

OBJECTIONS TO PROOFS OF CLAIM

Lou Jones Breakfast June 9, 2009

- 1) Why object to proofs of claim in the Post *In re Smith* and *In re Averhart* world?
 - a) *In re Smith* - three prong test for plan to control
 - i) adequate pre-confirmation notice
 - ii) limited to where creditor filed its proof of claim pre-confirmation
 - iii) plans which clearly laid out how it proposed to treat and value the creditor's claim
 - b) *In re Averhart*
 - i) Confirmed plan is controlling "as a general rule."
 - ii) Exceptions
 - (1) Where fraud is involved
 - (2) where a plan is ambiguous or contains a term that raises an unexpected problem at some point in the future
 - c) §502(a)
 - i) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, **unless** a party in interest...objects
 - d) Both cases state that when objected to, plan controls over claim. This necessitates the objection.
 - e) Prevents arguments later about whether the language of plans was clear or notice was proper.

2) Basics

- a) Requirements – BK Rule 3007
 - i) An objection to the allowance of a claim shall be in writing and filed
 - ii) Notice must be mailed to the claimant, debtor, and trustee 30 days prior to the hearing
 - iii) Judge specific
 - (1) MDM, SVK, PP – File the claim and the Court will send a hearing notice to creditor. Debtors still responsible for sending objection to creditor.
 - (2) JES – Call clerk and schedule a hearing and service notice and objection on creditor.
- b) Service
 - i) *In re Sunde*, 2007 Bankr. LEXIS 3704 (Bankr. W.D. Wis. Oct. 2, 2007)
 - (1) 9014(b) requires all contested matter be served in the manner provided in Bk Rule 7004
 - (2) BK Rule 7004 requires notice to attorney appearing, registered agent if corporation, or officer of financial institution
 - (3) May not be correct. Rule 9014(a) states that "in a contested matter in a case under the Code *not otherwise governed by these rules*, relief shall be

requested by motion . . . (b) *The motion* shall be served in the manner provided for service of a summons and complaint by Rule 7004

(a) Objections are “otherwise governed by these rules” specifically Rule 3007.

(b) Cases disagreeing with *In re Sunde: In re Hawthorne*, 326 B.R. 1 (Bankr. D. Colo. 2005); *In re Anderson*, 330 B.R. 180 (Bankr. S.D. Tex. 2003). *In re Cagle*, 2008 Bankr. LEXIS 2094 (Bankr. N.D. Ga. June 2, 2008)

c) Evidence

i) *In re Haliballa*

- (1) Bankruptcy Rule 3001(f), a proof of claim “executed and filed in accordance with these rules” constitutes *prima facie* evidence of both the validity and amount of the claim
- (2) A claim that meets the minimum requirements enjoys *prima facie* status, and in order to succeed on a claim objection, the objecting party must produce “probative evidence” of equal force.
- (3) Bankruptcy Rule 2004 provides that the court may order the examination of any entity, on motion of a party in interest. Appearance and production of documents may be compelled as provided in Rule 9016.

3) Examples of most common objections

a) Secured claims when the debtor does not have the item

- i) 506(a)(1) – An allowed claim of a creditor secured by a lien on property in which the **estate** has an interest in. (not listed in schedules or owned by debtor, no secured claim)
- ii) Will need live testimony of the debtor so the Judge can weigh the credibility of what is often considered self serving testimony
- iii) Details, Details, Details (police report, insurance claim, anything in paper format bolstering the debtors testimony is a plus)
- iv) Claim will still be valid as an unsecured claim

b) DWD/Judgments filed as secured

- i) 522(f)
 - (1) Debtor can avoid a judgment lien to the extent they impair an exemption to which the debtor would have been entitled to
 - (2) Wis Stat § 806.15: Every judgment properly entered in the judgment and lien docket showing the judgment debtor's place of residence shall, for 10 years from the date of entry, be a lien on all **real property** of every person against whom the judgment is entered which is in the county where the judgment is rendered, except homestead property that is exempt from execution under s. 815.20, and which the person has at the time of the entry or which the person acquires thereafter within the 10-year period
 - (3) Example: Debtor owns a house worth 100,000, first mortgage 60,000, exemption claimed 40,000. Creditor has a judgment of 10,000 and files a secured claim. Claim of the creditor is not secured pursuant to §522(f)

- c) Pre calculated interest
 - i) Most secured creditors file proof of claim with pre-calculated interest based on a five year plan.
 - ii) Most plans provide for the front loading of secured claims and as a result most secured claims are paid off before the final payment of the plan.
 - iii) Example: Debtor has a car valued at 10,000 and a rate of 5.5% interest. Over sixty months using declining balance interest the total claim will be \$11,460.00. Now assume the debtor pays off the vehicle in month 36 of the plan. Total value of the claim should be 10,870.52. A difference of \$589.48.

- d) Trustee objections
 - i) Deadline to file proof of claim
 - (1) The bankruptcy court has no general equitable power to allow late proofs of claim, no matter how worthy the merits of the creditor's claim. *Matter of Greenig*, 152 F.3d 631, 635 (7th Cir. 1998)
 - ii) What to do when you want the claim
 - (1) If within 30 days of the claims bar date debtor can file a claim for a creditor (BK Rule 3004)
 - (2) If after, Bk Rule 9006(b)(1) and argue excusable neglect (In re Dix, 95 B.R. 134, 138 (B.A.P. 9th Cir. Cal. 1988)
 - (a) under the liberal definition of excusable neglect, consideration of a broad range of factors is appropriate:
 - (i) whether granting the delay will prejudice the other creditor;
 - (ii) the length of the delay and its impact on efficient court administration;
 - (iii) whether the delay was beyond the reasonable control of the person whose duty it was to perform;
 - (iv) whether the creditor acted in good faith; and
 - (v) whether clients should be penalized for their counsel's mistake or neglect.