09-BK-029

February 3, 2010

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
Washington, D.C. 20544

RE: Comments on proposed changes to Bankruptcy Rule 3001

Dear Mr. McCabe and Members of the Committee:

I am a partner with the Law Offices of Mueller and Haller L.L.C. The firm consists of 12 attorneys who concentrate solely on representing individual debtors in chapter 7 and chapter 13 bankruptcies in the Southern District of Illinois and the Eastern District of Missouri.

Please accept my comments to the proposed amendments to Bankruptcy Rule 3001.

I believe that the proposed amendments to BR 3001 should be strengthened to require that the entity filing the proof of claim provide proof that it is the owner of the claim. This practice is already becoming prevalent in claims filed concerning secured mortgage holders. However, it is not common in other proofs of claim including other secured creditors or unsecured claims.

I am concerned that the entity filing a proof of claim is neither the actual creditor nor its agent at the time the claim is filed. In my opinion, this is a result of the securitization of notes and receivables.

In general, when securitizing notes and receivables, the original creditor sells the amount owed to a securitized trust while maintaining rights to service the debt. The original creditor (now servicer) is generally paid a small percentage of the money received pursuant to a forward flow agreement. The actual holder of the debt is usually an Asset Backed Securities (ABS) trust. Debtors who file bankruptcy are not aware that the debt is really owed to an ABS trust and think it is still owed to the original creditor because the bills

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come in the servicer's (original creditor's) name. Therefore, the debtors list the debt in the original creditor's name. In my experience, soon after a debtor files a petition in bankruptcy, a proof of claim is filed in the original creditor's name either by the creditor itself or by a servicer on behalf of the original creditor.

The problem arises when the party filing the proof of claim cannot or will not provide evidence that it is the holder of the debt (instead of the securitized trust) at the time the claim is filed. The result is that claims may be filed without a legal basis. Furthermore, it is extremely difficult for debtor's counsel to determine whether a claim was securitized prior to filing an objection on the claim. As far as I can determine, the publicly filed securitization documents at the Securities and Exchange Commission do not individually list all the accounts in a trust and therefore debtor's attorneys cannot search for our client's account.

As a direct result of the opacity of this information, litigation to determine the true holder of the debt is lengthy, complex and expensive. A further consequence is that the issue is rarely raised. However that does not mean that the issue should not be addressed because it significantly impacts upon the integrity of the bankruptcy system.

The response from creditors is generally that the debtors listed the debt as owed to the original creditor and unless the debtor has committed perjury, then the claim can be filed in that original creditor's name. As stated above, this is due to the complex nature of securitization and the ambiguity of identifying whether a debt is held by the original creditor or an ABS trust. The law already requires a creditor or services to identify the name, address and telephone number of the current holder of the debt under the Truth in Lending Act found at 15 U.S.C. § 1641(f)(2). It is appropriate to make those same requirements applicable when filing a proof of claim.

Another response from creditors (and trustees) is that if the debtor lists the debt on the schedules, then why does the debtor care (and does the debtor have standing) to object to any party filing a claim for that particular debt. The answer to this query is that it is illegal to file a claim for a debt if there is no legal basis to make that claim, regardless how the debtor listed it. Only creditors who are actually owed a debt (or their representatives on their behalf) should be allowed to file a proof of claim. Allowing claims to be filed by creditors or servicers who cannot verify their ownership of the debt penalizes other creditors, including credit unions and individuals, who do not regularly securitize their debt and can prove their ownership. It harms them by diluting the unsecured debt pool. It also detracts from the integrity of a system which is very strict upon debtors to accurately disclose very accurate information, but allows a much lower standard upon creditors filing claims. It is inequitable to require a debtor to file information with the court that is complete, accurate

and truthful (pursuant to 11 U.S.C. § 527(a)(2)(A)) but require a less stringent standard for parties who wish to file a proof of claim.

Based on my concerns above I suggest the addition of the following language to section 3001(2):

"If the claim (or any part thereof) has been transferred from the original creditor to another entity prior to the date the debtor filed a petition in bankruptcy, the proof of claim shall provide proof that the entity filing the proof of claim is the owner of the claim at the time it is filed. Proof by affidavit is insufficient."

The reason for removing an affidavit as proof is due to the abuse of affidavits as evidence. Some type of actual transfer documents should be provided to demonstrate that the claim is actually owned by the entity at the time the claim is filed.

Thank you for your consideration of my comments. Also, thank you for your hard work and time drafting the amendments to the bankruptcy rules. Please let me know I can be of any assistance or if you have any questions. I remain,

Very Truly Yours,

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