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OF THE NINTH CIRCUIT**

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:)	BAP No.	CC-05-1051-BKMo
)		CC-05-1053-BKMo
JSJF CORPORATION,)		CC-05-1103-BKMo
dba Weiler's Deli,)		(Consolidated)
)		
Debtor.)	Bk. No.	SV 04-14037 KT
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WALL STREET PLAZA, LLC,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
JSJF CORPORATION,)		
dba Weiler's Deli,)		
)		
Appellee.)		
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Argued and Submitted on February 24, 2006 at
Pasadena, California

Filed - May 1, 2006

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Kathleen Thompson, Bankruptcy Judge, Presiding

Before: BRANDT, KLEIN and MONTALI, Bankruptcy Judges.

1 BRANDT, Bankruptcy Judge:

2
3 This appeal presents questions regarding the "landlord's cap" of
4 § 502(b)(6),¹ untimely claims, and amended claims.

5 A few days after landlord Wall Street Plaza, LLC, was awarded a
6 state court judgment for damages against debtor JSJF Corporation for
7 breach of lease, JSJF filed its chapter 11 petition. Wall Street and
8 its counsel filed three proofs of claim, to which JSJF objected on
9 various grounds, including that all were for attorneys fees, not "rent
10 reserved," and that two were time-barred. The bankruptcy court
11 sustained debtor's objections, disallowed all three claims, and denied
12 Wall Street's motion for reconsideration.

13 Meanwhile, Wall Street sought leave to file a fourth proof of claim
14 on its judgment, either as an amendment to the first timely claim or as
15 late filed, which the bankruptcy court denied. It also denied Wall
16 Street's motion for reconsideration.

17 Because § 502(b)(6) does not limit lessors to claims for "rent
18 reserved," we REVERSE the order on the first claim. We AFFIRM
19 disallowance of the late second and third claims, and, as no prejudice
20 was shown, we REVERSE the disallowance of the final claim and REMAND for
21 its consideration as an amended claim. Finally, to the extent they are

22 _____
23 ¹ Absent contrary indication, all "Code," chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, prior to
25 its amendment by the Bankruptcy Abuse Prevention and Consumer
26 Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, as the case from
27 which these appeals arise was filed before its effective date
28 (generally 17 October 2005).

29 All "Rule" references are to the Federal Rules of Bankruptcy
30 Procedure, all "FRCP" references are to the Federal Rules of Civil
31 Procedure, and all "FRAP" references are to the Federal Rules of
32 Appellate Procedure.

1 not mooted by our dispositions respecting the claims themselves, we
2 AFFIRM the denials of reconsideration.

3
4 **I. FACTS**

5 A. Background

6 In 1996, JSJF sublet space for its restaurant from Wall Street.
7 The lease included a provision that attorney's fees were "additional
8 rent." JSJF vacated the premises after occupying the space without
9 paying rent for approximately seven months. Seven years later, and
10 following a state court jury trial on the defaulted lease obligations
11 and JSJF's counterclaim for constructive eviction, Wall Street was
12 awarded judgment for damages of \$183,240.67 (the "Judgment"): \$154,452
13 for breach of the sublease and \$28,786.67 for lost rent resulting from
14 wrongful termination of the lease. Wall Street also prevailed on JSJF's
15 counterclaim, obtaining a judgment of dismissal, with attorneys' fees to
16 be awarded later. Several days later, JSJF filed its chapter 11
17 petition, while continuing to operate the business as a debtor in
18 possession. Wall Street was its primary unsecured creditor: JSJF
19 scheduled the judgment as contingent, unliquidated, and disputed,
20 because, as JSJF later explained, the time for appeal had not elapsed,
21 attorney's fees had not yet been determined in state court, and it was
22 reserving its appellate rights.

23 On 9 November 2004, after the claims bar date of 31 August 2004,
24 JSJF filed its disclosure statement (which included a summary of the
25 Wall Street/JSJF litigation) and a proposed plan, which stated in part:

26 The Debtor estimates that unsecured claims will total
27 approximately \$91,171 excluding the claim of Wall Street which
28 will add an additional claim based on the results of claims
litigation. The Debtor estimates for purposes of this
Disclosure Statement [sic] only that the maximum amount of

1 Wall Street's allowed claim will not exceed \$125,000.

2 Chapter 11 Plan filed 7 October 2004, page 5.

3 The plan, confirmed on 27 January 2005, provided for quarterly
4 payments of \$9000 to general unsecured claim holders until paid in full.
5 Confirmation was not stayed pending these appeals.

6 JSJF acknowledged in the final decree it prepared "that appeals are
7 pending . . . [, and] that allowed general unsecured claims are treated
8 to full payment under Class 2 of the Debtor's chapter 11 plan. If the
9 Bankruptcy Court's orders disallowing Wall Street['s] . . . claims are
10 reversed and to the extent such claims are allowed, then such allowed
11 claims would qualify for payment as a Class 2 claimant under the plan."
12 Order [on] Final Decree, 2 May 2005: As there are adequate funds for
13 distribution to Wall Street, this appeal is not moot, see In re Beatty,
14 162 B.R. 853, 856 (9th Cir. BAP 1994), and we have jurisdiction.

15
16 B. Claims

17 Returning to the focus of these appeals:

18 Claim 11, filed timely on 16 August 2004, asserted a secured
19 claim of \$133,807.52 for a "civil judgment of attorney fees and costs,"
20 entered 7 May 2004. The claim references the state court judgment by
21 date, court, and case number. The derivation of the amount and date is
22 not explicit, but the amount matches that in counsel's (then stayed)
23 state court motion for fees and costs.

24 The bankruptcy court, sustaining JSJF's objection, disallowed the
25 claim, ruling that it was not for "rent reserved" under § 502(b)(6) and
26 stating "I think 502(b)(6) does apply." Transcript, 9 December 2004,
27 page 20.

28 Claims 16 and 17 were both filed on 2 September 2004 by two of Wall

1 Street's law firms in their own names, as secured claims for "civil
2 judgment[s]" of \$10,000 and \$250,000 respectively. The objections and
3 rulings were the same for both: "I'm sustaining those objections for 16
4 and 17. They're late filed. They are not filed by parties who, so far
5 as I can tell, have any direct claim against this Debtor [as] their
6 claims are derivative through the creditor" Transcript,
7 9 December 2004, page 20.

8 The bankruptcy court entered a single order disallowing claims 11,
9 16, and 17, on 20 December 2004, and an order denying reconsideration on
10 20 January 2005, which Wall Street timely appealed (No. CC-05-1051).

11 Claim 20 was filed on 22 December 2004 with a copy of the judgment
12 attached. The proof of claim was for \$183,241.67, unsecured, for
13 "damages for breach of lease and for attorneys' fees." Wall Street
14 moved for leave to have claim 20 allowed as late filed, i.e., after the
15 claims bar date, or to be considered as an amendment to claim 11. JSJF
16 objected to claim 20 because it was untimely and unsupported by evidence
17 showing excusable neglect. JSJF also argued that because claim 20 was
18 for damages for breach of the lease, it could not "relate back" as an
19 amendment to claim 11, which was for attorney fees for defending against
20 JSJF's cross-claim for constructive eviction. The bankruptcy court
21 sustained JSJF's objection:

22 I don't think you can make the relation-back argument.
23 I understand that the attorney's fees and the judgment all
24 arise out of the same lawsuit, but . . . it is absolutely
clear that . . . all of the claims that were made before this
last claim were solely related to attorney's fees.

25 I think . . . that you've changed the basis of the claim
26 in your request for amendment. And I don't think you qualify
27 by changing - I think it's a new claim. It doesn't mean that
28 . . . its existence was unknown, but it's a new claim when
it's placed side by side with a claim that was timely filed on
behalf of the creditor entity.

1 [Referring now to the issue of whether it should be allowed as
2 a late-filed claim] I think on the issue of prejudice to the
3 Debtor . . . in the process now, the acceptance of this new
4 claim would begin a whole new round of litigation.

5 Transcript, 11 January 2005, page 19.

6 Wall Street appealed the resulting order, entered 20 January 2005
7 (No. CC-05-1053). The bankruptcy court denied Wall Street's timely
8 § 502(j) motion for reconsideration on 7 March 2005, which Wall Street
9 also appealed (No. CC-05-1103).

10 We consolidated the three appeals.

11 **II. JURISDICTION**

12 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and
13 § 157(a), (b) (1), and (2). We do under 28 U.S.C. § 158(c).

14 **III. ISSUES**

15 Whether the bankruptcy court abused its discretion:

- 16
- 17 A. In sustaining debtor's objections to claims 11, 16 and 17;
 - 18 B. In disallowing claim 20 as an amendment to claim 11 or as a late-
19 filed claim; or
 - 20 C. In denying reconsideration of its disallowances of the claims.

21 Wall Street also argued to the bankruptcy court that it did not
22 need to file a proof of claim, contending that Rule 3003, which requires
23 a proof of claim in chapter 11 cases only if the debt is scheduled as
24 disputed, contingent or unliquidated, was not triggered since there was
25 no "genuine" dispute. The bankruptcy court did not explicitly rule on
26 this issue. Wall Street included it in its statement of issues
27 presented in these appeals, required by Rule 8010(a)(1)(C), and
28 mentioned it again in its opening brief. But it cited no authority for

1 this argument in the brief, contrary to Rule 8010(a)(1)(E). That
2 omission waives the issue on appeal, Heft v. Moore, 351 F.3d 278, 285
3 (7th Cir. 2003); and In re O'Brien, 312 F.3d 1135, 1136 (9th Cir. 2002)
4 (applying FRAP 28). We need not, and do not, consider it.

5 6 **IV. STANDARDS OF REVIEW**

7 A. We review the bankruptcy court's conclusions of law and its
8 interpretation of the Bankruptcy Code and Rules de novo, with no
9 deference given to its conclusions. Rule 8013; In re Staffer, 262 B.R.
10 80, 82 (9th Cir. BAP 2001), aff'd, 306 F.3d 967 (9th Cir. 2002); and In
11 re Pardee, 218 B.R. 916, 919 (9th Cir. BAP 1998), aff'd, 193 F.3d 1083
12 (9th Cir. 1999).

13 B. We review findings of fact for clear error. Rule 8013. A
14 factual finding is clearly erroneous if the appellate court, after
15 reviewing the record, has a firm and definite conviction that a mistake
16 has been committed. Anderson v. Bessemer City, 470 U.S. 564, 573
17 (1985). And "[w]e may regard a finding of fact as clearly erroneous not
18 only if it is without adequate evidentiary support, but also if it was
19 induced by an erroneous view of the law." Power v. Union Pac. R.R. Co.,
20 655 F.2d 1380, 1382-83 (9th Cir. 1981) (citations omitted).

21 C. We review the bankruptcy court's decision to deny a motion to
22 amend a claim for abuse of discretion. In re Burnett, 306 B.R. 313, 317
23 (9th Cir. BAP 2004), aff'd, 435 F.3d 971 (9th Cir. 2006). Likewise, its
24 determination whether a party has shown excusable neglect, In re Cahn,
25 188 B.R. 627, 629 (9th Cir. BAP 1995), and its denial of reconsideration
26 of allowance or disallowance of a claim. In re Consol. Pioneer
27 Mortgage, 178 B.R. 222, 225 (9th Cir. BAP 1995), aff'd, 91 F.3d 151 (9th
28 Cir. 1996) (table).

1 A court abuses its discretion if it bases its ruling on either an
2 erroneous view of the law or a clearly erroneous assessment of the
3 evidence. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990);
4 In re Travel Headquarters, Inc., 140 B.R. 260, 261 (9th Cir. BAP 1992).
5 Under the abuse of discretion standard, we must have a definite and firm
6 conviction that the bankruptcy court committed a clear error of judgment
7 to reverse. In re Black, 222 B.R. 896, 899 (9th Cir. BAP 1998).

8 9 V. DISCUSSION

10 A. Jurisdiction; Scope of Appeal

11 As the motion for reconsideration was filed within 10 days of entry
12 of the underlying order, FRCP 59, applicable in bankruptcy via Rule
13 9023, applies, and we have jurisdiction to review both the underlying
14 order and the order denying reconsideration. In re Tennant, 318 B.R.
15 860, 866 & n.5 (9th Cir. BAP 2004) (distinguishing between appeal of an
16 order denying FRCP 60 motion and appeal of a timely FRCP 59 motion); In
17 re Cascade Roads, Inc., 34 F.3d 756, 761 (9th Cir. 1994) (appellate
18 court may review the merits of a bankruptcy court order where the
19 parties have fully briefed those issues even if the order was not
20 identified in the notice of appeal).

21 But Wall Street's notice of appeal in CC-05-1051 designates and
22 attaches only the order denying reconsideration, not the underlying
23 order which sustained JSJF's objections to claims 11, 16, and 17.
24 Although Rule 8001(a) does not require a notice of appeal to designate
25 the order or judgment from which an appeal is taken, In re Dudley, 249
26 F.3d 1170, 1174 (9th Cir. 2001), our rule does.

27 But 9th Cir. BAP Rule 8001(a)-1 is a local rule, and we may depart
28 from it absent prejudice. In re Telemart Enters., Inc., 524 F.2d 761,

1 766 (9th Cir. 1975). There is none, and the parties have briefed the
2 issues regarding the disallowance of claims 11, 16, and 17.
3 Accordingly, we will review that order.

4
5 **B. "Rent Reserved"**

6 JSJF's only objection to claim 11 was that it was not "rent
7 reserved" and, it contended, therefore not allowable under § 502(b)(6).
8 That section, the "landlord's cap," limits the amount of a lessor's
9 claim for lease termination damages:

10 (b) . . . if [an] objection to [the] claim is made, the court,
11 after notice and a hearing, shall determine the amount of such
12 claim in lawful currency of the United States as of the date
of the filing of the petition, and shall allow such claim in
such amount, except to the extent that-

13 (6) if such claim is the claim of a lessor for damages
14 resulting from the termination of a lease of real
property, such claim exceeds-

15 (A) the rent reserved by such lease, without
16 acceleration, for the greater of one year, or 15 percent,
not to exceed three years, of the remaining term of such
17 lease, following the earlier of-

18 (i) the date of the filing of the petition; and

19 (ii) the date on which such lessor repossessed, or
the lessee surrendered, the leased property; plus

20 (B) any unpaid rent due under such lease, without
21 acceleration, on the earlier of such dates.

22 11 U.S.C. § 502(b) (emphasis added).

23 In In re McSheridan, 184 B.R. 91, 99-100 (9th Cir. BAP 1995), we
24 construed § 502(b)(6) as formulating a three-part test for determining
25 what charges are "rent reserved." To be capped, the charge must be:
26 (1)(a) designated as "rent" or "additional rent" in the lease; or (b)
27 provided as the tenant's/lessee's obligation in the lease; (2) related
28 to the value of the property or the lease thereon; and (3) properly

1 classifiable as rent because it is a fixed, regular or periodic charge.

2 JSJF relies on In re Pacific Arts Publ'g, Inc., 198 B.R. 319, 322-
3 23 (Bankr. C.D. Cal. 1996), in which the court sustained a debtor's
4 objection to a lessor's claim for attorney fees under § 502(b)(6), as
5 did the court in In re Edwards Theatres Circuit, Inc., 281 B.R. 675,
6 683-84 (Bankr. C.D. Cal. 2002). Those courts appear to have read
7 McSheridan as about claims allowance or disallowance, but it is not.
8 Rather, it concerns which portions of a lessor's claim are limited by
9 § 502(b)(6).

10 We are not bound to follow the bankruptcy court decisions in
11 Pacific Arts or Edwards Theatres as precedent, and do not read
12 § 502(b)(6) to limit lessors' claims only to those items which fall
13 within the cap, as explicated in McSheridan. This follows from the
14 structure of the statute, which we must interpret according to its plain
15 language, U.S. v. Ron Pair Enters., 489 U.S. 235, 241 (1989), and U.S.
16 v. Lopez-Perera, 438 F.3d 932, 933-34 (9th Cir. 2006) (to determine
17 plain meaning, a court examines the specific provisions, structure of
18 the law and object and policy). Under § 502(a) a claim is "deemed
19 allowed" unless objected to, and § 502(b) directs the bankruptcy court
20 to allow the claim "except to the extent . . . if such claim is the
21 claim of a lessor for damages resulting from the termination of a lease
22 of real property, such claim exceeds" the formula it sets out.

23 As we explained in McSheridan, a lessor may have an un-capped claim
24 for something other than damages resulting from the termination of a
25 lease. If the total claim is greater than the formula would permit, it
26 is in the lessor's interest (and contrary to the debtor's and other
27 creditors') that the cap not apply - that is precisely the import of
28 McSheridan.

1 In short, the "landlord's cap" of § 502(b)(6) may limit the amount
2 of a lessor's claim, but is not a criterion for its allowance: it
3 becomes significant only if the claim otherwise allowable under non-
4 bankruptcy law exceeds the cap calculated under the statute.

5 Disallowance of Wall Street's claim because it was not for rent,
6 which is the gist of the bankruptcy court's ruling, was an error of law.
7 We will REVERSE the order and REMAND for further proceedings. Even were
8 we to affirm all of the bankruptcy court's other rulings, remand would
9 still be necessary for determination of whether the landlord's cap
10 applies to some or all of claim 11 under McSheridan, and, if so, what
11 that cap is (the briefs indicate monthly rent of \$7,000, and that
12 approximately \$80,000 was due as of surrender of the premises).

13
14 **C. Untimely Claims**

15 Rule 9006(b) gives the bankruptcy court discretion to allow late-
16 filed or untimely claims if the claimants establish "inadvertence,
17 mistake, or carelessness" or "intervening circumstances beyond the
18 party's control." Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd.
19 P'ship, 507 U.S. 380, 388 (1993)

20 Neither Wall Street nor the attorneys who filed claims 16 and 17,
21 arguably as its agents, submitted any evidence showing excusable neglect
22 permitting the untimely filing of these two claims. Accordingly, there
23 was no abuse of discretion in disallowing these claims. We will AFFIRM
24 the order sustaining JSJF's objections to claims 16 and 17.

25
26 **D. Amended Claims**

27 Respecting claim 20, the bankruptcy court made no explicit finding
28 on excusable neglect, but, again, Wall Street proffered no evidence of

1 excusable neglect in support of its motion. Absent such a showing, the
2 bankruptcy court did not abuse its discretion in declining to consider
3 claim 20 as a late filed claim.

4 But the inquiry regarding amendment of claims is narrower:

5 In the absence of prejudice to an opposing party, the
6 bankruptcy courts, as courts of equity, should freely allow
7 amendments to proofs of claim that relate back to the filing
8 date of the informal claim when the purpose is to cure a
9 defect in the claim as filed or to describe the claim with
10 greater particularity.

11 In re Sambo's Restaurants, Inc., 754 F.2d 811, 816-17 (9th Cir. 1985).

12 And the Ninth Circuit explicated further in In re Roberts Farms,
13 Inc., 980 F.2d 1248, 1251-52 (9th Cir. 1992), a case involving formal
14 proofs of claim:

15 We have a long established liberal policy that permits
16 amendments to a proof of claim. The crucial inquiry is
17 whether the opposing party would be unduly prejudiced by the
18 amendment.

19 To determine whether [debtor] was prejudiced by [the]
20 amendment, the BAP properly relied on factors considered in
21 In re City of Capitals, Inc., 55 B.R. 634, 637 (Bankr. D. Md.
22 1985). The Ninth Circuit BAP adopted these factors in In re
23 Wilson, 96 B.R. at 262, where the court stated "in determining
24 prejudicial effect [we] look to such elements as bad faith or
25 unreasonable delay in filing the amendment, impact on other
26 claimants, reliance by the debtor or other creditors, and
27 change of the debtor's position." Id. Applying these factors,
28 we agree with the bankruptcy court and the BAP that [debtor]
was not prejudiced by the amendment.

(citations omitted).

Claim 11 made reference to the state court judgment. Because the
total amount of attorneys fees had not been determined, the amount
stated in the claim was incorrect. But the gravamen of the proof of
claim was the assertion of all of Wall Street's rights vis-a-vis JSJF
arising out of the lease litigation which resulted in the state court
judgment, and Claim 20 sought to correct the error and set forth the

1 proper amount of Wall Street's claim. The relation-back did not assert
2 a new theory of relief, and amendment is consistent with the foregoing
3 authorities permitting this sort of relief under similar circumstances.

4 So the question is prejudice, which the Third Circuit addressed in
5 In re O'Brien Env'tl. Energy, Inc., 188 F.3d 116 (3d Cir. 1999). There
6 a creditor holding an unsecured nonpriority claim sought to file a late
7 claim because it had failed to realize that an earlier noticed motion,
8 which had been granted, would preclude its claim. The Third Circuit
9 analyzed prejudice in considering whether to allow a late filed claim,
10 and held, following Pioneer Investment, that prejudice must involve more
11 than whether the plan set aside funds to pay the claim at issue, because
12 otherwise all amendments after a claims bar date would be prima facie
13 prejudicial:

14 There has been no allegation, let alone evidence in the
15 record, that payment of the cure claim . . . would pose any
16 problem, actually or legally, or would adversely impact any of
17 appellees. Finally, to the extent [debtor] argues that
18 allowance of this claim would open the floodgates to other
19 future claims against them, [debtor] has not alleged that any
20 other creditor promptly sought to be excused from the March 8
21 order so as to now be entitled to relief on the basis of
22 excusable neglect.

23 Considering all of these facts, we cannot see how any of the
24 appellees before us would be prejudiced, in the legal sense,
25 by [having to pay the] claim - a claim which the debtor had
26 already planned to pay by the terms of its own Plan.

27 O'Brien Env'tl., 188 F.3d at 128 (emphasis added).

28 We agree that prejudice requires more than simply having to
litigate the merits of, or to pay, a claim - there must be some legal
detriment to the party opposing. Nothing in JSJF's papers suggests any
worsening of its position, or bad faith or unreasonable delay on the
part of Wall Street, nor are there any such findings. The equities of
the situation favor Wall Street - JSJF's own plan of reorganization,

1 schedules, and disclosure statement included Wall Street's claim for
2 lease damages, and JSJF knew that Wall Street intended to assert its
3 rights against it. After all, Wall Street's successful assertion of
4 those rights triggered JSJF's bankruptcy filing, and it referenced the
5 judgment by court, case number, and date in its initial timely claim,
6 claim 11.

7 As the bankruptcy court's disallowance of claim 20 as an amendment
8 to claim 11 was based on the mistaken legal premise that the debtor's
9 having to address the merits of the claim (or pay it) was sufficient
10 prejudice, denying leave to amend was an abuse of discretion. We will
11 REVERSE that disallowance, and REMAND for determination of the claim and
12 the extent to which it may be limited by the § 502(b)(6) cap.

13
14 **E. Reconsideration**

15 Given our determination regarding claim 11, the appeal of the order
16 denying reconsideration of that claim is moot.

17 Wall Street did not brief any issues regarding reconsideration of
18 claims 16 and 17; it has thereby waived them. In re Sedona Inst., 220
19 B.R. 74, 76 (9th Cir. BAP 1998). We will AFFIRM those denials of
20 reconsideration.

21 Respecting claim 20, to the extent Wall Street's motion for
22 reconsideration is not mooted by the foregoing, that motion, filed
23 within the ten-day period to appeal, is governed by FRCP 59(a),²

24
25 ² Which states:

26 A new trial may be granted to all or any of the parties
27 and on all or part of the issues

28 . . .

(continued...)

1 applicable in bankruptcy via Rule 9023. In re Captain Blythers, Inc.,
2 311 B.R. 530, 539 (9th Cir. BAP 2004).

3 But bankruptcy proceedings are not exercises in successive
4 approximation, on the model of early modern (World War II and before)
5 naval gunfire, wherein one shoots a salvo, observes the splashes
6 relative to the target, corrects, and shoots again, repeating the
7 process until the target (or one's own ship) is destroyed:

8 A motion to reconsider may not be used to present a new legal
9 theory for the first time or to raise legal arguments which
10 could have been raised in connection with the original motion.
11 Also, a motion to reconsider may not be used to rehash the
12 same arguments presented the first time or simply to express
13 the opinion that the court was wrong. The standard for
14 granting a motion to reconsider is strict in order to preclude
15 repetitive arguments that have already been fully considered
16 by the court.

13

14 As busy as this court is, it nonetheless is required to review
15 the evidence and the applicable law and to render a sound
16 decision the first time that a matter is brought before it.
17 The court does not have the luxury of treating its first
18 decision as a dress rehearsal for the next time. The court is
19 required to "get it right" the first time.

18 No less is expected of counsel. Initial arguments are not to
19 be treated as a dress rehearsal for a second attempt to
20 prevail on the same matter. Counsel is also expected to "get
21 it right" the first time and to present all the arguments
22 which counsel believes support its position.

21 In re Armstrong Store Fixtures Corp., 139 B.R. 347, 349-50 (Bankr. W.D.
22 Pa. 1992) (emphasis in original; citations omitted).

23 _____
24 ²(...continued)

25 (2) in an action tried without a jury, for any of the
26 reasons for which rehearings have heretofore been granted in
27 suits in equity in the courts of the United States. On a
28 motion for a new trial in an action tried without a jury,
the court may open the judgment if one has been entered,
take additional testimony, amend findings of fact and
conclusions of law or make new findings and conclusions, and
direct the entry of a new judgment.

1 Here Wall Street's papers raised no issues which were not, or could
2 not have been, considered at the initial hearing; the motion was
3 properly denied. In re Agric. Research & Tech. Group, Inc., 916 F.2d
4 528, 542 (9th Cir. 1990); and In re Negrete, 183 B.R. 195, 197 (9th Cir.
5 BAP 1995), aff'd, 103 F.3d 139 (9th Cir. 1996) (table). We will AFFIRM
6 the denial of reconsideration with respect to claim 20.

8 VI. CONCLUSION

9 Because the bankruptcy court's ruling was predicated on a mistaken
10 legal premise, it was an abuse of discretion to disallow claim 11 under
11 § 502(b)(6); to the extent the order of 20 December 2004 disallows that
12 claim, we REVERSE.

13 As claims 16 and 17 were untimely and no excusable neglect was
14 shown, we AFFIRM the disallowance of those claims and of claim 20 on
15 that ground, but REVERSE the disallowance of claim 20 as an amendment to
16 claim 11, and REMAND. If Wall Street prevails, the bankruptcy court
17 will need to determine whether and to what portion of its claim the
18 § 502(b)(6) cap applies.

19 Finally, to the extent they are not mooted by our dispositions
20 concerning the underlying claims, we AFFIRM the denials of
21 reconsideration.