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December 1, 2017 Rules Changes

Part I

Claims: New Bar Dates and Other Requirements

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The Rules of Bankruptcy Procedure are being amended this year in ways that will significantly affect chapter 13 trustees and practitioners. In this series, scheduled to run before the December 1 effective date, Beverly Burden and Larry Ahern will explain these changes. In this first part of the series, the authors describe the new rules related to claims bar dates and related issues.

Summary

A new deadline for filing non-governmental claims in chapter 13 cases will become earlier in cases filed on and after December 1, 2017.[1] In addition, secured creditors will be required to file claims, and a new two-stage bar date will apply to secured claims.

New Basic Bar Date

Chapter 13 creditors[2] other than governmental units will have only 70 days from the date of the order for relief in which to file claims (not 90 days from the date of the first scheduled 341 meeting).[3] The filing of the petition constitutes an order for relief, as does a conversion. The rule clarifies that the claims deadline runs from the date of the petition if the case was filed under chapter 13 or the date of conversion if the case is later converted to one under chapter 13.

New Requirement for Secured Creditors to File Claims

Secured creditors will be required to file a proof of claim in order for the claim to be allowed.[4] This explicit requirement makes clear that the bar date applies to secured claims. Thus, secured creditors (other than governmental units) will have 70 days from the date of the order for relief in which to file a proof of claim. If a secured creditor does not timely file a claim, it will not have an allowed claim in the case, but its lien is not void due only to its failure to file a claim.[5]

Two New Bar Dates for Secured Creditors

If the creditor's claim is secured by a security interest in the debtor's principal residence, the creditor will have a two-stage deadline. The creditor must file the proof of claim, along with the mortgage attachment and escrow statement, within 70 days after the date of the order for relief, and must file a copy of the note and mortgage as a supplement to the claim within 120 days after the order for relief.[6] The claim is timely filed only if both deadlines are met.

No New Bar Date for Governmental Units

The claims deadline for governmental units is unchanged. Most claims filed by governmental units must be filed within 180 days after the date of the order for relief.[7]

Extensions for Certain Creditors Without Notice

Certain creditors without notice may request an extension of time for filing a claim, but the circumstances in which such an extension may be granted are quite limited. The motion need not be filed before the bar date, but the court may extend the deadline only if (1) it finds notice to have been insufficient to give the creditor a reasonable time to file a claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a), or (2) the notice was insufficient and was mailed to the creditor at a foreign address.[8] If the court grants the creditor's motion, the deadline may be extended "by not more than 60 days from the date of the order granting the motion."

The rule does not address the more common situation in which a particular creditor with a domestic address was not scheduled or otherwise was not given sufficient notice. The implication is that those creditors' late claims will, if objected to, continue to be disallowed as untimely.[9]

Other Exceptions Unchanged

Other existing exceptions for infants or incompetents, claims arising from certain postpetition judgments, and claims arising from the rejection of an executory contract survive the amendment of the rules.[10]

Consequences of Untimely Filed Claims

Under the amended rules, there can no longer be doubt that the bar date applies to require filing of secured claims, but what are the consequences? In most jurisdictions, an untimely filed unsecured claim, if objected to, is disallowed under 11 U.S.C. § 502(b)(9). Before this year, some courts have held that secured creditors are not subject to the bar date, because they were not required by the Rules to file a proof of claim, while other courts have applied the bar date and disallowed late-filed secured claims.[11] If a late claim is disallowed and cannot be paid through the chapter 13 plan, the debtor's fresh start may be thwarted by the survival of the lien, especially if the claim is oversecured. However, the creditor may be out of luck, especially if its claim is underwater.

Debtor's counsel may consider trying to find middle ground in the terms of the plan.[12] To avoid uncertainty and risks, if a debtor wants a secured claim paid through the plan, debtors' attorneys should also consider filing claims on behalf of secured creditors. If a creditor does not timely file a proof of claim, the debtor may file a claim on behalf of the creditor within 30 days after the expiration of the creditor's deadline.[13]

"Blacklined" Rule 3002, Showing 2017 ~~Deletions~~ and Additions

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. ~~An~~ A secured creditor, unsecured creditor, or ~~an~~ equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 ~~liquidation~~ case, chapter 12 ~~family farmer's debt adjustment~~ case, or chapter 13 ~~individual's debt adjustment~~ case, a proof of claim is timely filed if it is filed not later than ~~90~~70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. ~~The first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:~~ But in all these cases, the following exceptions apply:

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(6) ~~If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, o~~ On motion filed by ~~the~~ a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that ~~the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.~~:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

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[1] The amendments take effect on December 1, 2017, and the Supreme Court's adopting order states that they "shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending." Retroactive application of these new bar dates, however, seems unlikely to be either just or practicable.

[2] The new bar dates apply also in voluntary chapter 7 cases and chapter 12 cases, but are not discussed here. A "blacklined" version of amended Rule 3002 is appended to this article for clarity.

[3] Fed. R. Bankr. P. 3002(c) (amended, eff. Dec. 1, 2017).

[4] Fed. R. Bankr. P. 3002(a) (amended, eff. Dec. 1, 2017).

[5] Fed. R. Bankr. P. 3002(a) (amended, eff. Dec. 1, 2017); *see also* 11 U.S.C. § 506(d)(2).

[6] Fed. R. Bankr. P. 3002(c)(7) (new, eff. Dec. 1, 2017). This requirement that secured creditors file claims applies in all cases, except as provided in Rules 1019(3), 3003, 3004, and 3005. The mortgage attachment and escrow statement are required in all cases in which the debtor is an individual by existing Rule 3001(c)(2)(C). The note or other writing on which a secured claim is based also continues to be required in individual cases, as does evidence of perfection, by existing Rule 3001(c)(1) & (d).

[7] Fed. R. Bankr. P. 3002(c)(1).

[8] Fed. R. Bankr. P. 3002(c)(6) (amended, eff. Dec. 1, 2017). The "foreign address" exception already exists in Rule 3002(c)(6).

[9] The claim is disallowed under 11 U.S.C. § 502(b)(9), but may be excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(3) and 1328(a)(2).

[10] Fed. R. Bankr. P. 3002(c)(2) through (c)(4).

[11] *See, e.g.*, *In re Pajian*, 785 F.3d 1161 (7th Cir. 2015) (holding mortgage lender's claim was barred from inclusion in confirmed Chapter 13 plan, where lender filed its claim after 90-day deadline in former Rule 3002(c), because deadline applied to secured and unsecured creditors wishing to receive distributions in bankruptcy proceedings, but noting that secured creditor's lien was largely unaffected by Chapter 13 discharge, regardless of whether creditor filed proof of claim).

[12] In *In re Hrubec*, 544 B.R. 397 (N.D. Ill. 2016), the court distinguished *Pajian*, holding that, when a Chapter 13 debtor voluntarily proposed a plan that included payments to a secured creditor and that creditor did not object to its treatment, there was no need for the creditor to file a proof of claim and the plan was confirmable. New Rule 3002 seems to follow the approach in *Pajian* but the continued vitality of the *Hrubec* rule is unclear.

[13] Fed. R. Bankr. P. 3004 (unchanged). Rule 3004 also allows the trustee to file claims on behalf of creditors, which is a practice in a few jurisdictions.