

Practice & Procedure

BY DAVID I. CISAR AND CHRISTOPHER T. KOEHNKE

Revised Rule 3002: Is Lack of Notice Grounds for a Late-Filed Claim?

In 2017, Rule 3002 of the Federal Rules of Bankruptcy Procedure was amended to require the timely filing of a proof of claim or interest by secured creditors, as well as unsecured creditors and equityholders in chapters 7, 12 and 13. The amendment also modified the deadline for filing proofs of claim and interest (now generally 70 days after the order for relief instead of 90 days after the first scheduled § 341 meeting).

In addition, subsection 6 of the rule, which deals with extensions of time to file a claim if the creditor did not have sufficient notice of the bankruptcy, was substantially modified to expand the opportunity for creditors who did not receive notice of the bankruptcy case to file and have their claims allowed. However, courts addressing such “no-notice, late-filed claims” have come to opposite conclusions as to the meaning of this change in Rule 3002(c)(6).

Before the Rule 3002 Amendments

Prior to 2017, Bankruptcy Rule 3002(a) only required that unsecured creditors and equity security-holders timely file a proof of claim to have an allowed claim or interest. Rule 3002(c) generally provided that such proofs of claim or interest had to be filed within 90 days after the order for relief, but provided for six exceptions to that time limit: (1) governmental units; (2) infants and incompetents; (3) claims arising from judgments; (4) claims arising from rejected executory contracts or leases; (5) possible distributions after a no-asset notice; and (6) insufficiency of notice sent to a creditor at a foreign address.¹ Before these amendments, Rule 3002(c)(6) permitted an enlargement of time for insufficient notice on only these narrow grounds:

If notice of the time to file a proof of claim has been *mailed to a creditor at a foreign address*, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days 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.²

Courts interpreting Rule 3002(c) were divided as to whether the rule provided any discretion for courts to enlarge the time for filing claims for reasons other

than those six specifically stated in subsections (c)(1)-(6). This divide was particularly evident in chapter 13 cases.³ Some courts interpreting Rule 3002(c) prior to 2017 held that the language of the rule did not permit an extension of the bar date for insufficient notice, absent the creditor meeting the narrow requirements of Rule 3002(c)(6).⁴ Other courts, relying on Rule 9006(b)(3), determined that Rule 3002(c) “provide[d] no exceptions for extenuating circumstances, excusable neglect, or other cause.”⁵

Rule 3002 as Amended

The amendments to Bankruptcy Rule 3002 became effective Dec. 1, 2017. The new text of Rule 3002(a) now includes secured creditors, along with unsecured creditors and equityholders, as being required to timely file a proof of claim or interest in order for it to be allowed. Rule 3002(a) also clarifies, in accordance with § 506(d) of the Bankruptcy Code, that the failure to file a proof of claim does not affect the lien securing the debt.⁶

New subsection (c)(6) expands the circumstances under which the time to file a proof of claim can be extended. While subsection (c)(6)(B) expresses the same “foreign address” exception as old Rule 3002(c)(6), subsection (c)(6)(A) is entirely new. It provides an exception if:

(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).⁷

Restrictive Interpretation of the Amended Rule

A recent decision, *In re Wulff*,⁸ applies a narrow interpretation of subsection (c)(6)(A). In *Wulff*, the



David I. Cisar
von Briesen & Roper, sc
Milwaukee



Christopher T. Koehnke
von Briesen & Roper, sc
Milwaukee

David Cisar chairs the Banking and Commercial Finance Section of von Briesen & Roper, sc in Milwaukee and is board certified in creditors’ rights law by the American Board of Certification. Christopher Koehnke is a member of the Bankruptcy and Creditors’ Rights Section in the same office.

¹ See Fed. R. Bankr. P. 3002(c) (Dec. 1, 2016).

² *Id.* (emphasis added).

³ See, e.g., *In re Harris*, 447 B.R. 254, 257 (Bankr. W.D. Ark. 2011) (“While the language contained in the Code and the Rules greatly restricts the rights of creditors who do not receive notice of a debtor’s bankruptcy filing, courts are split on the issue of whether a creditor who has received no notice in a Chapter 13 case should be entitled to file a late proof of claim notwithstanding the provisions of Bankruptcy Rules 3002(c) and 9006(b).”) (citations omitted).

⁴ See *In re Mazik*, 592 B.R. 812, 815 (Bankr. E.D. Pa. 2018) (“Under the majority view, prior to December 1, 2017, creditors without notice of the claims bar date had no means to enlarge their time to file a claim.”).

⁵ *In re McLarry*, 273 B.R. 753, 754 (Bankr. S.D. Tex. 2002).

⁶ See Fed. R. Bankr. P. 3002, 2017 Committee Note: “Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor’s lien void.”

⁷ Fed. R. Bankr. P. 3002(c)(6)(A).

⁸ 598 B.R. 459 (Bankr. E.D. Wis. 2019)

debtor, a “family farmer,” listed all secured creditors on his bankruptcy schedule, but failed to provide a valid address for one of the secured creditors on the creditor matrix. Due to the invalid address, the secured creditor never received notice of the bankruptcy or the deadline to file proofs of claim. The secured creditor only learned of the bankruptcy when it contacted the debtor about his past-due accounts. Upon learning of the bankruptcy filing, the secured creditor immediately filed two proofs of claim, but after the filing deadline had passed.

No one, including the chapter 12 trustee, noticed the tardy filing of the proofs of claim. The court confirmed the plan, which included payments to the secured creditor that filed the late proofs of claim. One month after the plan was confirmed, the trustee objected, arguing that the claims should be disallowed because they were late. Counsel for the debtor filed a motion to extend the deadline set in Rule 3002, arguing that an enlargement of time was warranted due to “excusable neglect.”

Both the debtor and the secured creditor argued that sustaining the trustee’s objection would kill any chance for the debtor to reorganize. If the court disallowed the claims, no payments to the secured creditor could be made under the chapter 12 plan, leaving the secured creditor no choice but to repossess its collateral.

The court evaluated the debtor’s request for an extension of time under Rule 9006(b). Under Rule 9006(b)(1), a court can generally extend a deadline “for cause” if the party seeking an extension asks before the applicable deadline expires. If the deadline has passed before the request, Rule 9006(b)(1) permits an extension of a deadline only if the moving party establishes “excusable neglect.”⁹

The court ruled that Rule 9006(b)(1) did not apply, as it could not find excusable neglect. However, the court ruled that the chapter 12 trustee was bound by *res judicata* to the confirmation order and could not relitigate the plan’s treatment of the secured creditor’s late proofs of claim.¹⁰

The U.S. Bankruptcy Court for the District of Maryland came to a similar result in a chapter 13 case. *In re Somerville*¹¹ involved a creditor who first became aware of the debtor’s bankruptcy filing after attempting to garnish the debtor’s wages to satisfy a pre-petition debt. Because the debtor did not include the creditor on the bankruptcy schedules, the creditor never received notice of the bankruptcy filing. After it learned of the debtor’s bankruptcy, the creditor filed a motion asking the court to allow it to file a late proof of claim.

The court acknowledged that the creditor received insufficient notice of the bankruptcy filing. However, because that insufficient notice was not the result of an *untimely filed* creditor matrix, the court found that Rule 3002(c)(6)(A) did not permit the creditor’s late-filed claim. Just as in *Wulff*, the court narrowly interpreted the language of Rule 3002(c), found it to be unambiguous, and determined that the rule did not permit the late filing of a proof of claim.¹²

Other courts have ruled that new Rule 3002(c)(6)(A) requires a showing of both insufficient notice *and* an untimely filing of the creditor matrix. These courts have held that simply failing to include a creditor on an otherwise timely filed creditor matrix is not sufficient grounds to allow for an extension of time under Rule 3002(c)(6)(A).¹³

The Broader View

Other courts take a different, broader view of Rule 3002(c)(6)(A). *In re Vanderpol*¹⁴ involved a chapter 13 debtor who failed to include a creditor’s name on the timely filed creditor matrix. The excluded creditor first became aware of the debtor’s bankruptcy filing roughly one month after the claims bar date. It immediately filed a motion requesting that the court extend the claims deadline.

The *Vanderpol* court relied on the Advisory Committee’s statement of legislative intent that Rule 3002(c)(6) was amended to “expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim”¹⁵ and permitted the late-filed claim. The court noted that Congress’s intent:

is best effectuated by reading this rule to apply whenever the debtor fails to timely file a *full and complete* Creditor Matrix. If the purpose of the rule is to provide the Court with discretion when a creditor’s due process rights have been abridged, then this broader reading will support that goal.¹⁶

Similarly, in *In re Mazik*,¹⁷ the court permitted the late filing of a proof of claim because the creditor was not included on the timely filed creditor matrix. The court concluded that an extension could be granted under Bankruptcy Rule 3002(c)(6)(A) because “the omission of the creditor from the filed list constitutes a failure to comply with the requirement in [Bankruptcy] Rule 1007(a)” and that “fits squarely into the language of [Bankruptcy] Rule 3002(c)(6)(A).”¹⁸

Conclusion

The tension between Bankruptcy Rule 9006(b)(3) (“The court may enlarge the time for taking actions under Rules ... 3002(c) ... only to the extent and under the conditions stated in those rules.”)¹⁹ and the Advisory Committee statement that Rule 3002(c)(6) was amended “to expand the exception ... for cases in which a creditor received insufficient notice”²⁰ is palpable. Rule 1007(a) requires the filing with the petition of “a list containing the name and address of each entity included *or to be included* on Schedules D, E/F, G and H.”²¹ Rule 1008 requires that the list be verified, giving its accuracy considerable weight.

¹³ See, e.g., *In re Fryman*, 18-20660, 2019 WL 2612763 (Bankr. E.D. Ky. July 24, 2019), as amended (July 24, 2019); *In re Price*, No. 18-71260, 2019 WL 2895006, at *2 (Bankr. W.D. Va. July 3, 2019); *In re Wood*, No. 18-00639, 2019 WL 1398180, at *2 (Bankr. D.D.C. March 26, 2019).

¹⁴ 608 B.R. 425 (Bankr. D. Colo. 2019).

¹⁵ Fed. R. Bankr. P. 3002, 2017 Committee Note.

¹⁶ *In re Vanderpol* at 432 (emphasis in original).

¹⁷ 592 B.R. 812 (Bankr. E.D. Pa. 2018).

¹⁸ *Id.* at 818.

¹⁹ Fed. R. Bankr. P. 9006(b)(3).

²⁰ Fed. R. Bankr. P. 3002, 2017 Committee Note.

²¹ The inclusion of “or to be included” suggests that in order to comply with Rule 1007(a), the creditor matrix must be complete.

⁹ See *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993).

¹⁰ See *In re Harvey*, 213 F.3d 318 (7th Cir. 2000).

¹¹ 605 B.R. 700 (Bankr. D. Md. 2019).

¹² *Id.* at 708.

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Is an incomplete or inaccurate list of creditors' names and addresses within the "extent" and "conditions" of Rule 3002(c)(6)(A) such that an extension of time is permitted under Rule 9006(b)(3)? It is, because new Rule 3002(c)(6)(A) references Rule 1007(a), and that rule requires the listing of all creditors "included or to be included" on the schedules. Either the untimely filing of the creditor matrix or noncompliance with Rule 1007(a) satisfies Rule 3002(c)(6)(A) to permit the extension of the time for filing claims. To read Rule 3002(c)(6)(A) otherwise denigrates Rule 1007(a) and defies the purpose of the amendment. **abi**

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