

Bankruptcy Rules Changes Effective December 1, 2009

Significant changes to the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") became effective December 1, 2009. The most notable amendments to the Bankruptcy Rules involve the computation of time under the Bankruptcy Rules and the increased stay period on orders granting motions for relief from the automatic stay. Highlights of these amendments are:

Computation of time:

Effective December 1, 2009, Bankruptcy Rule 9006(a) was amended to make the federal rules of calculating time periods simpler, clearer, and consistent. Prior to the amendment to Bankruptcy Rule 9006, the rules excluded weekends and holidays resulting in inconsistency and unnecessary complications. The computation of time as provided in the amendment to Bankruptcy Rule 9006, now takes into consideration all days, including weekends and holidays, in computing time periods under the procedural rules. Specifically, all calendar days are now counted ("days are days") excluding the date of the event that triggers the period, but including weekends and holidays. If, at the end of the time period the deadline day is on a holiday or a weekend, then the period is extended to the next day that is not a weekend or holiday. The amended rules specifically provide that in cases of electronic filing, if the clerk's office is not accessible on the deadline day, then the filing date is midnight of the next day the office is open as long as that day is not a weekend or holiday. For non-electronic filing, it is the normal period of closure on the next day. The various deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Bankruptcy Rule 4001(a)(3)/Increased Stay Period:

Also effective December 1, 2009, Bankruptcy Rule 4001 was amended to extend the stay after the entry of order granting a motion for relief from automatic stay **from 10-days to 14-days**. The pertinent amendment to Bankruptcy Rule 4001(a)(3) is provided below:

"(3) Stay of order. An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."

The extended 14-day stay of Bankruptcy Rule 4001(a)(3) affects any pending bankruptcy case where an Order on a Motion for Relief from the Automatic Stay is entered on or after December 1, 2009. In other words, if an Order for relief from the Automatic Stay is entered on November 30, 2009, and the court did not waive 4001(a)(3), the effective date of the Order is 10 days from the date of its entry on the court docket. Conversely, if an Order for relief from the Automatic Stay is entered on or after December 1, 2009, and the court did not waive 4001(a)(3), the effective date of the Order is 14 days from the date of its entry on the court docket. Creditors should continue to seek a waiver of Bankruptcy Rule 4001(a)(3) on the Motions for relief from the Automatic Stay whenever possible (some courts routinely waive Rule 4001(a)(3) and others will only do so if there is cause, which may include a surrender of the property by the debtor, bad faith, or some other extraordinary circumstance). To the extent the court declines to waive Rule 4001(a)(3), creditors should ensure that they refrain from taking action under the terms of the Order for Relief from the Automatic Stay, until after the expiration of the applicable period that the Order is stayed.

If you have any questions or would like to discuss the amendments to the Bankruptcy Rules in greater detail, please do not hesitate to contact Pite Duncan, LLP at 619.326.2460.