claims. While omnibus objections certainly have their place, rather than apparently authorizing them in all instances, as a paragraph (c) appears to do, it would be a more appropriate to give the Bankruptcy Courts some flexibility and make the use of omnibus objections a matter committed to the court's discretion. The proposed amendments to Rule 6006(e) specifically do this where the assumption or assignment of executory contracts is concerned. That rule requires separate motions for each such contract, unless they are between the same parties or to be assigned to the same assignee or the court authorizes the use of a single motion. That same philosophy should also be applied to the use of claims objections in Rule 3002. Accordingly, I would suggest that paragraph (c) of the proposed amended rule be reworded as follows:

> Unless otherwise ordered by the court, objections to more than one claim shall not be joined in a single objection.

Paragraph (d) could then be revised to include the following introductory language:

If authorized by the court, subject to subdivision (e) . . . .

Changes along these lines would preserve all of the virtues that omnibus objections might offer but it would also allow the court to avoid their use unless the facts of a particular case suggest that their benefits outweigh the troubles and confusion they may tend to create.

In addition to expressing my preference for making the use of omnibus objections discretionary, it is also appropriate to make some comments with regard to three of the situations in which proposed paragraph (d) would authorize their use; in particular (d)(3), (d)(4) and (d)(6).

Paragraph (d)(3) would authorize the use of an omnibus objection where the claims in question "have been replaced by subsequently filed proofs of claim." There would seem to be no need to file an objection to a claim which has been superseded or replaced by an amended claim. In traditional civil litigation when a pleading has been superseded by an amended pleading, the original pleading, be it a complaint or an answer, is of no further force or effect. See e.g., 188 L.L.C. vs. Trinity Industries Inc., 300 F.3d 730, 736 (7th Cir. 2002) ("an amended pleading ordinarily supersedes the prior pleading, the prior pleading is in effect withdrawn . . . and becomes functus officio"). There is no reason why this same principal should not be applied to amended claims which are clearly designated as such on the official form. Such an approach would promote judicial economy by eliminating the need for trustees or other parties in interest to object to claims which are, in effect, no longer before the court. The rules should not be written in a way that promotes the filing of unnecessary objections and that is what the proposed rule does when it authorizes the filing of an objection to a particular claim simply because it has been replaced by a subsequently filed claim.

Proposed paragraph (d)(4) would authorize an objection to a claim because it has been "transferred in accordance with rule 3001(e)." Although there are proposed amendments to Rule 3001, I do not see anything in the preliminary draft which proposes to change the present text of Rule 3001(e). That rule, as you know, deals with proofs of claim where the claim has been transferred to someone other than the original creditor. If the transfer occurs before a claim has been filed, the claim is to be filed by the transferee. If the transfer occurs after a claim has been filed, the transferee simply files a notice of the transfer with the Bankruptcy Court, the transferor is then given notice of that fact, advising it that it has 20 days within which to object to the alleged transfer, and absent objection the transferee is substituted for the transferor on the court's records. There seems to be something unfair in creating a rule which specifically addresses the issue of how we will deal with transferred claims and then creating another rule which suggests that the mere fact a claim has been transferred constitutes cause to deny it. Furthermore, Congress has specified the reasons that a claim is not to be allowed in § 502(b)(1)-(9) and the fact that it has been transferred from one entity to another is not among them. I realize that claims trading can create difficulties and confusion and is a matter some debate. Nonetheless, Congress, and not the rules committee, would seem to be the

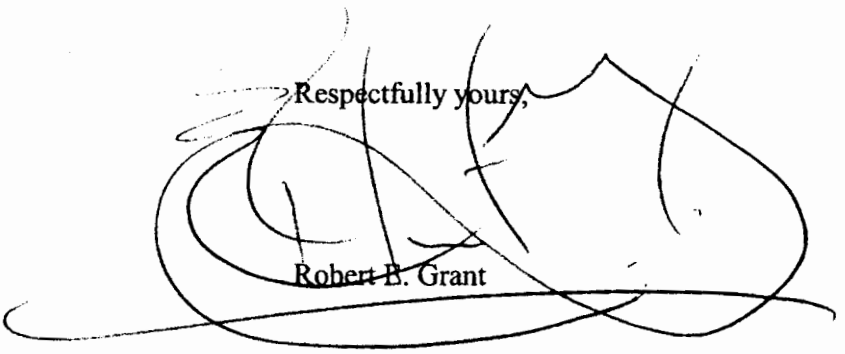
proper place to address that issue and to decide whether or not such claims should be denied. Perhaps I have misconstrued the apparent purpose of proposed Rule 3007(d)(4) and the committee had something else in mind. If so, I apologize for my criticism but would, nonetheless, suggest that, whatever it is the committee might be striving for here, it express its wishes more clearly.

Proposed Rule 3007(d)(6) would authorize an omnibus objection if a claim has been "satisfied or released during the case . . ." This proposal conflicts with the requirements of the Bankruptcy Code. Section 502 is quite specific as to what the court is to do once a claim has been objected to. The court is to determine the amount due "as of the date of the petition, and . . . allow [the] claim in such amount . . ." 11 U.S.C. § 502(b). Consequently, when it comes to determining the amount due a creditor, except to the extent authorized by § 506(b), the court is directed to focus on the amount due as of the date of the petition – subsequent events such as payment or other satisfaction of the claim do not change the amount due as of that date. I will readily acknowledge that if a claim has been satisfied or released after it has been filed, that is certainly a very good reason not to make any further distribution on account of that claim. But it is not a reason to say, in effect, that nothing was due as of the date of the petition. Whatever administrative or record keeping needs the trustee or debtors-in-possession might have to fulfill to substantiate the lack of a distribution on account of a such claim can undoubtedly be satisfied in a way other than completely denying a claim that is otherwise entirely valid.

My final comment concerns not the proposed amendments themselves, but rather the committee note which accompanies them. The second to the last paragraph of the note to Rule 3007 indicates that the use of an omnibus objection does not prevent the objector from raising other objections to those claims at a later date. The authority for this observation is § 502(j) of the Bankruptcy Code. That portion of the Code states that a claim which has been allowed or disallowed may be "reconsidered for cause." Most of the decisions which have addressed a sufficient cause to reconsider an order on a claim have equated it with the showing that is generally expected of a litigant under Rule 60 of the Federal Rules of Civil Procedure. This is a more rigorous standard than what the committee seems to have in mind. The committee's commentary seems to contemplate the possibility that objections could be filed serially, so that if one challenge is not successful the objector can, in a steady drip, drip, drip, continue to file other objections until it finds one that meets with success or the creditor gives up in frustration. In traditional civil litigation, the splitting of a cause of action is something which is frowned upon. That same principle should be equally laudatory when it comes to objections to proofs of claims. If an objector knows of more than one reason that a particular claim should be challenged, I cannot see any good reason which would excuse it from raising all of those objections at the same time, so that the court can deal with them all at once. If, at a later time, the objector would become aware of additional reasons that a claim should be challenged, it could then make use of § 502(j), and rely upon the newly discovered information as cause to reconsider the court's prior order. If the rules committee would like to make an exception to that principle it should do so directly, by specifically proposing a rule on the subject, rather than through comments contained in a note addressing a rule on some other issue.

I appreciate the opportunity to offer my observations concerning the committee's proposal to change the bankruptcy rules. If you have any questions concerning my comments or would need

additional information concerning them, please feel free to contact me.



Respectfully yours,

Robert B. Grant