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Fleet Credit Card Services
Mail Stop: PA HR MO 1B
550 Blair Mill Road
Horsham, PA 19044

99-BK-003
additional comments
00-BK-A

January 18, 2000

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Dear Mr. McCabe:

I am enclosing my statement proposing two rule changes.

Your office was kind enough to allow me to incorporate additional comments in my proposal since the public hearing scheduled for January 18, 2000 was postponed.

I am sending this letter and the attachments via facsimile and by express mail. I have made twenty duplicates of the recommendations and their attachments.

Please accept my appreciation for your consideration and I will be available to respond to any questions the Committee may have concerning my recommendations. I can be reached at 1-215-444-7493.

Sincerely,

Raymond P. Bell, Jr.
Bankruptcy Manager

RPB: jml
Enclosures

TO: The Advisory Committee on Federal Rules of
Bankruptcy Procedure

FROM: Raymond P. Bell, Jr., Bankruptcy Manager
Fleet Credit Card Services, L.P.

DATE: January 18, 2000

I thank the Committee for this opportunity to submit my recommendations for proposed changes to the Federal Rules of Bankruptcy Procedure.

My current position is Bankruptcy Manager for Fleet Credit Card Services, L.P. Fleet is the ninth largest credit card issuer in the United States. Fleet receives 90,000 bankruptcy petitions per year. I have worked in the field of consumer credit and collections for 30 years. For the past 20 years, I have been in charge of bankruptcy operations for three national banks. I was also employed as a director of two national law firms, which represented creditors in consumer bankruptcies. I was a former instructor of the American Institute of Banking. I have been an invited speaker on creditor's rights at various seminars. I am a member of the Board of Directors for the Coalition for Consumer Bankruptcy Debtor Education.

A. Proposed Change to Rule 2002(g).

The proposed change to Rule 2002(g) attempts to give adequate notice to creditors. Under the current proposed change, the last

document filed by the debtor or by a creditor determines the proper address for the creditor in each specific case. This was suggested in H.R. 833 (§603(a)) where a creditor must be served at addresses filed with the Court. (See *ABI Journal*, July/August, 1999 “*Legislative Update*”.)

My proposal is to allow creditors to designate their proper address in all bankruptcy courts where cases are pending. Each court would have this information electronically designated so that the creditors’ addresses would electronically appear when the clerk enters schedules D, E, and F for creditors who have notified the Court of its address. As the same creditors appear in bankruptcy cases, this change would significantly decrease the time and cost to administer the notices to creditors. If a court receives an average of 5,000 bankruptcy petitions per month and, assuming an average of 15 creditors per case, an electronic designation of creditors’ addresses, as opposed to the manual entry of each creditor’s address in each case, would reduce the costs of entering the creditor’s addresses in each case and the duplicate entry of addresses for the same creditors.

B. *Proposed Rule Change: Allowed Claims to be Deemed Filed in Chapter 7 and Chapter 13 Cases by Amending Rule 3002(a).*

Creditors’ claims are deemed filed in Chapter 9 and Chapter 11 cases. This rule was adopted on October 1, 1979 and has worked well in over 325,000 petitions filed in Chapter 11 cases since that date.

Under the current law, creditors are required to file proofs of claim in Chapter 13 cases and in asset 7 cases by a certain date, or their

claims are not paid. The filing of proofs of claim in Chapter 13 cases produce a voluminous amount of paperwork for both the bankruptcy courts and for creditors.

We propose that Rule 3002(a) be amended to allow that all claims listed by debtors in Chapter 13 and asset 7 cases be deemed filed, as is the current law in Chapter 11 cases. To notify the creditors of the amounts scheduled by the debtors in each case, the scheduled debt amount and its claim classification could be included on the 341 notice. This information is already provided on the 341 notice by some bankruptcy courts. Creditors could still file a proof of claim if there is a variance between the scheduled amount and the account balance at filing.

The benefit to the courts of a deemed filed rule in Chapter 13 and asset 7 cases would be the significant decrease in the number of proofs of claim filed by creditors in Chapter 13 cases and asset 7 cases, thereby decreasing the paper flow and labor in the bankruptcy courts and in the offices of the Chapter 13 trustees. Looking at the year 1998 alone, approximately 389,000 Chapter 13 cases were filed with the courts in 1998. Assuming an average of 15 creditors per case and each creditor filing two claims in each case, 11,670,000 proofs of claim were filed with the bankruptcy courts in 1998. To illustrate the paper flow since 1982, there have been approximately 2,710,000 Chapter 13 filings. If each filing contained 15 unsecured creditors, a total of 80,505,000 claims

would have been submitted to the Clerk of the Court based upon each creditor filing two proofs of claim, so that they would receive an acknowledgement from the Court. Based upon two-thirds of Chapter 13 plans failing, the system still had to manage 60,370,000 pieces of paper. These figures do not include Chapter 7 cases, where unsecured creditors do the same ritual of filing proofs of claim. In addition, the costs to creditors to file proofs of claim is burdensome, due to the large number of bankruptcy filings and considering that two-thirds of all Chapter 13 cases are dismissed based upon the records of the Administrative Office.

The adoption of deemed filed in Chapter 13 and asset 7 cases was proposed previously by the Government Working Group at the National Bankruptcy Review Commission. (December 17-18, 1996 and January 23, 1997, National Bankruptcy Review Commission.) It was not adopted by the Commission due to the proposition that the debtors' schedules are not reliable. However, this conclusion was based upon data from the 1970's. (Testimony of Professor Laurence King on December 17-18, 1996).

Similarly, the original HR 2500 and 3150 provided that the proofs of claim be deemed filed in Chapter 13 and asset 7 cases. Opposition to this provision was submitted by the Honorable Eugene R. Wedoff. (An Analysis of the Consumer Bankruptcy Provisions of HR 3150, Proposed Bankruptcy Reform Legislation (Revised)). In support of his opposition to deemed filed in Chapter 13 cases, Judge Wedoff stated that as consumer

debtors have poor records on what they owe, requiring proof by the creditor assures that the debt is paid in the appropriate amount. Judge Wedoff was concerned that treating all scheduled debts as accurate may result in overpayment of claims or payment of inaccurate claims.

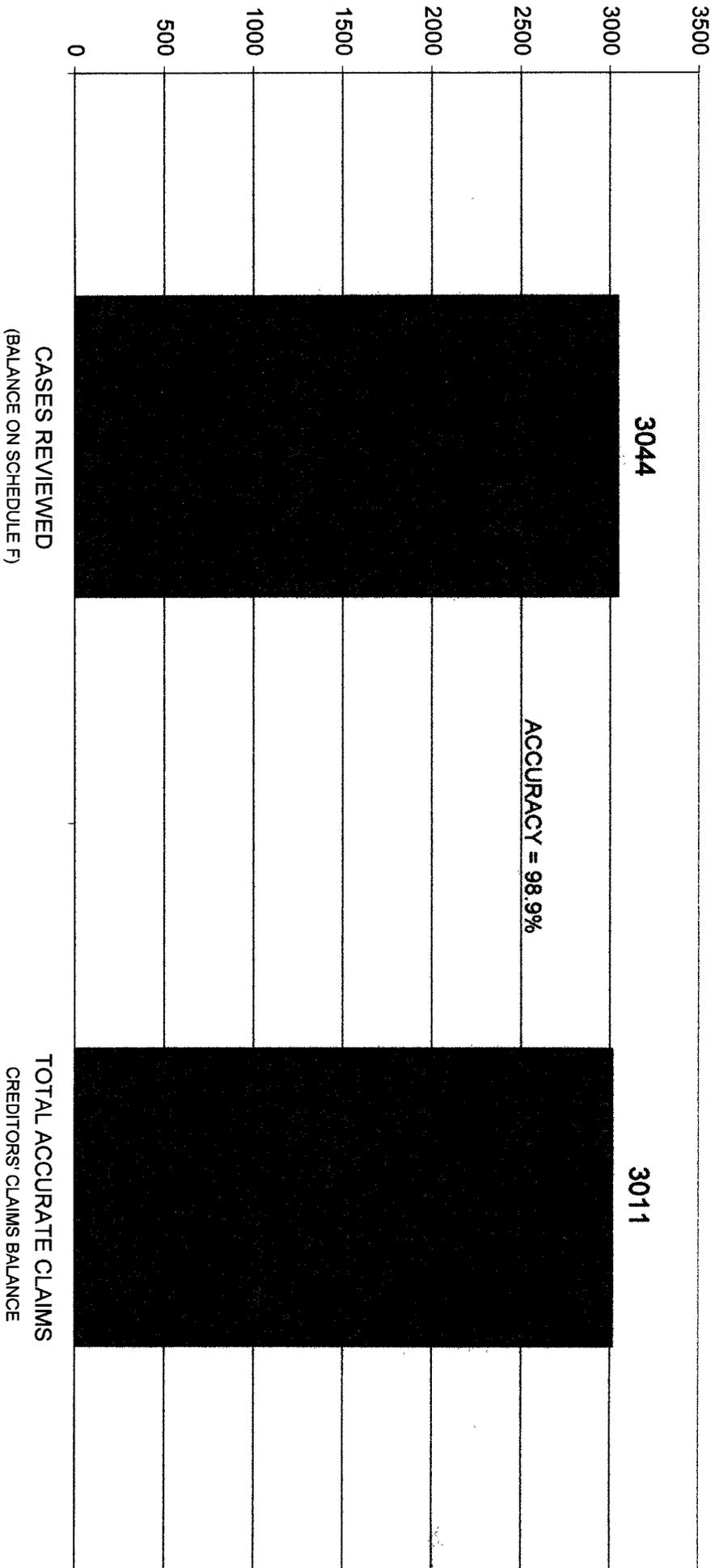
Fleet conducted a study comparing the claim amounts scheduled by debtors in Chapter 13 cases from three trustees where we had electronic access via the Internet, and in Chapter 7 cases where Fleet was listed as a creditor. In our study, the records of 3,044 Chapter 13 cases were reviewed and the records of 91 Chapter 7 cases were reviewed. In both studies, there was less than a 1.5% variance between the debtors' scheduled claim amounts and the creditors' proof of claim amounts. Attached are graphs of the two studies. There are over 3,000 pages of information in this study. I have retained the data from the study and will forward it to you, if requested.

Based upon the low variance between the debtors' listed claim amounts and the creditors' proof of claim amounts, namely 1.5% in our study, adoption of the deemed filed rule in Chapter 13 and Chapter 7 cases could decrease claim filings by 98-99%, which would significantly decrease the amount of paper filed with the courts and with Chapter 13 trustees, and would decrease the considerable cost to creditors to file proofs of claim in Chapter 13 and asset 7 cases. Creditors would be able to review the debtor's scheduled claim amounts and file a proof of claim if the scheduled amount was incorrect.

The bankruptcy process has changed since October, 1979. Filings have significantly increased and the expense of administering the process has increased for the courts, the debtors, the creditors and the American taxpayers. A deemed filed rule in Chapter 13 and asset 7 cases would alleviate the expense. In a discussion draft (March, 1997) by Leonidas R. Mecham, Director, Administrative Office of the United States Courts, Mr. Mecham proposed that federal courts can reduce their reliance on paper records. He also indicated that reduced physical handling, maintenance and copying of file documents would produce an impressive range of benefits to the courts and the people who use the courts. (*Electronic Case Filed in the Federal Courts: A Preliminary Examination of Goals, Issues and the Road Ahead* March, 1997.)

Again, thank you for considering my recommendations on these changes, which would significantly reduce the papers filed and labor in the bankruptcy courts, while at the same time decreasing the costs to creditors in protecting their rights to recovery in bankruptcy cases.

**CHAPTER 13 BALANCE COMPARISON
(ALL UNSECURED CREDITORS' BALANCES vs. SCHEDULE F)**



Note-Unsecured creditor balances represent bank credit cards, revolving store credit cards, installment loans, asset claim buyers, and oil company credit cards. All or part were listed from schedule F and the balance listed in the Chapter 13 Trustee claim register.

CHAPTER 7 BALANCE COMPARISON
(FLEET SYSTEM BALANCE vs. AMOUNT LISTED IN SCHEDULE F)

\$900,000		
\$800,000	\$903,874	
\$700,000		VARIANCE = 1.02%
\$600,000		
\$500,000		
\$400,000		
\$300,000		
\$200,000		
\$100,000		
\$0		
	BANK BALANCE	
		LISTED SCHEDULE BALANCE

91 CHAPTER 7 CASES SELECTED - NINETY ONE BALANCES WERE TOTALED FROM FLEET'S COMPUTER SYSTEM AND THE AMOUNTS LISTED IN SCHEDULE F.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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EVIDENCE RULES

February 9, 2000

Mr. Raymond P. Bell, Jr.
Bankruptcy Manager
Fleet Credit Card Services
Mail Stop: PA HR MO 1B
550 Blair Mill Road
Horsham, Pennsylvania 19044

Dear Mr. Bell:

Thank you for your comments and suggestions to the Federal Rules of Bankruptcy Procedure. A copy of your letter will be sent to the members of the Judicial Conference Advisory Committee on Bankruptcy Rules for their consideration.

We welcome your comments and suggestions and appreciate your interest in the rulemaking process.

Sincerely,



Peter G. McCabe

cc: Honorable Anthony J. Scirica
Advisory Committee on Bankruptcy Rules
Professor Daniel R. Coquillette