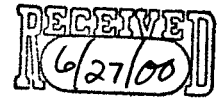


UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MARYLAND



PAUL MANNES
JUDGE

June 23, 2000

U. S. Courthouse
6500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-8040

00-BK-F

Mr. Peter G. McCabe
Secretary, Advisory Committee
on Bankruptcy Rules
Administrative Office of
the United States Courts
Washington DC 20544

Dear Mr. McCabe:

This is to suggest Committee consideration of an amendment to Bankruptcy Rule 3002(c) so as to provide a further exception for cases arising under Chapter 13 and Chapter 7 corporate cases where the debtor is not an individual. This exception would track the language of 11 U.S.C. § 523(a)(3)(A).

The reason for this revision in the Rule is that debtors from time to time fail to schedule the holder of an unsecured claim. That potential claimant will not receive notice of the filing of the bankruptcy case in time to file a timely claim under Bankruptcy Rule 3002(c), that is, 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code. When the creditor obtains notice of the filing of the case, many Chapter 13 Trustees will feel obligated to object to the claim as untimely, as it most certainly is.

The Chapter 13 discharge that is entered after completion by the debtor of all payments under the Plan does not except a debt of a kind specified under § 523(a)(3)(A). The result is that it is conceivable that a judge would sustain an objection to an untimely proof of claim filed by a creditor without notice of the pendency of the action. This result offends constitutionally guaranteed due process that a creditor be given notice of the pendency of an action and be afforded an opportunity to present its claims. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); In re Robintech, Inc., 863 F.2d 393, 396 (CA5 1999); United States v. Cardinal Mine Supply, Inc., 916 F.2d 1087 (CA6 1990); In re Barnett, 42 B.R. 254 (BC S.D.N.Y. 1983); In re Kohl, 146 B.R. 837 (D. Colo. 1992); In re McQueen, 228 B.R. 408 (BC M.D. Tenn. 1998), reversed IRS v. Hildebrand, 245 B.R. 287 (2000).

In Chapter 7 corporate cases, I suggest that the rule be revised so as to enable the unscheduled and unknowing creditor to have until the trustee commences distribution, the same as § 726(a)(1) of the Code deals with priority creditors.

In an effort to avoid the obvious injustice of strict application of the Rule, courts have ignored it or engaged in verbal gymnastics to allow the claim while paying homage to the Rule, or sustaining the objection to the claim but not allowing discharge of the underlying debt.

I respectfully suggest that the Committee review this situation.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul Mannes".

PAUL MANNES

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

WILL L. GARWOOD
APPELLATE RULES

ADRIAN G. DUPLANTIER
BANKRUPTCY RULES

PAUL V. NIEMEYER
CIVIL RULES

W. EUGENE DAVIS
CRIMINAL RULES

MILTON I. SHADUR
EVIDENCE RULES

June 29, 2000


Honorable Paul Mannes
U.S. Bankruptcy Court
U.S. Courthouse
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Dear Judge Mannes:

Thank you for your suggestion to amend Bankruptcy Rule 3002(c). A copy of your letter was sent to the chair and reporter of the Advisory Committee on Bankruptcy Rules for their consideration.

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,


for Peter G. McCabe
Secretary

cc: Honorable Adrian G. Duplantier
Honorable A. Thomas Small
Professor Jeffrey W. Morris