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To Rules_Comments@ao.uscourts.gov

cc

Subject Comment to Proposed Modification to F R B P 8002

07-BR-025

To: The Advisory Committee on Bankruptcy Rules

I understand that the Committee seeks comments on whether (i) the proposed extension of the time to file a notice of appeal from 10 days to 14 days and (ii) a further proposed extension to 30 days would "cause any material disruption in bankruptcy practice." As a 15-year bankruptcy practitioner who usually represents large debtors attempting to reorganize, I can state that, in my view, both extensions will cause material disruption in bankruptcy practice. Certainly, the 30-day extension is far more disruptive than the 14-day extension; however, both are unnecessary and harmful to those companies that wish to reorganize. Conversely, the current 10-day period prejudices no-one.

As you are no doubt aware, one of the major changes to the Bankruptcy Code under BAPCPA is to limit the time in which a debtor has the exclusive right to propose a plan of reorganization to 18 months from the petition date. That exclusivity period is not only a protection for debtors; in practice, it is the period of time in which debtor and creditors are "forced" to come together to attempt to work things out consensually. That is, frankly, the goal of chapter 11. Recent years have seen the rise in highly aggressive hedge funds and other creditors who appear to care little about the saving of a company (taxpayer) and its attendant jobs, but rather care more about short-term trading returns. A debtor's exclusivity period prevents the waste that can be caused by competing plans and parochial fighting. However, now that Congress has limited such period, it is incumbent upon debtors, particularly large ones, to move extraordinarily swiftly through all the issues that must be decided by a bankruptcy court before a plan of reorganization can be proposed, negotiated, filed and confirmed. Many of the issues that form the foundation of a plan are themselves subject to independent orders that are appealable. Any delay in the appellate process jeopardizes an already ridiculously compressed time schedule.

Indeed, Congress' obvious intent in shortening a debtor's exclusivity period was "to move a case along quickly" rather than having a case languish in chapter 11 for many years. Adding delay to the resolution of issues that are important to, and underlie, a reorganization clearly subverts this purpose.

Practically speaking, filing a notice of appeal is a legal "no brainer." It is a one or two-paragraph notice that merely informs the other side of the fact that an appeal has been taken from a specific order. The current 10 days is more than enough time to decide to appeal (a decision usually made within hours of a verdict's being rendered) and prepare such a minor pleading. In fact, in my view, F.R.A.P. 4(a)(1) should be shortened from 30 days to 10 days to promote efficiency and economy.

Please note that the views expressed above are my own and should not be attributed to my Firm. Thank you for considering them.

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