

## **Bankruptcy Rule Changes are Almost Here – and You Should Care**

The Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) go into effect on December 1, 2017. Don’t ignore these imminent changes to the Bankruptcy Rules. The headline-grabbers have been about Chapter 13 cases, including the adoption of a national model plan (amended Rules 3015 and 3015.1) and modified deadlines for noticing the objection deadline and hearing date for Chapter 13 plans (Rules 2002(a) and (b)). [1] But, important changes affect Chapter 7 and 11 cases too, particularly regarding secured creditors’ proofs of claim. The bottom line is that commercial practitioners should understand some of these changes.

### **Rule 3002: Filing Proof of Claim or Interest.**

Rule 3002(a) is being amended to clarify that ***all creditors, including secured creditors, must file a proof of claim in order to have an allowed claim.*** The existing language states that “[a]n unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed....” Rule 3002(a) is being amended to now read; **“[a] secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed....”**

Some time ago, courts settled that secured creditors need to file claims. But, the conspicuous omission of “secured creditor” in Rule 3002(a) caused a split in decisions about whether the claims filing deadline under Rule 3002(a) applies to secured creditors. Some courts allowed secured creditors to file claims after the established bar date, as long as they filed a claim prior to plan confirmation. **The amendment to Rule 3002(a) is primarily intended to clarify that the filing deadline applies to secured creditors as well as to unsecured creditors and equity holders.**

### **Rule 3007: Objections to Claims.**

Two important changes are being made to Rule 3007(a): one that affects the required manner of service for a claim objection and one that affects the need for hearing. First, the amended rule clarifies that Rule 7004 does not govern service requirements for every claim objection. Instead, most objections can be served by first-class mail to the contact person listed on the official claim form. Rule 7004 service requirements still apply to claim objections directed to the United States government and insured depository institutions.

Second, not every claim objection requires a hearing. While the objecting party must provide notice and an opportunity for a hearing, courts now have the flexibility to deviate from mandatory hearings on claims objections via their local rules. Local rules may require a claimant to respond or to affirmatively request a hearing on the claim objection. This change does not affect the requirement that **the bankruptcy court must determine the validity of a claim**, even if the claimant does not respond or request a hearing.

#### Rule 3012: Determining the Amount of Secured and Priority Claims.

Under existing Rule 3012, any party in interest may file a motion to seek a determination of the value of a claim secured by a lien on property of the estate. Changes to part (a) extend the rule to allow any party in interest to file a motion to seek determination of the amount of a priority claim under section 507 of the Bankruptcy Code. [2] It will be interesting to see whether and under what circumstances creditor committees and other parties in interest might use modified Rule 3012 to challenge priority claims.

#### Takeaways

Don't ignore the December 1, 2017 Bankruptcy Rule changes – even if you are a commercial practitioner. Nearly every case involves secured claims (Rule 3002), claim objections (Rule 3007), and priority claims (Rule 3012), all of which are affected by the impending changes.