AMERICAN BANKRUPTCY INSTITUTE

2017 Mid-Atlantic Bankruptcy Workshop

Consumer Track

Chapter 13: Improving the Process

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CONCURRENT SESSION

2017

Chapter 13 vs. Chapter 11

Chapter 13 v. Chapter 11

Which one to choose?

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Chapter 13 v. Chapter 11

- Both similar number of ways:

❑ Debtors can retain property;

❑ Allow time to sell assets;

❑ Modify certain secured debts;

❑ Discharge certain debts.

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Chapter 13 v. Chapter 11

- Chapter 11 Bankruptcy:
  - ❑ Who is eligible?
    - ❑ Anyone who can afford to pay/ living person/ corporation/ partnership/ LLC can file
  - ❑ Trusts or Estates cannot file Bankruptcy

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Chapter 13 v. Chapter 11

- **Chapter 13 Bankruptcy:**
  - Who is eligible?
    - Person with regular income/ retirement
    - Unsecured debts under $394,725.00
    - Secured debts less than $1,184,200.00

  Governed by 11 U.S.C. §109(e)

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Chapter 13 v. Chapter 11

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Chapter 13 v. Chapter 11

- Some arguments about debt ceiling:
  - Does a personal guarantee on a corporate promissory note count to the limit?

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Chapter 13 v. Chapter 11

- Some wiggle room of debt ceiling:
  - Answer: Provided no default -
  - Many courts hold guaranty agreements as contingent:
  - In re Barrett, 42 B.R. 254 (Bankr. S.D. NY. 1984);
  - In re Kaplan, 186 B.R. 871 (D.N.J. 1995);
  - In re Pennypacker, 115 B.R. 504 (Bankr.E.D. Pa. 1990)

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Chapter 13 v. Chapter 11

- What about debts previously discharged?

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The answer depends where you live

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Chapter 13 v. Chapter 11

- Split in authority:
- In 9th Circuit:

  Debts discharged in prior chapter 7 are not counted as unsecured debt in chapter 13

  Free v. Malaier (In re Free), 542 B.R. 492, 500-501 (9th Cir. B.A.P.2015)

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Chapter 13 v. Chapter 11

- But see:

  In re Scott-DeClemente, 463 B.R. 308 (Bankr. N.J. 2012)

  In rem debts discharged in prior chapter 7 are counted as unsecured debt in chapter 13.

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Chapter 13 v. Chapter 11

- What about undersecured debts?

(The amount of the lien exceeds value of property)

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Chapter 13 v. Chapter 11

- The overwhelming majority of courts, including every circuit that has considered the question, have concluded that the undersecured portion of a secured creditor's claim should be counted as unsecured debt for § 109(e) purposes.

Matter of Day, 747 F.2d 405 (7th Cir. 1984);

Miller v. U.S., 907 F.2d 80 (8th Cir. 1990);

Brown & Co. Securities Corp. v. Balbus, (In re Balbus), 933 F.2d 246 (4th Cir. 1991).

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Chapter 13 v. Chapter 11

- Assuming debtor is eligible:
  - Benefits:
    1. Its cheaper… much cheaper

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Chapter 13 v. Chapter 11

Still from *Jerry Maguire,* directed by Cameron Crowe (1996; TriStar Pictures).

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How Individual 11 and Chapter 13 Similar

1. Liquidation tests 1129(a)(7)(2), 1325(a)(4);
2. Current paying domestic support orders §1129(14), §1329(a)(8);
3. Good Faith §1129(a)(3), §1325(a)(3)

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Chapter 13 v. Chapter 11

- How Chapter 13 Plans Better:
  1. No need to move to appoint counsel and professionals (at least in Philly);
  2. No DIP account; No estate tax issues
  3. No voting and Disclosure Statement;

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Chapter 13 v. Chapter 11

- Benefits:

4. No absolute priority rule

Debtor can use future income to fund plan to retain non exempt assets

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5. Divorce matters:

Equitable Distribution

Dischargeable in Chapter 13 NOT in Chapter 11:

11 U.S.C.§ 1141(d)(2)

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Chapter 13 v. Chapter 11

- Other Benefits:
  6. Chapter 13 Trustee: Trustee appointed to make disbursements
  7. Many courts have form Fee Applications – or no fee application if fee low enough (Maryland)
  8. Form Plan(s) Good or bad....
  9. Debtor can only file Plans.

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How Individual Chapter 11 Plans Better for Debtors

- 1. Disposable Income test less rigid in Chapter 11
  - a. No statutory expense formula;
  - b. Disposable income can pay all creditors – not just unsecured creditors, §1129(a)(15)(B) §1325(a)(2).
- 2. No requirement to file all federal state and local taxes for previous 4 years §1325(b)(9).
- 3. No limit on car loan cram downs, see §1325(b)(9).
- 4. Longer repayment terms.
- 5. No trustee commission.

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CAN WE MOVE THIS CHAPTER 13 CASE ALONG?

Hypothetical

Tryand Getmee has just filed his second Chapter 13 case in the last year to stop a foreclosure on his residence by Merry Mortgage Company ("MMC"), which is owed $250,000 by the Getmees pursuant to their guaranty of a commercial loan to their woodworking business. His first case was filed 6 months ago. His wife, is not a debtor. Getmee's last case was dismissed by the court after he failed to show up for the second time to his Section 341 meeting without excuse. Thirty-one (31) days after his second case is filed, pursuant to Section 362(c)(3)(A), MMC files a confess judgment against the Getmees, which creates a lien against their unencumbered Ocean City, Maryland vacation property, owned as tenants by the entirety. MMC also files a lift stay to obtain an attachment on Getmee's tools.

Getmee files a plan which provides a 3% dividend unsecured creditors because 2 months prior to his first filing, he purchased "Super Duper" wood working equipment for his sole proprietorship business, granting a security interest to the seller. It is the "Cadillac" in the industry, but causes his monthly expenses to exceed his income. Getmee's confirmation hearing is set the day after his continued 341 meeting, which he shows up for, but the confirmation hearing needs to be postponed because he didn't provide any of the requested documentation to the trustee. The hearing is continued for a month. The hearing is postponed again because Getmee "allegedly" has a sick uncle to care for that day. MMC had brought his appraiser to this hearing and waited 3 hours before finding out the debtor was a "no show". Another 30 day continuance is granted. At the next confirmation hearing, MMC successfully objects to the plan, and court grants

leave to amend. MMC wants to file a lift stay as to the residence but Debtor has his home fitted out to conduct his business, causing its attorney to be pessimistic about its chances of prevailing. After 6 months, the trustee files a motion to dismiss which is granted over the debtor's opposition, with prejudice, barring a re-filing for 6 months.

MMC starts the foreclosure up again and the day before the auction, Mrs. Getmee files a Chapter 13. Debtor's counsel immediately files an adversary to set aside the judgment lien against the Ocean City property on the grounds that the stay was violated in her husband's case. MMC fires his attorney and asks his new bankruptcy attorney what can be done. After hearing that only Congress can fix this, but it is busy working on repealing the Affordable Care Act and fixing the tax code, MMC authorizes counsel to be as aggressive as possible. After 6 more months, Mrs. Getmee files a notice of dismissal, which is objected to by the Chapter 13 trustee and MMC, who want the case converted. The court permits dismissal. The foreclosure action is restarted, but by this time, the 6 month bar in effect as to Mr. Getmee has expired and he files his third case. MMC takes 50 cents on the dollar from Slick Eddie, a family friend of the Getmees, to buy its note, wanting no more of the bankruptcy courts.

Issues

1. What limits exist to the right to dismiss a Ch. 13 case?
    a. There is a split in Circuit Courts as to whether there is an absolute right under §1307(b) to dismiss a Chapter 13 case or whether the court has the power to deny dismissal by converting a case to Chapter 7 based on bad faith.

i. Debtors can't be forced in stay in Chapter 13. The issue is whether one can force a conversion to Chapter 7 rather than a dismissal.

ii. A majority of courts hold that there is an absolute right to dismiss a Chapter 13.

iii. In 2007, the United States Supreme Court in *Mirrama v. Citizens Bank of Mass.*, 549 U.S.371 (2007) held that, using §105, there was a bad faith exception to the right under §706(d) to convert from a Chapter 7 to a Chapter 13 case.

iv. Thereafter, some courts then concluded that there must also then be an exception to the right to dismiss a Chapter 13.

v. Relying on Mirrama and the principle that any other interpretation would render §1307(c) [authorizing the court to dismiss or concert a case] a nullity, the 5th and 9th Circuits have held that a court has authority to deny dismissal due to bad faith (still a minority view)

    1. *In re Jacobson*, 609 F. 3d 647 (5th Cir. 2010)
    2. *Rosson v.Fitzgerald*, 545 F. 3d 764 (9th Cir. 2008)
    3. Does *Law v. Siegel* impact these minority decisions
        a. *Law v. Siegel,* 134 S.Ct. 1188 (2014), holds that a debtor's exempt property cannot be surcharged under §105 as a punishment for abuse of the bankruptcy process
        b. Relying on *Law*, some courts have expressed the view that, inasmuch as statutory language cannot be

overridden by §105, §105 cannot be relied upon to change the express language of §1307(b), which provides an absolute right to dismiss a Chapter 13 case.

c. In *Law*, J.Scalia distinguished the holding in Mirrama, and stated that some of the discussion in Mirrama regarding §105 was dicta.

4. *In re Williams*, 435 B.R. 552 (N.D. Illin. 2010) – Chapter 13 trustee moved to convert Chapter 13 case to Chapter 7, while debtor sought dismissal. J. Wedoff found that there was an absolute right to dismissal, holding that there was no bad faith exception, based on 3 principles: (i) §1307(b) contained an unqualified right to dismissal; (ii) only another statutory provision, not a court, may modify a statute; and (iii) no other such statute existed. Finally, the court held that §105 cannot be used to modify a statute.
5. Furthermore, the court found with respect to the issue surrounding §1307(c) that, based on the rule that the more specific statute overrides the less specific, because §1307(b) was more specific than §1307(c), §1307(b) controlled.

2. Remedies for "Bad Faith" or Other Improper Conduct

a. *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) – bankruptcy court has broad discretion to shape equitable remedies in the exercise of its §105 authority to further Congressional intent

b. Remedies include lift stays, sanctions, in rem orders, §109(g) bars from re-filing for 180 days and longer bars from re-filing under §105.

c. The automatic stay may be lifted for "cause" due to bad faith. *In re Ford*, 522 B.R. 829 (D.S.Car. 2014). However, latter court not only failed to find bad faith based on serial filings, but also held, in response to a motion under §362(d)(2) that the debtor's residence was necessary for an effective reorganization because it was necessary to debtor to generate income.

d. §109(g) order – A §109(g) order may be obtained if a debtor has been a debtor in a case pending in the preceding 180 days and either (i) the case was dismissed for willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case; or (ii) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for the lifting of the stay.

    i. A willful failure to do a required act necessitates a showing that the person, with notice of their responsibility, intentionally disregarded it or demonstrated "plain indifference". *In re Ellis*, 48 B.R. 178 (Bankr. E.D.N.Y. 1985)

1. A failure to attend the §341 meeting is a failure to comply with a court order. *In re Montgomery*, 37 F.3d 413, 414 (8th Cir. 1994).
2. Is failure to show up for a confirmation hearing failure to prosecute? Is any other failure to appear in court sufficient?

ii. Is the debtor's failure to object to a motion to dismiss the equivalent of a voluntary dismissal?

iii. Is the filing of a totally frivolous lift stay motion sufficient for §109(g) purposes?

e. Bars from filing new cases for longer than 180 days - *In re Ameson*, No. NV-03-53451, 2005 WL 6960173 (9th Cir. BAP April 21, 2005) – under §349, a court may dismiss a case with prejudice for more than the 180 day period provided by §109(g). Section 349 states:

> (a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of subsequent petition under this title, except as provided in section 109(g) of this title. (emphasis added)

However, the 9th Circuit BAP found that permanent stay relief was an abuse of the court's discretion.

f. *In re Rios*, No.13-11076, 2016 WL 8461532 (D. Kansas 2016) – pursuant to §349, in connection with a dismissal order, a court may also provide that no scheduled debts may be discharged in any future case.

g. Equitable Servitude - An equitable servitude is an "in rem" remedy which is a response to serial filings involving more than one debtor with a common interest in property.

   i. An equitable servitude provides that automatic stay will not go into effect as to certain property, typically jointly held property.

   ii. The record must clearly demonstrate an abuse of the bankruptcy process through multiple filings with the sole purpose of frustrating the legitimate efforts of creditors to recover their collateral.

   iii. Providing notice to all interested parties is critical.

   iv. Authority is provided by: (a) *In re Yiman*, 214 B.R. 463 (Bankr. Md.1997); and (b) 11 U.S.C. § 105(a), made applicable to Chapter 13 cases by 11 U.S.C. § 103(a), pursuant to which a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" and may take "any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process".

   v. An equitable servitude is warranted in order to prevent abuse of the bankruptcy process when statutory relief does not provide an adequate remedy.

   vi. *In re Taal*, 520 B.R. 370 (D. N.H. 2014) – court refused to grant motion to dismiss or a request for equitable servitude in wife's bankruptcy case despite 3 prior filing (with early dismissals) by

husband and the findings that all filings contained numerous errors and were obviously intended only to forestall foreclosure proceedings.

vii. How many cases have to be filed before equitable relief is warranted?

h. Injunctive relief – creditors sometimes request injunctive relief enjoining the debtor (and sometimes a spouse) from filing future petitions

i. In re Graham, No. 98-11990, 1998 WL 473051 (S.D. Fla. August 3, 1998) – court refused to grant injunction enjoining debtor and his non-debtor spouse from filing another petition for 180 days. Court noted that this should have been filed as an adversary, not as part of a lift stay motion; was also concerned about lack of notice to spouse; simply pointed out that court's powers under Rule 9011 may be used in the future.

ii. In re Ross, No. 15-2222, 2017 WL 2434707 (3rd Cir. June 6, 2017) – Third Circuit found that an order constituting a "lifetime " ban on the debtor filing a petition without court's permission exceeded the court's authority.

3. How do we deal with exorbitant purchases pre-petition?

a. Debtor has to dedicate all disposable income under plan; can't modify mortgage on residence; and must pay secured debt in equal payments

b. What if debtor incurs substantial secured debt prior to filing, causing a material reduction of his disposable income?

c. Creditors can object to confirmation of plan arguing that plan is not proposed in "good faith" due to debtor incurring debt pre-petition which is not reasonable (in most cases could be secured or unsecured debt)

d. How does a creditor establish lack of good faith due to the debtor incurring unreasonable expenses pre-petition?

   i. Some courts permit a large expense incurred prior to filing if debtor could afford the expense at the time but had a material negative change in income prior to filing. See *In re Sweet*, 428 B.R. 917 (M.D. Ga. 2010); but compare with *In re Namie*, 395 B.R. 594 (Bankr. Md. 2008).

   ii. Secured debt – *Drummond v. Welsh*, 711 F. 3d 1120 (9th Cir.2013) – holds that as long as the debtor computes disposable income in accordance with statutory requirements, the court should not look at the reasonableness of secured debt payments when analyzing the "good faith" requirement for confirmation.

   iii. *In re Hall*, 12 B.R. 226 (S.D. Ohio 1981) – court found that extravagant purchases and incurrence of secured and unsecured debt shortly before filing prevented court from being able to find "good faith". See, also In re Ogden, No.16-12280 2017 WL1501411 (N.D. Ga. April 26, 2017)

   iv. *In re Davis, No. 08-13693, 2008 WL 5786921 (E.D. Va. November 18, 2008) – debtor's* lavish lifestyle coupled with small dividend to unsecured creditors led court to find lack of good faith

4. What is the proper interpretation of Section 362(c)(3)(A)?
    a. This sub-section of Section 362 was added pursuant to BAPCPA in 2005.
    b. Authorizes lifting of stay under §362(a) with respect to any action taken **with respect to a debt or property securing such debt or with respect to any lease** after 30 days from the date on which the case is filed if this is the debtor's second bankruptcy filing within a year and the first case was dismissed.
    c. Stay may be extended past 30 days if a party in interest requests a continuation of the stay as to one or more creditors, and after notice and a hearing completed before the expiration of the 30 day period, the moving party demonstrates that the filing was in good faith as to parties to be stayed.
    d. Courts are split with respect to whether the stay is lifted only as to "property of the debtor" or all property of the estate. Divergent interpretations are due to "horrible" draftsmanship by Congress.
        i. Majority rule is that stay is lifted to authorize actions against the debtor and property that is not property of the estate, e.g. exempt property.
        ii. *Jumpp v. Chase Home Fin.*, LLC, 356 B.R. 789 (1st Cir. B.A.P. 2006) – leading case for majority rule – that stay is lifted only as to non-estate property
        iii. Criticism of majority rule centers on the contention that this interpretation makes the relief granted [as to property of the debtor]

negligible or, in other words, renders the statute meaningless. Ability to proceed against exempt property is meaningless.

iv. Courts adopting majority view contend this the interpretation of the statute does not lead to an absurd result because creditors can still continue lawsuits against the debtor, attach or enforce liens or bring evictions against a tenant debtor.

v. *In re Angela Roach*, 55 B.R. 840 (M.D. Ala. 2016) - although finding that the statute was poorly worded and contains surplusage, court nevertheless found that statute was unambiguous and adopted the majority view

vi. If only one spouse files a petition and the other requirements under the majority interpretation of this statute are satisfied, is the stay lifted as to property owned tenants by the entirety?

e. Minority view is that the stay is lifted as to actions against the debtor as well as all property of the estate.

i. *Reswick v. Reswick*, 446 B.R. 362 (9th Cir. B.A.P. 2011) – leading case expressing the minority view – found that statute is ambiguous and its interpretation enforces the Congressional policy of dealing harshly with serial filers.

f. *In re Tracey E. Bender*, 562 B.R. 578 (E.D. N.Y. 2016) – court held that this sub-section lifts the stay with respect to any judicial, administrative or other formal proceeding commenced pre-petition which relates to a debt

or property securing the debt regardless of whether the property was property of the estate or property of the debtor

5. How can we improve the process (absent Rule or legislative changes)?
    a. Ch. 13 trustees are typically overworked – can't spend too much time with any one debtor; does system rely too heavily on Ch. 13 trustee?
    b. Can be difficult for creditors to contact Chapter 13 trustee or debtor's counsel
    c. Judges rely greatly on input from trustee
    d. Does the system enable Chapter 13 debtors to "get away" with too much
    e. Creditor's rights may be violated absent vigilance
        i. *United Student Aid Funds v. Espinosa*, 130 S. Ct. 1367 (2010) – confirmed plan which violated Code may not be set aside if creditor had notice and did not object

4839-3940-0778, v. 1

Amended Chapter 13 rules —coming soon!

1. Timing

- The Supreme Court has now issued the rule amendments for Chapter 13.
- Unless Congress enacts contrary legislation, the amended rules will go into effect on December 1 of this year.

2. Reasons for the amendments

- A. Make the new forms effective
- B. Make plan confirmation final
- C. Provide adequate notice
- D. Allow for an order declaring a lien satisfied

We'll look at:

- how these goals are addressed and
- what new procedures will be available.

3. The rule amendments

A. To make the forms effective

- Require use of specified forms (national or local)
- Require local forms to meet specified standards
- Limit modification of the forms

3A. Make the form effective

Make use of the forms mandatory

- Rule 3015(c):

  If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1.

3A. Make the form effective

Prohibit most modifications

- Current Rule 9009(a)
  - The Official Forms prescribed by the Judicial Conference of the United States shall be used "with alterations as may be appropriate"

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a)
  - The Official Forms prescribed by the Judicial Conference of the United States shall be used "*without* alteration . . . ."

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a)
  - The Official Forms prescribed by the Judicial Conference of the United States shall be used "without alteration, except
    - as otherwise provided in these rules, [allowing for the use of local forms]

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a)
  - The Official Forms prescribed by the Judicial Conference of the United States shall be used "without alteration, except
    - as otherwise provided in these rules,
    - in a particular Official Form,
    - or in the national instructions regarding a particular Official Form.

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:

Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

(1) expand the prescribed areas for responses in order to permit complete responses;

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:

Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

(2) delete space not needed for responses; or

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:

Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

(3) delete items requiring detail by checking "no" or "none" or by stating in words that there is nothing to report on that question.

3A. Make the form effective

Special place for nonstandard provisions

- Rule 3015(c):

With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form.

3A. Make the form effective

Requirements for local forms

- Rule 3015.1:
  - (a) one local form per district
  - (b) separate paragraphs, numbered and headed in bold type
  - (c) initial warning paragraph on nonstandard provisions, stripoff, and lien avoidance

3A. Make the form effective

Requirements for local forms

- Rule 3015.1:
  - (d) separate paragraphs for curing and maintaining mortgages, paying DSOs, paying hanging paragraph claims, and surrendering collateral (with stay termination)
  - (e) a final paragraph for nonstandard provisions and a certification that no nonstandard provisions are placed elsewhere.

3. The rule amendments

B. Make plan confirmation final

- All non-governmental claims must be filed before confirmation
- Treatment of priority and secured claims may be determined at confirmation
- Lien avoidance may be obtained through the plan

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:

(a) NECESSITY FOR FILING. 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 . . . . 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.

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:

(c)TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a caseunder chapter 12 or chapter 13.

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:

(c)(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:

. . . . (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.

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

[A] request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or 13 case.

[This allows the plan to provide for § 506(a) stripdown.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

A request to determine the amount of a claim entitled to priority may be made only by motion made after the filing of the claim or in a claim objection.

[Early claim filing should allow a motion to determine priority amounts at confirmation.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3015:

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim . . . and regardless of whether an objection to the claim has been filed . . . .

3B. Make plan confirmation final

Lien avoidance done through the plan

- Rule 4003:

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 . . . .

3. The rule amendments

C. Provide sufficient notice

- Heightened service for claim modification
- Service of the full plan
- Adequate time for objection

3C. Provide adequate notice

Heightened service for claim modification

- Rule 3012(b), allowing for stripdown of secured claims through the plan,
- and Rule 4003(d), allowing for lien avoidance,

both require service "in the manner provided for service of a summons and complaint by Rule 7004."

3C. Provide adequate notice

Service of the full plan

- Rule 3015(d):

NOTICE AND COPIES. If the plan is not included with the each notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

3C. Provide adequate notice

Adequate time for objection

- Rule 2002(b)(3): 28 days notice of the hearing on confirmation
- Rule 2002(a)(9): 21 days notice of deadline for objections to confirmation
- Rule 3015(f): objections to confirmation must be filed 7 days before the hearing

3. The rule amendments

D. Allow for an order declaring a lien satisfied

- Rule 5009(d):

In a chapter 12 or chapter13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan."