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SENDER'S EXT. 2213

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To: The Advisory Committee on Bankruptcy Rules  
From: Alane A. Becket, Becket & Lee LLP  
Date: February 16, 2011  
Re: Comments to proposed changes to Bankruptcy Rule 3001

In making these comments, I am representing myself and my law firm, only. Also, rather than restate my experience in the area of objections to unsecured claims and the points I have made in the past regarding the Committee's proposals, I refer the Committee to my testimony of February 5, 2010, which begins on page 94 of the transcript of that hearing and my written follow up comments to the Committee of February 16, 2010. These comments will address two provisions of the proposals to amend Rule 3001.

First, in regard to the requirement for an itemized statement of interest, fees and charges set forth in proposed Rule 3001(c)(2)(A),<sup>1</sup> the Committee has heard from creditor representatives that because credit card balances revolve and interest compounds, it is not possible to break a balance into its individual components.

*Requirement in subparagraph (A) for itemized statement of interest, fees, expenses, or charges.* Most of the comments concerning this provision related to unsecured claims, particularly those based on credit card debt. Despite the current and longstanding requirement of the proof of claim form that an "itemized statement of interest or charges" be attached if the "claim includes interest or other charges in addition to the principal amount of claim," commentators opposing this proposed rule provision asserted that it is often impossible to break out the components of credit card debt because, depending upon the terms of the applicable credit agreement, unpaid interest and fees may be folded into the principal balance. They further contended that in most bankruptcy cases the debtor has no need for this information. While they acknowledged that mortgage

<sup>1</sup> (2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

lenders may have a history of including inflated or unnecessary fees and charges in their claims, they argued that this problem does not generally exist with respect to unsecured credit card claims.

Report to Standing Committee, May 27, 2010, Page 8.

The fact that many creditors have not itemized their balances in the past may not be indicative of a lack of intent to comply, but rather, the inability to do so. Thus, for many unsecured claims, compliance with the revised rule will likewise be impossible, leading to a tremendous amount of litigation over the lack of an itemization and disparate opinions throughout the country. Further, subjecting creditors to sanctions when they are simply unable to comply with the varying levels of "itemization" that are likely to be required across the country is unfair, especially when most of the objections to claims lodged against unsecured creditors are non-substantive. Indeed, they are often solely based on a putative lack of documentation, and potentially, lack of an itemization, and not with an actual dispute over the amount of the debt. The Committee's insistence on an itemized statement for an unsecured claim, and the potential for sanctions for a failure to so provide, will likely only serve to invite more technical objections to claims and deter creditors from participating in the bankruptcy process by filing claims.

In determining to omit the proposal that the creditor be required to attach the "last statement" to the proof of claim, the Committee stated:

*The proposal for the attachment of the last account statement for credit card claims arose from a concern that the requirement for the attachment of the writing on which a claim is based is frequently not complied with by holders of credit card debt. ... The Committee concluded, however, that the rule should not require the attachment of information that is frequently unavailable or impracticable to obtain. Likewise, it concluded that if there is a less burdensome way for a creditor to provide the information needed to assess the validity of its claim, the rule should not insist on the provision of that information in a more costly or difficult manner.*

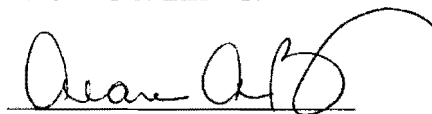
Report to Standing Committee, May 27, 2010, Page 18 (emphasis added).

Similar to the proposal for the last statement, the Committee should reconsider its proposal that unsecured creditors holding open-end or revolving obligations itemize balances, especially when there is no other articulated, substantive dispute over the debtor's liability for the obligation. Of course, if the debtor raises a good faith, bona fide dispute with the calculation of the claim amount, the debtor may so state and the burden will then be the creditor's to prove its amount. Only in this way will the needs of the debtor and the creditor be fairly met.

Second, the provision in new proposed Rule 3001(c)(3)(B),<sup>2</sup> which allows a “party in interest” to request the “writing” upon which the claim is based is likewise unbalanced when considered in conjunction with the addition of the itemization requirement in proposed Rule 3001(c)(2) and the data elements required in proposed Rule 3001(c)(3)(A). As I detailed in my written and oral comments from February 2010, the vast majority of objections to unsecured claims are technical, based on a “lack of documentation” and wherein the debtors do not actually dispute the obligation. By allowing any party to request the “writing” (still an undefined term throughout the country), unsecured creditors will continue to be subject to arbitrary and harassing requests for documents with no articulated or demonstrated need therefore, and sanctions for failure to respond to the requestor’s satisfaction. The Committee’s proposal should be withdrawn. However, if approved for submission to the Standing Committee, the proposal should also include requirements (i) that any party requesting a “writing” articulate a substantive need for the documents or dispute with the underlying debt and (ii) that such request only be made in good faith, subject to sanctions similar to those the Committee is recommending for creditors who do not comply with the proposed Rule.

Thank you for your consideration of these comments.

Very truly yours,  
BECKET & LEE LLP

BY:   
Alane A. Becket

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<sup>2</sup> (c) SUPPORTING INFORMATION.

(1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, ~~W~~when a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

\* \* \* \* \*

(3) Claim Based on an Open-End or Revolving Consumer Credit Agreement.

...

(B) On written request, the holder of a claim based on an open-end or revolving consumer credit agreement shall provide a party in interest the documentation specified in paragraph (1) of this subdivision.