

Guidelines for Effective Objections to Claim

The following guidance is provided to assist parties and counsel in chapter 13 cases assigned to Judge John E. Waites with filing effective objections to claim.

REVIEW THE CLAIM FOR COMPLIANCE WITH FRBP 3001

In reviewing a proof of claim, a party should first address whether the proof of claim meets each of the requirements of FRBP 3001, including:

- Does the proof of claim substantially conform to Official Form (B 410; 410A; 410S-1; 410S-2)?
- Is the proof of claim properly executed by the claimant or the claimant's authorized agent? FRBP 3001(b).
- If the claim is based on a writing (e.g., contract, promissory note), is a copy of writing attached to proof of claim? FRBP 3001(c)(1). If the writing is missing, is a statement of the circumstances of the loss or destruction filed with the claim?
- In individual cases:
 - Is a statement of interest, fees, expenses, or charges attached, if applicable? FRBP 3001(c)(2)(A).
 - If a security interest is claimed in debtor's property, does the claim include a statement of amount necessary to cure default? FRBP 3001(c)(2)(B).
 - If a security interest is claimed in debtor's principal residence, is a properly completed Official Form 410A and escrow account statement (if applicable) attached to the proof of claim? FRBP 3001(c)(2)(C).
- If claim is based upon an open ended or revolving consumer credit agreement, is a statement filed with proof of claim with information required under FRBP 3001(c)(3)(A)?
- If a security interest in property of debtor is claimed, is evidence of perfection of security interest attached? FRBP 3001(d).

OBJECTING TO A CLAIM WITH *PRIMA FACIE* EVIDENTIARY EFFECT

A review of a proof of claim's compliance with FRBP 3001 helps to establish the evidentiary effect of the proof of claim. If all FRBP 3001 requirements are met, the proof of claim is *prima facie* evidence of the validity and amount of the claim. FRBP 3001(f).

Grounds for an Objection: If the debtor or another party disputes the claim, the debtor (or other party) must file a written objection to claim. The objection to claim **must** assert a basis for disallowance of the claim under one of the grounds set forth in 11 U.S.C. § 502(b)(1)-(9) (for example: the claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmaturing (§ 502(b)(1))). Failure to meet Rule 3001 requirements alone is not sufficient grounds for disallowance.

Notice of Objection to Claim: The objecting party must provide notice to the claimant using the Local Form: Hearing Notice (Objection to Claim). Objections to claims are approved for passive

notice under SC LBR 9013-4. The claimant must be provided with 30 days to file a response. A hearing date must be selected pursuant to SC LBR 9013-4(b). Service of an objection to claim is governed by FRBP 3007(a)(2), which for most objections to claim, allows service on the claimant to be accomplished by first class mail on the party most recently designated to receive notices in the claimant's original or amended proof of claim, with exceptions to this rule for claims filed by the United States or any of its offices or agencies and insured depository institutions.¹ In addition, the objection and notice must also be served on the debtor and the case trustee. FRBP 3007(a)(2)(B).

Burden of Proof: At the hearing, the objecting party bears the initial burden of proof and must introduce evidence sufficient to rebut the claim's presumptive validity.

OBJECTING TO A CLAIM WITHOUT *PRIMA FACIE* EVIDENTIARY EFFECT

If the requirements of FRBP 3001 are not met, the proof of claim is NOT *prima facie* evidence of the validity and amount of claim.

Grounds for Objection: If the debtor or other party disputes the claim, the debtor (or other party) **must** only file an objection stating a colorable claim for disallowance under one of the grounds set forth in 11 U.S.C. § 502(b)(1)-(9) (for example: the claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured (§ 502(b)(1))). *In re Devey* 590 B.R. 706 (Bankr. D.S.C. 2018) (“If the proof of claim, as filed, does not qualify as *prima facie* evidence as to validity and amount, then the evidentiary burden of proof never shifts from the claimant to the objecting party. To challenge the allowance of the claim pursuant to § 502(b), the objecting party need only file an objection pursuant to the applicable rules”).

Notice of Objection to Claim: The objecting party must provide notice to the claimant using Local Form: Hearing Notice (Objection to Claim). Objections to claims are approved for passive notice under SC LBR 9013-4. The claimant must be provided with 30 days to file a response. A hearing date must be selected pursuant to SC LBR 9013-4(b). Service of an objection to claim is governed by FRBP 3007(a)(2), which for most objections to claim, allows service on the claimant to be accomplished by first class mail on the party most recently designated to receive notices in the claimant's original or amended proof of claim, with exceptions to this rule for claims filed by the United States or any of its offices or agencies and insured depository institutions.² In addition, the objection and notice must also be served on the debtor and the case trustee. FRBP 3007(a)(2)(B).

Burden of Proof: In this instance, the claimant bears the burden of proof to establish the amount and validity of its claim by a preponderance of evidence. Note that contingent and unliquidated claims must be proven under the burdens of proof and persuasion imposed by substantive state

¹ For claims filed by the United States (or its officers or agencies) and insured depository institutions, objections to the claim must be served on these claimants in the manner required under FRBP 7004.

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law, which determines whether a debtor has an obligation to the claimant in the first instance. *In re Devey*, 590 B.R. 706, 723 (Bankr. D.S.C. 2018). Also, as the burden to prove an affirmative defense is on the party asserting it, objections based solely upon an affirmative defense, such as the statute of limitations, may first require a showing of the defense's applicability by the objecting party. *In re Brown*, C/A No. 19-02093, slip op. at 3 (Bankr. D.S.C. Aug 13, 2019). According to the Local Form: Hearing Notice (Objection to Claim), the Court may sustain an objection without a hearing or it may set a hearing.

ATTORNEY'S FEES

If the claimant's proof of claim is deficient for the failure to provide adequate supporting information required under FRBP 3001(c), the objecting party may also seek in the objection to claim: (1) an order precluding the claimant from presenting the omitted information in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless and/or (2) seek other appropriate relief including reasonable expenses and attorney's fees under FRBP 3001(c)(2)(D). Counsel should consider designating the amount of attorney's fees and expenses in the objection to claim so no further hearing is required.

HELPFUL DECISIONS FOR REFERENCE

Fourth Circuit case:

- *In re Harford Sands Inc.*, 372 F.3d 637 (4th Cir. 2004)

Judge Waites' cases:

- *In re Schmale*, C/A No. 08-03315-jw, slip op. (Bankr. D.S.C. Apr. 28, 2009)
- *In re Worldwide Wholesale Lumber, Inc.*, C/A No. 06-01499-JW, slip op. (Bankr. D.S.C. Sept. 30, 2009)
- *In re Mazyck*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014) (statute of limitations)
- *In re Devey*, 590 B.R. 706 (Bankr. D.S.C. 2018)
- *In re Jenkins*, C/A No. 18-02463-jw, slip op. (Bankr. D.S.C. Sept. 18, 2018)
- *In re Brown*, 603 B.R. 786, 792 (Bankr. D.S.C. 2019) (awarding attorney's fees)
- *In re Brown*, C/A No. 19-02093-jw, slip op. (Bankr. D.S.C. Aug. 13, 2019)
- *In re Field*, 604 B.R. 680 (Bankr. D.S.C. 2019)
- *In re Bowen*, C/A No. 20-01444-jw, slip op. (Bankr. D.S.C. Aug. 25, 2020) (awarding attorney's fees)