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04-BK-6

Hon. Thomas S Zilly, Chair
Advisory Committee on Bankruptcy Rules
United States Courthouse
700 Stewart Street, Suite 15229
Seattle, WA 98101-1271

Re: Federal Rule of Bankruptcy Procedure 1019(3)

Dear Judge Zilly:

One of our local trustees has invited my attention to a problem that exists with respect to Rule 1019(3). In its present form, Rule 1019(3) reads: "Claims Filed Before Conversion. All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case." In situations where a chapter 11 case is converted to chapter 7 prior to confirmation, the rule in its present form makes sense and promotes efficiency by avoiding unnecessary duplication. However, where a chapter 11 case is converted after confirmation of a plan of reorganization, application of the rule is problematical. The same is true to a lesser extent in chapter 12 and 13 cases.

As a rule, when a plan of reorganization is confirmed, claims filed in the chapter 11 proceeding are extinguished and replaced by a claim created by the confirmed plan, *i.e.*, the obligation owed the creditor is now defined by the confirmed plan. Thus, at least technically, confirmation of the plan of reorganization creates an entirely new and different claim. In many cases, the creditor's claim is modified and in some payments are made postconfirmation. If, as the broad language of 1019(3) suggests, the claim filed prior to conversion applies in cases where a plan has been confirmed, the chapter 7 trustee must review the plan to determine the treatment accorded to each claim under the plan and even comb the record to determine if any other action affecting the claim occurred during the pendency of the prior chapter proceeding. In addition, since under §502(a) of the Code, a filed claim is deemed allowed unless objected to, the trustee must file an objection to each claim actually filed in the prior chapter proceeding. This places a significant burden on the chapter 7 trustee in administering the case.

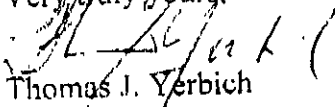
It is suggested that the burden of filing a new or superceding claim is more properly placed on the claimant. The claimant knows, or should know, the nature and amount of the claim as it existed at the time of conversion. The additional burden imposed on claimants to prepare and file new claims in cases converted postconfirmation is minimal, particularly compared to the burden imposed on trustees under the current provision.

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This problem may be alleviated by adding the new language shown in brackets [] at the end of Rule 1019(3) as it presently reads and is submitted for consideration by the Committee

Claims Filed Before Conversion. All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case[, except in a case in which a plan has been confirmed under §§ 1129, 1225 or 1325 of the Code].

Very truly yours,


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