

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

Claims Transfers – Importance of Compliance with the Federal Rules of Bankruptcy Procedure

Those individuals or businesses involved in the transfer of claims in bankruptcy cases that have been filed in the United States Bankruptcy Court of the Southern District of New York must comply with ***Federal Rule of Bankruptcy Procedure 3001(e)***. Specifically, paragraphs (2), (3) and (4) of Rule 3001(e) require the submission of information regarding the actual transfer,¹ as noted immediately below:

Rule 3001(e)(2) states, in part, that “[i]f a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, ***evidence of the transfer shall be filed by the transferee. . . .***” (emphasis supplied)

Rule 3001(e)(3) states, in part, that “[i]f a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. ***The proof shall be supported by a statement setting forth the terms of the transfer. . . .***” (emphasis supplied)

Rule 3001(e)(4) states, in part, that “[i]f a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, ***evidence of the terms of the transfer shall be filed by the transferee. . . .***” (emphasis supplied)

As stated in the 1983 Advisory Committee Notes, “[t]he interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowledging the transfer and consideration of the transfer.”

To comply with the provisions of **paragraph (2), (3) or (4)** of Rule 3001(e), those parties involved in the transfer of claims can submit, for purposes of docketing, the **actual agreement** between the parties. As an alternative to filing the actual agreement, a transferee seeking to comply with **paragraph (2) or (4)** can submit **evidence of the transfer**, provided that a) the pertinent terms are included and b) the writing is signed by both parties. Similarly, instead of filing the actual agreement, those seeking to comply with **paragraph (3)** can file a **separate statement** setting forth the terms of the transfer. The submission of information regarding the actual transfer, as outlined above, is **in addition to** fulfilling all other applicable requirements set forth in Rule 3001(e), such as those regarding the filing of notice.

¹ Paragraph (1) of Rule 3001(e) does not require submission of evidence of the transfer. *See* the Advisory Committee Notes accompanying the 1991 Amendments.

New Claims Transfer Fee to Take Effect May 1, 2013

Effective May 1, 2013, the bankruptcy courts will begin charging a new fee of \$25 for each claim transferred. This fee was approved by the Judicial Conference of the United States at its September 2012 session.

In considering this fee, the Judicial Conference Committees with jurisdiction over bankruptcy fees recognized the impact a transfer of a claim has on the workload of the bankruptcy courts, including impact on court time and resources. Bankruptcy Rule 3001(e) requires the clerk of court to notice a transferred claim, and provides additional notice and hearing requirements if an objection to a transfer is made.

The fee will be assessed by bankruptcy courts upon the filing of the claim transfer, whether filed by a transferee or transferor. It will apply to partial claims transfers as well. In the event multiple claims transfers are filed at one time by one entity (claims upload or batch filing), the \$25 fee will be charged for each individual claim transferred. The fee must be paid by credit card upon the filing of the claims transfer in CM/ECF using Pay.gov, ACH Debit card, or by whatever means is designated by the court if the claim transfer is not filed electronically. An entity that electronically handles claims transfers must ensure that the individual filing a transfer is authorized to pay this fee by credit card.

Entities that transfer claims should be aware that courts may be reviewing user accounts, account access, and the number of accounts authorized for a particular entity in anticipation of this fee.

For question regarding this fee, please contact Court Services at 212-668-2870 x 4040.