

❖ MEMORANDUM ❖

To: Chapter 13 Practioners
Fr: Judge Marilyn Shea-Stonum
Date: October 4, 2004
Re: Hearings on Objections to Claims

When a debtor files an objection to the treatment of a claim, other than a claim held by the United States, the Court will not schedule a hearing and will consider a proposed order sustaining the objection on a default basis provided that no response is filed and the objection complies with the following requirements.

1. The objection sets forth a detailed explanation of why it is being filed;¹
2. The objection sets forth a specific request of how debtor would like the challenged claim to be treated in debtor's bankruptcy;²
3. The objection sets forth specific factual allegations (including supporting documentation, if applicable)³ evidencing that the requested treatment of the challenged claim is appropriate;
4. The objection cites to all relevant statutory and case law to support the requested treatment of the challenged claim;
5. The objection contains a notice pursuant to § 102 of the Bankruptcy Code (the "§ 102 Notice") indicating that a hearing can be requested within 30 days of the date of service of the objection;⁴

¹ For instance, a mere indication by debtor the he/she "objects to the claim as filed" will not suffice.

² *E.g.*, debtor requests that the challenged claim be disallowed in its entirety or debtor requests that the challenged claim be bifurcated and treated as a secured claim in the amount of \$___ and an unsecured claim in the amount of \$_____.

³ Local Bankruptcy Rule 9013-2.

⁴ *See* footnote 5.

6. The § 102 Notice complies with the requirements of FED. R. BANKR. P. 3007;⁵ and
7. The objection contains a statement in substantially the same form as the following which identifies the address(es) at which the claimant was served:

Counsel for debtor represents to the Court that claimant was served at the following address(es): _____, pursuant to FED. R. BANKR. P. 2002(g)(1)(A)⁶ [and FED. R. BANKR. P. 7004(i) or 7004(j), if applicable]⁷

or

Counsel for debtor represents to the Court that claimant was served at the following address(es): _____, pursuant to FED. R. BANKR. P. 2002(g)(2)⁸ [and FED. R. BANKR. P. 7004(i) or 7004(j), if applicable].

If the Court, in its sole discretion, determines that the above requirements have not been met or if a response to the objection is filed then a hearing will be scheduled at which counsel *shall* appear. If the objection deals with a claim held by the United States, an evidentiary hearing, at which counsel *shall appear*, will be held pursuant to FED. R. BANKR. P. 7055(e).

⁵ That rule sets forth, in part, that “[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . and the trustee *at least 30 days prior to the hearing.*” FED. R. BANKR. P. 3007 (emphasis added).

⁶ That rule provides that, if a proof of claim has been filed, a notice shall be sent to the claimant at the address designated in that proof of claim.

⁷ Rules 7004(i) and 7004(j) set forth how service is to be made upon the United States and foreign, state and local governments.

⁸ That rule provides that, if a creditor has not filed a request designating a mailing address, then notices should be served at the address listed for that creditor on the list of creditors or schedule of liabilities, whichever is the later filed document.