



09-BK-141

February 16, 2010

**VIA EMAIL**

Mr. John K. Rabiej  
Chief  
Rules Committee Support Office  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle N.E.  
Washington, D.C. 20544

Re: Comments Regarding Proposed Changes to Bankruptcy Rule 3001

Dear Mr. Rabiej:

This letter is submitted on behalf of Resurgent Capital Services LP ("Resurgent") in connection with proposed changes to Bankruptcy Rule 3001. Resurgent appreciates this opportunity to contribute to the rulemaking process by providing these comments.

Resurgent is the master servicer for a group of affiliated debt buyers as well as unaffiliated original issuers of credit. Headquartered in Greenville, South Carolina, Resurgent has approximately 500 employees in 4 offices to handle the services the company provides for its clients.

In 2009, Resurgent filed 251,144 proofs of claim on behalf of its clients. The majority of these claims related to credit card accounts. Slightly less than 1% of the claims filed by Resurgent received any sort of objection; of those objections, only about 26% were actually upheld. A table showing a breakdown of objections by type has been submitted under separate cover.

Our understanding is that the general intent of the proposed amendments is to enhance the ability of debtors to understand the claims filed and ensure that they in fact belong to that debtor and, more specifically, to address a perceived problem of inadequate documentation of claims, especially those filed by bulk purchasers. Resurgent believes that all parties to a bankruptcy case benefit from accuracy and completeness in filed claims and supports efforts to increase the effectiveness and efficiency of the bankruptcy process. However, Resurgent's experience in filing large numbers of claims with very low numbers of successful objections suggests that the process currently in place is providing that needed accuracy and

completeness—that the current system (with the debtor objecting when they have cause to) already provides the appropriate checks and balances.

In reviewing proposed changes to the Bankruptcy process, the needs of debtors, the Court and creditors must all be considered. It is critical that changes take account of the way in which business is conducted, to permit creditors a practically achievable method to pursue claims to which they are legally entitled. Resurgent's concern is that, as currently drafted, the proposed Amendments would impose a substantial burden on creditors, both original issuers and subsequent purchasers, without a concomitant substantial benefit to debtors, the Court and creditors. The proposed Amendment would result in adding thousands of documents to court dockets to support 100% of claims filed, when the data indicate that only a small fraction of claims are questioned, and an even smaller number seem to need such support.

#### **Attachment of a Copy of the Last Pre-Petition Statement to the Proof of Claim**

With respect to the requirement that the proof of claim include a copy of the last statement sent to the debtor before the petition was filed, Resurgent would make the following observations. First, the last pre-petition statement will often not include a great deal of substantive information about the account. For example, if the account was charged off before the petition was filed, the last statement may well contain only the balance and interest accrued since the previous statement. It may not include any transactions with the card such as purchases or cash advances. Further, because many creditors stop sending statements after an account is charged off, the last pre-petition statement may antedate the filing by a considerable time. The last statement would not include payments made or interest accrued since the last statement was sent, which, again, may have been a year or more previously; in such a case, the last statement would be of little value in assessing the current status of the debt. In fact, use of the last pre-petition statement will sometimes be misleading. For example, because the last statement may not reflect the most recent payment by the consumer, it may give the incorrect impression that the applicable statute of limitations has expired or suggest that the amount of the debt is higher than it actually is. In addition, privacy rules dictate that a statement that does include substantive information such as purchases and cash advances would in most cases require extensive often manual redaction, which is time consuming and burdensome.

#### **Itemization of Principal, Interest, Fees, Expenses and Charges**

Resurgent is also concerned about the application in the context of credit card accounts of the proposed requirement to itemize principal, interest, fees, expenses or charges that comprise a claim. The vast majority of credit card agreements, the terms of which the debtors accepted when they accepted the credit card, provide that interest earned in a given month, if not paid, becomes part of the principal balance of the card. If the borrower doesn't pay the bill in full every month, a credit card account balance at any given time has become a summation of

hundreds -- possibly thousands -- of purchases, payments, finance charges and fees; separating those would impose a tremendous burden on creditors and in some cases might not even be possible; the burden would be particularly difficult for account purchasers, as the "balance" purchased is generally a single number to which the new owner may add interest and, in some cases, other charges. For these reasons, the additional burden imposed by the proposed Rule change would not result in increased information for debtors and the Court.

### **Sanctions**

Under the proposed Amendments, if a claim-holder, whether original issuer or subsequent purchaser, fails to comply with the proposed new requirements, the holder is precluded from presenting the omitted evidence in any dispute except in specified circumstances; monetary sanctions can also be imposed. Given that over 99% of claims are recognized as valid by the debtor, this provision essentially imposes strict liability and sanctions on creditors to comply with a burdensome requirement that provides limited benefits to the debtor, the Court and creditors.

### **Recommendations**

Resurgent and many other creditors have developed and utilize sophisticated processes to allow it to manage large numbers of bankruptcy accounts accurately and efficiently. As an alternative to attaching the last pre-petition statement, Resurgent proposes that the Courts adopt an "Account Summary" approach. Under this approach, each claim would be accompanied by an Account Summary Form similar to the attached. The summary would include information necessary to identify and describe the account, such as the debtor name, truncated social security number and account number, account balance, and charge-off date. Because the summary would be electronically generated from creditor records, preparation of the summary would impose a relatively small burden on claimants, while still providing the debtor and the Court with ample information to understand and evaluate the claim. Use of the summary would eliminate the need for a separate itemization; the detail regarding principal and interest would be set forth in the summary. Additionally, the summary will not include the borrower's purchase history—or in the cases of medical accounts his treatment history—preserving the borrower's need for and right to privacy regarding his personal affairs.

We also recommend deletion of the itemization requirement; as discussed above, it is not practicable for credit card creditors to comply, nor does it provide the debtor or the court with meaningful information regarding the current status of the account.

### **Conclusion**

As noted above, Resurgent files a large number of bankruptcy claims. Some have put forth the view that creditors that file a large number of claims are, at best, unaware of and, at

worst, unconcerned about, the accuracy of the claims. The premise appears to be that a creditor that files a large number of claims is of necessity abusing the bankruptcy system by filing claims with little or no thought as to the validity of those claims. The effort to make a profit and conducts business as efficiently as possible is equated with a callous disregard for the integrity of the bankruptcy process and the rights of individual debtors.

That characterization does not reflect the way Resurgent does business. The company goes to great lengths to maximize the accuracy of the information it includes in proofs of claims. The first step is determining that an account is subject to a bankruptcy. This two-step process involves both a "scrub" of account information against several electronic bankruptcy databases and a manual review of potential matches by a trained research specialist. Once an account has been matched to a bankruptcy case, it receives a "second look" when it moves to a process that involves manually researching each claim on PACER, to verify with certainty that we have the legal right to file a claim and the accuracy of the claim. This process was implemented largely because of the recognition that no matter how much data we have from sellers and external data sources, we cannot make an automated decision on claims filing.

It is only after this process is complete, after we have verified as much information as can be verified, that a claim is filed. The low rate of objections to Resurgent's claims would seem to support the contention that Resurgent takes great care in the management of its bankruptcy portfolio and strives to reduce error as much as humanly possible.

Resurgent would like to thank you again for this opportunity to share with the Committee some concerns and proposed alternatives regarding the proposed Amendments to Bankruptcy Rule 3001.

Sincerely,  
RESURGENT CAPITAL SERVICES LP

A handwritten signature in black ink that reads "Carol J. Moore". The signature is written in a cursive, flowing style.

Carol J. Moore  
Senior Vice President and  
Assistant General Counsel



Proof of Claim – Account Detail

<u>Borrower Information</u>	
Borrower Name:	
SSN (redacted):	
Address:	
City:	
State, Zip:	

<u>Bankruptcy Case Information</u>	
Trustee Name:	
Bankruptcy Case Number:	
Chapter:	

<u>Account Information</u>	
Account Number (redacted):	
Amount due as of the date the bankruptcy case was filed**:	
Charged off by original creditor on:	
Last transaction date:	

<u>Creditor Information</u>	
Current Creditor*:	
Purchased by Creditor from:	
Alternative names (if any) for this creditor:	

\*Resurgent Capital Services services this account on behalf of the current creditor. Please send any bankruptcy or related notices on this account to our attention at the following address:

Resurgent Capital Services

\*\*Information on this account was obtained from the data files received from the assignor and other information such as Bankruptcy Court records.

The assignor has verified that the balance recorded above is the balance of the account as of the filing date of the bankruptcy and does not include post petition interest, late fees, return check fees, charges representing credit protection plan fees or insurance fees or other charges.