

**SEP 29 2005**

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

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

In re:	)	BAP No.	CC-04-1324-MoBMa
	)		
PHILIP HEATH and MARLENE	)	Bk. No.	ND 03-10028-RR
HEATH,	)		
	)		
Debtors.	)		
	)		
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PHILIP HEATH; MARLENE HEATH,	)		
	)		
Appellants,	)		
	)		
v.	)		
	)		
AMERICAN EXPRESS TRAVEL	)		
RELATED SERVICES COMPANY,	)		
INC.; AMERICAN EXPRESS	)		
CENTURION BANK; MBNA AMERICA	)		
BANK N.A.; DAVID Y. FARMER,	)		
Chapter 7 Trustee,	)		
	)		
Appellees.	)		
	)		
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**O P I N I O N**

Argued and Submitted on June 22, 2005  
at Pasadena, California

Filed - September 29, 2005

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

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding.

\_\_\_\_\_

Before: MONTALI, BRANDT and MARLAR, Bankruptcy Judges.

1 MONTALI, Bankruptcy Judge:

2 Debtors Philip and Marlene Heath ("Debtors") object that  
3 several holders of their credit card debt ("Creditors") did not  
4 attach sufficient documentation to their proofs of claim to comply  
5 with Rule 3001(c).<sup>1</sup> Debtors argue that the claims must be  
6 disallowed as a matter of law. We join numerous other courts  
7 which have discouraged this form of objection and disagree.

8 When a creditor files a proof of claim, that claim is deemed  
9 allowed under Sections 501 and 502(a). A proof of claim that  
10 lacks the documentation required by Rule 3001(c) does not qualify  
11 for the evidentiary benefit of Rule 3001(f) -- it is not prima  
12 facie evidence of the validity and amount of the claim -- but that  
13 by itself is not a basis to disallow the claim. Section 502(b)  
14 sets forth the exclusive grounds for disallowance of claims, and  
15 Debtors have introduced no evidence or arguments to establish any  
16 of those grounds. Accordingly, the bankruptcy court's order  
17 allowing Creditors' claims is AFFIRMED.

18 **I. FACTS**

19 Debtors filed their voluntary Chapter 7 petition on February  
20 10, 2003. Debtors' bankruptcy Schedule F (general unsecured  
21 claims) lists twelve credit card debts, without designating any of  
22 them as disputed, unliquidated or contingent. Several holders of  
23 these credit card debts filed proofs of claim, all in slightly  
24 higher amounts than what Debtors listed in their Schedule F.  
25 Debtors filed objections to eight proofs of claim. A

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27 <sup>1</sup> Unless otherwise indicated, all chapter, section and  
28 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330,  
and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 representative objection states:

2 Debtor[s] object to the Proof of Claim of  
3 AMERICAN EXPRESS TRAVEL RELATED SERVICES CO. INC.  
4 ["Amex"] [in the amount of \$242.49] on the grounds  
5 that no supporting writing is attached to it as  
6 required by the Federal Rules of Bankruptcy  
7 Procedure, Rule 3001(c). Under the terms of the  
8 rule the original writing or a copy of it must be  
9 attached to the proof of claim. If the writing is  
unavailable, an explanation to that effect must be  
attached. Under Rule 3001(f) a proof of claim that  
conforms to the rules is "prima facie evidence of  
the validity and amount of the claim". It follows  
then, that a claim not filed in conformity with the  
rules is NOT entitled to the evidentiary  
presumptions of validity and amount.

10 \* \* \*

11 The initial burden is on the creditor to file  
12 a proper claim. The debtor then has an opportunity  
13 to look at it and determine if it is the correct  
14 amount or not. Are late fees and interest  
correctly calculated? Are all of the charges  
proper?

15 Unless the claim is properly amended, this  
objection should be sustained.

16 Debtors included an additional objection to this particular  
17 proof of claim and to one filed by American Express Centurion Bank  
18 ("Amex Centurion") for \$6,250.90, because these Creditors altered  
19 the official proof of claim form ("Form 10"):

20 There is nothing in the Bankruptcy Code or  
21 Rules which authorize this creditor to alter the  
22 Proof of Claim form to excuse compliance with the  
23 Rules. In paragraph 4 of the [proof of] claim the  
24 creditor claims it is too "unduly time consuming  
and burdensome" to produce the writing. Neither  
the Code or the Rules authorize it to require  
[D]ebtors to call [the attorneys for Amex and Amex  
Centurion] to get copies of the writing(s).

25 Amex and Amex Centurion filed a joint response and, after a  
26 reply by Debtors, a supplement with additional documentation (the  
27 "Amex Supplement"). Another Creditor, MBNA America Bank, N.A.  
28 ("MBNA"), mailed a letter to the bankruptcy court which was

1 accepted for filing and docketed as a response to Debtors'  
2 objection.

3 No other Creditors responded. At a hearing on April 20,  
4 2004, the bankruptcy court noted that Debtors had acknowledged the  
5 approximate amounts of their debts to Creditors on their  
6 bankruptcy schedules. It stated that "[a]dmissions on the  
7 schedules are evidence," "[i]t's more trouble [for most Creditors]  
8 to respond than the claim is worth," and Debtors were making "a  
9 blatant attempt to just get whatever monies there are" in what is  
10 projected to be, at least if Creditors' claims were disallowed, a  
11 "surplus" case. Transcript, April 20, 2004, pp. 2:9-17, 3:10-12,  
12 5:4. It concluded that it would overrule one objection because  
13 the Creditor was served at the wrong address and would allow the  
14 remaining seven claims, reducing the amount of each to what was  
15 listed in the schedule. Id. p. 3:13-14. It entered a written  
16 order allowing those seven claims in the reduced amounts and, on  
17 Debtors' timely motion, it entered an order (the "Reconsideration  
18 Order") stating:

- 19 1. The claim of Citibank/Choice is subordinated  
20 per 11 USC § 726(a)(3) as it was filed late.
- 21 2. The Court declines to reconsider its order  
22 with respect to any other objection for the  
23 reasons set forth on the record at the  
24 original hearing on April 20, 2004. The  
25 debtors are estopped to file objections  
26 inconsistent with their own schedules in order  
27 to prevent the sale of their [house].<sup>[2]</sup>

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28 <sup>2</sup> Debtors previously took other actions to oppose the sale  
of their house and the bankruptcy court apparently saw the same  
motivation in Debtors' objections to Creditors' claims. Although  
Debtors' motivation is irrelevant to our disposition, we note that  
their house has now been sold, notwithstanding Debtors' efforts in  
(continued...)

The bankruptcy court's rulings can be summarized as follows:

Creditor	Proof of Claim	Allowed Amount (Schedule F Amount)
Bank of America, N.A. (USA)	\$ 8,930.74	\$ 8,737.00
Amex	\$ 242.49	\$ 107.00
Amex Centurion	\$ 6,250.90	\$ 6,250.00
Direct Merchants Credit Card Bank	\$ 3,729.29	\$ 3,729.00
Discover Bank	\$ 8,290.55	\$ 8,290.00
MBNA	\$ 14,721.36	\$ 13,887.00
Citibank, N.A.	\$ 10,778.37	\$ 10,592.00
(Claim of Citibank, N.A. held to be untimely and subordinated per 11 U.S.C. § 726(a)(3).)		

Debtors filed a timely Notice of Appeal from the Reconsideration Order, later amended to include more parties. Included as parties are the Chapter 7 Trustee David Farmer ("Trustee"), his attorney, and the United States Trustee (the "UST").

Of the seven Creditors, only Amex and Amex Centurion have participated in this appeal, and they have not cross-appealed from the reduction in their claims to the amounts listed on Debtors' Schedule F. Trustee has filed an "Amicus Curiae Brief" to which Debtors objected in their reply brief on the grounds that Trustee did not participate in the proceedings before the bankruptcy court

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<sup>2</sup>(...continued)  
this Chapter 7 case and a later Chapter 13 case (No. ND 04-11178 RR). We dismissed as moot an appeal (CC-04-1361) from an order in that Chapter 13 case granting Trustee relief from the automatic stay to proceed with an unlawful detainer action to obtain possession of the house.

1 and is not an agent of the UST. Trustee then filed a "Motion for  
2 Relief to File Brief of Amicus Curiae" (the "Amicus Motion")  
3 arguing that he is a party in Debtors' Chapter 7 case and  
4 represents the interests of all the unsecured creditors.

## 5 **II. ISSUES**

6 1. May Trustee participate in this appeal?

7 2. Do Debtors' bankruptcy schedules estop them from  
8 objecting to the lack of support for Creditors' proofs of claim?

9 3. Did the bankruptcy court properly overrule Debtors'  
10 objections and allow Creditors' claims?

## 11 **III. STANDARDS OF REVIEW**

12 The proper interpretations of statutes and rules are legal  
13 questions that we review de novo. Kir Temecula v. LPM Corp. (In  
14 re LPM Corp.), 300 F.3d 1134, 1136 (9th Cir. 2002). Whether  
15 compliance with a given statute or rule has been established is  
16 generally a question of fact, which we review for clear error.  
17 Ashford v. Consol. Pioneer Mortgage (In re Consol. Pioneer  
18 Mortgage), 178 B.R. 222, 225 (9th Cir. BAP 1995) (compliance with  
19 Rule 3001 is a question of fact reviewed for clear error), aff'd,  
20 91 F.3d 151 (9th Cir. 1996) (table).

21 "A bankruptcy court's denial of a motion for reconsideration  
22 of an allowance or disallowance of a claim under Section 502(j)  
23 and Rule 3008 is reviewed for an abuse of discretion." Consol.  
24 Pioneer Mortgage, 178 B.R. at 225 (citations omitted).

25 Application of judicial or equitable estoppel is also reviewed for  
26 abuse of discretion. U.S. ex rel Sequoia Orange Co. v. Baird-  
27 Neece Packing Corp., 151 F.3d 1139, 1147 (9th Cir. 1998) (judicial  
28 estoppel); Hoefler v. Babbitt, 139 F.3d 726, 727 (9th Cir. 1998)

1 (equitable estoppel). We review the bankruptcy court's  
2 evidentiary rulings for abuse of discretion. Latman v. Burdette,  
3 366 F.3d 774, 786 (9th Cir. 2004).

4 A bankruptcy court necessarily abuses its discretion if it  
5 bases its ruling upon an erroneous view of the law or a clearly  
6 erroneous assessment of the evidence. We also find an abuse of  
7 discretion if we have a definite and firm conviction that the  
8 bankruptcy court committed a clear error of judgment in the  
9 conclusion it reached. Beatty v. Traub (In re Beatty), 162 B.R.  
10 853, 855 (9th Cir. BAP 1994) (citations and quotation marks  
11 omitted).

#### 12 IV. DISCUSSION

##### 13 1. Trustee's participation in this appeal

14 Debtors concede that Trustee is a party but argue that,  
15 because he did not participate in proceedings before the  
16 bankruptcy court, he does not have or has forfeited his right to  
17 argue the issues on appeal. We have found little authority on  
18 point and the Ninth Circuit appears to approach the issue on a  
19 case-by-case basis. See Brady v. Andrew (In re Commercial Western  
20 Finance Corp.), 761 F.2d 1329, 1334-35 (9th Cir. 1985) (attendance  
21 and objection to proposed action "should usually" be prerequisites  
22 to fulfilling "person aggrieved" standard for appellate standing;  
23 noting scarcity of precedent) (emphasis added), and compare  
24 Investors Thrift v. Lam (In re Lam), 192 F.3d 1309 (9th Cir. 1999)  
25 (declining invitation to abrogate procedural rules for creditor  
26 who defaulted and then did not appear before either bankruptcy  
27 court or BAP). See generally 15A Wright, Miller & Cooper, Federal  
28 Practice and Procedure: Jurisdiction 2d § 3902.1 (noting lack of

1 clear standards). Compare White v. Univision of Va., Inc. (In re  
2 Urban Broadcasting Corp.), 401 F.3d 236, 243-44 (4th Cir. 2005)  
3 (rejecting Commercial Western Finance Corp. and stating that  
4 “defining standing by whether an appellant has objected to an  
5 order or attended a hearing conflates basic notions of standing  
6 with notions of waiver and forfeiture”).

7       We do not believe that Trustee lacks appellate standing or  
8 has waived his right to participate as a party. Trustee has a  
9 role in representing creditors in all cases, 11 U.S.C. §§ 323 and  
10 704, and a special role in cases like this. The bankruptcy court  
11 cannot appear before us to defend its own ruling. Most creditors  
12 cannot be expected to participate extensively in Chapter 7 cases  
13 with few assets because the cost of doing so would likely outweigh  
14 the projected financial returns. Indeed, ordinarily Trustee would  
15 be the party with standing to litigate the allowance or  
16 disallowance of claims. See In re Jorczak, 314 B.R. 474, 479  
17 (Bankr. D. Conn. 2004) (debtors only have standing to object to  
18 claims where there is “a sufficient possibility” of a surplus to  
19 give them a pecuniary interest).

20       Alternatively, even if Trustee cannot appear as a party we  
21 will grant his Amicus Motion. Trustee did not move for leave  
22 before filing an amicus curiae brief, but he did file a brief  
23 entitled “Amicus Curiae Brief” citing the appropriate rules and  
24 then filed his Amicus Motion belatedly in response to Debtors’  
25 reply brief. We will treat Trustee’s timely brief as a combined  
26 brief and motion for leave to file that brief, supplemented by his  
27  
28



1 belated Amicus Motion.<sup>3</sup> One circuit court has stated:

2 An amicus brief should normally be allowed when a  
3 party is not represented competently or is not  
4 represented at all, when the amicus has an interest  
5 in some other case that may be affected by the  
6 decision in the present case (though not enough  
7 affected to entitle the amicus to intervene and  
8 become a party in the present case), or when the  
9 amicus has unique information or perspective that  
10 can help the court beyond the help that the lawyers  
11 for the parties are able to provide.

12 Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062, 1063 (7th  
13 Cir. 1997) (emphasis added). Cf. Neonatology Assocs., P.A. v.  
14 C.I.R., 293 F.3d 128 (3d Cir. 2002) (criticizing Ryan as too

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15 <sup>3</sup> 9th Cir. BAP Rule 8018(b)-1 calls for application of the  
16 Rules of the United States Court of Appeals for the Ninth Circuit  
17 and the Federal Rules of Appellate Procedure when the Federal  
18 Rules of Bankruptcy Procedure and the 9th Cir. BAP Rules are  
19 silent on the subject. Federal Rule of Appellate Procedure 29  
20 provides in relevant part:

21 29. Brief of an Amicus Curiae

22 (a) When Permitted. The United States or its officer or  
23 agency, or a State, Territory, Commonwealth, or the District  
24 of Columbia may file an amicus-curiae brief without the  
25 consent of the parties or leave of court. Any other amicus  
26 curiae may file a brief only by leave of court or if the  
27 brief states that all parties have consented to its filing.

28 (b) Motion for Leave to File. The motion must be accompanied  
29 by the proposed brief and state:

- 30 (1) the movant's interest; and
- 31 (2) the reason why an amicus brief is desirable and why  
32 the matters asserted are relevant to the disposition of  
33 the case.

34 \* \* \*

35 (e) Time for Filing. An amicus curiae must file its brief,  
36 accompanied by a motion for filing when necessary, no later  
37 than 7 days after the principal brief of the party being  
38 supported is filed. . . .

39 Fed. R. App. P. 29(a).

1 restrictive).

2 We express no opinion whether the Ninth Circuit would apply  
3 criteria as restrictive as the Ryan court, but if it did Trustee  
4 would qualify under one or more of those criteria. Cf. Portland  
5 Fish Co. v. States S.S. Co., 510 F.2d 628, 634 (9th Cir. 1974)  
6 (denying motion of several entities to file amicus briefs on  
7 rehearing, over dissent of one judge, based on factual distinction  
8 between prospective amici's and parties' interests). As we have  
9 observed, most Creditors are not represented on this appeal,  
10 Trustee has an interest beyond this one case in protecting  
11 legitimate claims from objections that lack merit, and Trustee has  
12 a unique perspective as a party that typically objects to claims  
13 while also attempting to maximize recovery for creditors with  
14 legitimate claims. For each of the above reasons, Trustee may  
15 participate in this appeal.<sup>4</sup>

16 2. Debtors' admissions in their schedule

17 The bankruptcy court's written order overruling Debtors'  
18 objections referred to estoppel but did not specify what type of  
19 estoppel. We do not rely on judicial estoppel to affirm the  
20 bankruptcy court because the excerpts of record do not reflect any  
21 judicial reliance on Debtors' schedules. Hamilton v. State Farm  
22 Fire & Cas. Co., 270 F.3d 778, 783 (9th Cir. 2001) ("This court  
23

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24 <sup>4</sup> We would reach the same outcome on this appeal even  
25 without considering Trustee's brief. There is a minority view  
26 that where an amicus brief does not add entirely new material it  
27 should not be accepted. See Voices for Choices v. Illinois Bell  
28 Telephone Co., 339 F.3d 542, 545 (7th Cir. 2003). We reject that  
approach in this case because denying Trustee's Amicus Motion  
would present an additional hurdle to his participation in any  
further appeal, and that might prejudice the interests of the  
third party creditors whose interests Trustee is defending.

1 has restricted the application of judicial estoppel to cases where  
2 the court relied on, or 'accepted,' the party's previous  
3 inconsistent position."). Nor do we rely on equitable estoppel  
4 because no party to this appeal has argued that it relied to its  
5 detriment on Debtors' bankruptcy schedules or would be somehow  
6 prejudiced if Debtors were to amend Schedule F to reflect the  
7 existence of legitimate disputes that they might raise in their  
8 objections. See The Alary Corp. v. Sims (In re Associated Vintage  
9 Group, Inc.), 283 B.R. 549, 567 (9th Cir. BAP 2002) (reviewing  
10 elements of equitable estoppel).

11 Creditors and Trustee cite a number of decisions in which  
12 principles of bad faith and estoppel are discussed, but such  
13 language is either dicta or unpersuasive in the circumstances of  
14 this appeal, or both. See, e.g., In re Cluff, 313 B.R. 323, 340-  
15 43 (Bankr. D. Utah 2004) (concluding that debtors' attempt to  
16 amend schedules was "disingenuous," "smacks of manipulation," and  
17 raised "issues of bad faith"). We cannot say that Debtors'  
18 objections were made in bad faith given Creditors' scant  
19 documentation and the diversity of judicial views on the effect of  
20 inadequate documentation.

21 Nor do we rely on evidentiary admissions in Debtors'  
22 bankruptcy schedules. It is true that, as the bankruptcy court  
23 orally suggested, bankruptcy schedules can constitute admissions  
24 under Fed. R. Evid. 801(d)(2). See Cluff, 313 B.R. at 340.  
25 Nevertheless, amendments to bankruptcy schedules are permitted "as  
26 a matter of course" any time before a case is closed. See Fed. R.  
27 Bankr. P. 1009(a); Arnold v. Gill (In re Arnold), 252 B.R. 778  
28 (9th Cir. BAP 2000) (discussing exceptions for bad faith or

1 prejudice). Perhaps for this reason, the bankruptcy court's  
2 written order did not rely on such admissions. Nor do we.

3 Although we do not rely on estoppel, bad faith, or Debtors'  
4 admissions in their bankruptcy schedules, we may affirm on any  
5 basis supported by the excerpts of record. Fernandez v. GE  
6 Capital Mortgage Services, Inc. (In re Fernandez), 227 B.R. 174,  
7 177 (9th Cir. BAP 1998), aff'd 208 F.3d 220 (9th Cir. 2000)  
8 (table). For the reasons discussed below we will do so in this  
9 case.

10 3. The statute sets forth the sole grounds for objections,  
11 which do not include lack of compliance with  
12 Rule 3001(c)

13 The requirements for proofs of claim are contained in the  
14 Bankruptcy Code, the Bankruptcy Rules and the Official Forms.  
15 Section 501(a) states that a creditor "may file a proof of claim."  
16 11 U.S.C. § 501(a). Section 502(a) states:

17 § 502. Allowance of claims or interests

18 (a) A claim or interest, proof of which is  
19 filed under section 501 of this title, is deemed  
20 allowed, unless a party in interest, including a  
21 creditor of a general partner in a partnership that  
22 is a debtor in a case under chapter 7 of this  
23 title, objects.

24 11 U.S.C. § 502(a).

25 Section 502(b) provides that if an objection to a claim is  
26 made, then the court, with inapplicable exceptions,

27 shall determine the amount of such claim in lawful  
28 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 -- (1) such claim  
is unenforceable against the debtor and property of the  
debtor, under any agreement or applicable law for a  
reason other than because such claim is contingent or

1           unmatured; [or any of eight other reasons for  
2           disallowance].

3 11 U.S.C. § 502(b)(1) - (9).

4           Rule 3001(a) states that a proof of claim "shall conform  
5 substantially to the appropriate Official Form." Fed. R. Bankr.  
6 P. 3001(a). Form 10 is the official proof of claim form. The  
7 version mailed to creditors in this case was last revised in  
8 April, 2001, and the current version was revised in April, 2004,  
9 but there are no material changes for purposes of our discussion.  
10 Item 4 on the face of Form 10 instructs creditors to fill in the  
11 amount of their claim, check a box "if claim includes interest or  
12 other charges in addition to the principal amount of the claim,"  
13 and "[a]ttach itemized statement of all interest or additional  
14 charges." Official Form 10, Item 4. The next to last item on  
15 Form 10 instructs creditors to attach copies of supporting  
16 documents "such as promissory notes, purchase orders, invoices,  
17 itemized statements of running accounts, contracts," explain if  
18 the documents "are not available," and "[i]f the documents are  
19 voluminous, attach a summary." Official Form 10, Item 8 (4/01  
20 rev.) or Item 9 (4/04 rev.). The instructions on the back of  
21 Form 10 are to the same effect, as are the 1991 Committee Note and  
22 the official instructions.

23           Rule 3001(c) and (f) state:

24                   (c) Claim based on a writing

25                   When a claim, or an interest in property of  
26                   the debtor securing the claim, is based on a  
27                   writing, the original or a duplicate shall be filed  
28                   with the proof of claim. If the writing has been  
                 lost or destroyed, a statement of the circumstances  
                 of the loss or destruction shall be filed with the  
                 claim.

1 \* \* \*

2 (f) Evidentiary effect

3 A proof of claim executed and filed in  
4 accordance with these rules shall constitute prima  
5 facie evidence of the validity and amount of the  
6 claim.

6 Fed. R. Bankr. P. 3001(c) and (f).

7 Debtors argue on this appeal that Creditors should have  
8 attached copies of "the credit card agreement (and any amendments  
9 to it)" to their proofs of claim because it is "hard to believe"  
10 that such documents are 'too lengthy' to be attached." This  
11 ignores the fact that the "writing" for credit card accounts can  
12 be said to include not only the underlying credit card agreement  
13 but also the written or electronic records of every transaction on  
14 the account since the oldest unpaid obligation, or at least the  
15 monthly bills since that time. Such records are likely to be  
16 voluminous. Therefore, the creditor can comply with Rule 3001 and  
17 Form 10 by using some sort of summary. See Cluff, 313 B.R. at  
18 332-35 (interpreting Form 10 and Rule 3001 and also citing Fed. R.  
19 Evid. 1006, authorizing summaries); In re Kemmer, 315 B.R. 706,  
20 714 (Bankr. E.D. Tenn. 2004) (same, and stating that credit card  
21 claim "is based upon both the underlying agreement creating the  
22 account and the actual transactions creating the debt under the  
23 account") (emphasis in original); In re Crowe, 321 B.R. 729  
24 (Bankr. W.D. Wash. 2005) (approving filing of summary in credit  
25 card case).

26 There is no uniform standard for what must be contained in  
27 such a summary. Although some breakdown of interest and other  
28 charges must be included, it is unclear whether this should cover

1 the entire account history, the last several billing cycles, or  
2 only those charges not reflected in the last prepetition monthly  
3 statement. See Cluff, 313 B.R. at 335 (“[T]he summary attached to  
4 the proof of claim should: (i) include the amount of the debts;  
5 (ii) indicate the name and account number of the debtor; (iii) be  
6 in the form of a business record or some other equally reliable  
7 format; and (iv) if the claim includes charges such as interest,  
8 late fees and attorney’s fees, the summary should include a  
9 statement giving a breakdown of those elements.”); In re  
10 Armstrong, 320 B.R. 97, 105 (Bankr. N.D. Tex. 2005) (similar  
11 list); In re Henry, 311 B.R. 813 (Bankr. W.D. Wash. 2004) (same,  
12 but also requiring copy of underlying credit card agreement);  
13 Kemmer, 315 B.R. at 714-15 (summary adequate, not necessary for  
14 creditor to attach copy of underlying credit card agreement); In  
15 re Sandifer, 318 B.R. 609, 611 (Bankr. M.D. Fla. 2004) (“[t]wo to  
16 four months of credit card statements” attached to some amended  
17 proofs of claim were adequate).

18 One or more of the proofs of claim in this case probably meet  
19 the more lenient standards and therefore may constitute prima  
20 facie evidence of the validity and amount of the claim. It is  
21 well established that such proofs of claim are “strong enough to  
22 prevail over a mere formal objection without more.” Garner v.  
23 Shier (In re Garner), 246 B.R. 617, 623 (9th Cir. BAP 2000);  
24 Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991).

25 Other proofs of claim in this case probably fail all of the  
26 various tests for prima facie validity in the reported decisions.  
27 The interest rate and other details in the original Amex and Amex  
28 Centurion proofs of claim are hard to discern on the computer

1 printout provided, assuming such information is present at all,  
2 and although the Amex Supplement consists of several months of  
3 credit card statements it still might not comply with Rule  
4 3001(c). The first statement recites a total of \$153.23 in "New  
5 Charges/Adjustments Inc[luding] Finance Charge" but then itemizes  
6 only a \$29.00 "Late Payment Fee" on June 6, 2002, and a  
7 subscription charge of \$9.95 on June 6, 2002. Claims that do not  
8 meet the standards of Rule 3001(c) lack prima facie validity and  
9 the question is whether they should be disallowed.

10 We have stated:

11 It is generally held that failure to attach  
12 writings to a proof of claim does not require a  
13 bankruptcy court to disallow a claim on that basis  
14 alone. Rather, the claim is not entitled to be  
15 considered as prima facie evidence of the claim's  
16 validity.

17 Consol. Pioneer Mortgage, 178 B.R. at 226 (citations omitted).

18 In that case, however, the claim was not only procedurally  
19 defective, under Rule 3001(c), but also substantively lacked merit  
20 and was properly disallowed. Id. at 227. Therefore we did not  
21 have occasion to address whether a claim should be disallowed  
22 where there is no ground stated, other than non-compliance with  
23 Rule 3001(c), for disallowing the claim. See also State Bd. of  
24 Equalization v. Los Angeles Int'l Airport Hotel Assocs. (In re Los  
25 Angeles Int'l Airport Hotel Assocs.), 196 B.R. 134, 139 (9th Cir.  
26 BAP 1996) (stating in dicta that failure to attach a writing,  
27 "when required," does not automatically invalidate the claim, but  
28 liability in that case was based on statute not on writing), aff'd,  
106 F.3d 1479 (9th Cir. 1997); Garner, 246 B.R. at 623 (stating  
that "mere formal objection" narrows the issue to whether the



1 proof of claim is executed and filed in accordance with the rules,  
2 but not addressing consequence if proof of claim does not meet  
3 that standard).

4       The reported decisions are split on this issue. What seems  
5 to be the minority view is that where a proof of claim is not  
6 entitled to prima facie validity under Rule 3001(c) and (f), that  
7 is a sufficient basis by itself to disallow the entire claim if  
8 the creditor does not amend its claim within a limited time, such  
9 as by the deadline to respond to the objection to their claim. As  
10 one court put it:

11               [A] creditor must, at a minimum, file with its  
12 proof of claim form, but in no event later than in  
13 response to a claims objection by the debtor, (i) a  
14 sufficient number of monthly account statements to  
15 show how the total amount asserted has been  
16 calculated, and (ii) a copy of the agreement  
17 authorizing the charges and fees included in the  
18 claim. In the absence of that minimum evidentiary  
19 presentation, the creditor's claim should be  
20 disallowed.

21 Henry, 311 B.R. at 817-18 (emphasis added).

22       In another reported decision three judges issued a joint  
23 memorandum opinion in several cases stating that failure to attach  
24 required documentation to a proof of claim "will not result in  
25 disallowance of the claim," but they went on to state that because  
26 of the lack of prima facie validity the claimant "would have to  
27 establish the claim by a preponderance of the evidence," failing  
28 which the claim presumably would be disallowed. In re Armstrong,  
320 B.R. 97, 106-09 (Bankr. N.D. Tex. 2005).<sup>5</sup>

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27       <sup>5</sup> Three other reported decisions in the minority camp are  
28 all decided by the same judge who decided Henry, 311 B.R. 813.  
(continued...)

1 One justification for this minority approach is the burden to  
2 debtors or a trustee who "should not have to incur the cost of  
3 making a claims objection based on lack of supporting  
4 documentation when the Rules initially place the burden of  
5 providing support on the creditor," combined with the practical  
6 difficulties of obtaining accurate and complete information from  
7 institutional holders of credit card debt who frequently are not  
8 the original holder. Henry, 311 B.R. at 816-17. Another possible  
9 justification is the burden on a debtor -- or a trustee who may  
10 have no familiarity with the debtor's actual debts -- who must  
11 somehow decide which claims might be overstated or improper.  
12 Regularly excusing inadequate documentation could lead creditors  
13 to abuse the system. In re All-American Auxiliary Ass'n, 95 B.R.  
14 540, 545 (Bankr. S.D. Ohio, 1989). Debtors echo these concerns on  
15 this appeal by asserting that without adequate documentation  
16 attached to the proof of claim they have "no meaningful  
17 opportunity to challenge the validity of the claim" and that they  
18 should not have to bear the costs and burden of discovery.

19 As an alternative to relying on the above minority cases  
20 Debtors raise a due process argument. They claim that a hearing  
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22 <sup>5</sup>(...continued)  
23 See Crowe, 321 B.R. 729; In re Vann, 321 B.R. 734 (Bankr. W.D.  
24 Wash. 2005); In re Schraner, 321 B.R. 738 (Bankr. W.D. Wash.  
25 2005). See also In re All-American Auxiliary Assoc., 95 B.R. 540,  
26 545 (Bankr. S.D. Ohio, 1989) (stating that court "could" deny  
27 claim based solely on lack of prima facie validity, but going on  
28 to disallow claim on alternative grounds); In re Blue, 2004 WL  
1745786 (N.D. Ill. 2004) (rejecting argument that "substantial  
compliance" with Rule 3001(c) is sufficient, and treating  
resulting lack of prima facie validity as basis for disallowance  
without discussion, but directing that creditor be given  
opportunity to amend claim).

1 on an objection to a claim is a meaningless act if they are not  
2 provided with the writings on which the claim is based, and  
3 therefore their due process rights have been violated and the  
4 bankruptcy court's orders allowing Creditors' claims are void,  
5 citing Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14  
6 (1978), and Owens-Corning Fiberglas, Corp. v. Center Wholesale,  
7 Inc. (In re Center Wholesale, Inc.), 759 F.2d 1440, 1448 (9th Cir.  
8 1985).

9 We are not persuaded by the minority view or by Debtors'  
10 arguments. First, we are bound by the plain meaning of the  
11 statute. Section 501(a) provides that a "creditor or an indenture  
12 trustee may file a proof of claim." 11 U.S.C. § 501(a). Section  
13 502(a) states that a claim filed under Section 501 "is deemed  
14 allowed" unless an objection is made. 11 U.S.C. § 502(a).  
15 Section 502(b) states that if an objection to a claim is made,  
16 then the court "shall" determine the amount of such claim and  
17 "shall allow such claim" except to the extent that one of the  
18 limited grounds for disallowance is established. 11 U.S.C.  
19 § 502(b) (emphasis added). Noncompliance with Rule 3001(c) is not  
20 one of the statutory grounds for disallowance. The minority  
21 decisions do not explain how they can disregard this statutory  
22 mandate. The statute's provisions cannot be enlarged or reduced  
23 by the Rules. See Dove-Nation v. eCast Settlement Corp. (In re  
24 Dove-Nation), 318 B.R. 147, 150-51 (8th Cir. BAP 2004) ("Section  
25 502(b) sets forth the sole grounds for objecting to a claim and  
26 directs the court to allow the claim unless one of the exceptions  
27 applies" and "[t]he rules are designed to supplement the statute,  
28 not replace it.") (citing 28 U.S.C. § 2075) (emphasis added);

1 Cluff, 313 B.R. at 331-340; In re Shank, 315 B.R. 799, 801 (Bankr.  
2 N.D. Ga. 2004) (“[T]here is no reason to require amendment of  
3 claims when, as here, there is no showing that there are any  
4 disputes about the debtor’s liability on the claims or their  
5 amounts.”); Kemmer, 315 B.R. at 716 (“[A]s long as the creditor  
6 has presented some evidence to substantiate the claim, the  
7 objecting party must have a basis for challenging the validity of  
8 the claim.”); In re Mazzoni, 318 B.R. 576, 578 n.12 (Bankr. D.  
9 Kan. 2004) (following Cluff, Shank, and Kemmer); In re Guidry, 321  
10 B.R. 712, 714 (Bankr. N.D. Ill. 2005) (same).

11       Second, there is nothing in the statutory scheme that  
12 violates due process. The procedure for claims allowance or  
13 disallowance is designed to be speedy and inexpensive, and Section  
14 502(a) deems claims allowed. The purpose of Rule 3001(f) is not  
15 to undermine this approach or create an independent reason to  
16 disallow claims but to permit the proof of claim itself to act  
17 similar to a verified complaint and have an independent  
18 evidentiary effect. Cluff, 313 B.R. at 332; Garner, 246 B.R. at  
19 622 (evidentiary effect of proof of claim is “similar to that of a  
20 verified complaint”). In fact, a proof of claim has been said to  
21 have more weight than a verified pleading because it is signed  
22 under penalty of up to \$500,000.00 or up to five years in prison,  
23 or both, for fraudulent claims. See Official Form 10 (citing 18  
24 U.S.C. §§ 152 and 3571); Cluff, 313 B.R. at 337-38. If the proof  
25 of claim is not entitled to prima facie validity then it may have  
26 lesser evidentiary weight or none at all, but unless there is a  
27 factual dispute that is irrelevant:

28                       The difficulty with [the minority line of

1 cases] is that evidence of any kind -- prima facie  
2 or otherwise -- is a concern only at a hearing to  
3 resolve factual disputes. See Fed. R. Evid. 401  
4 (defining "relevant evidence" as that tending to  
5 make more or less probable "the existence of any  
6 fact that is of consequence to the determination of  
7 the action"). The debtors' claim objections raised  
8 no factual dispute requiring a hearing. If  
9 [creditor's] proofs of claim are analogized to  
10 complaints -- as is commonly done -- then the  
11 debtors' objections are like motions to dismiss for  
12 failure to state a claim on which relief can be  
13 granted. The debtors do not deny any of the  
14 factual allegations of the proofs of claim;  
15 rather, their objections assert that an evidentiary  
16 hearing is unnecessary because of [creditor's]  
17 noncompliance with Rule 3001(c). Thus, the  
18 question is not the evidentiary impact of  
19 noncompliance with the rule, but whether  
20 noncompliance itself renders a claim subject to  
21 disallowance. As already noted, it does not.

12 Guidry, 321 B.R. at 715 (footnote omitted). See also Dove-Nation,  
13 318 B.R. at 152 ("Even if the proofs of claim are not entitled to  
14 prima facie validity, they are some evidence of the Claimant's  
15 claims.") (emphasis added, citing Cluff, 313 B.R. at 340); Shank,  
16 315 B.R. at 811. Compare In re Relford, 323 B.R. 669, 676 (Bankr.  
17 S.D. Ind. 2005) (non-compliance with Rule 3001 does not  
18 necessarily result in disallowance or allowance, and "the  
19 determinative question is whether the preponderance of the  
20 evidence supports allowance of the claim as filed").

21 Third, even if we had discretion to apply equitable  
22 principles, we disagree with Debtors that the equities necessarily  
23 flow in their favor. As we understand the minority rule, if a  
24 hypothetical creditor files a proof of claim for \$5,000 in credit  
25 card purchases plus interest and other charges, but does not  
26 provide an adequate summary of the interest charges, then the  
27 entire claim lacks prima facie validity and can be disallowed by  
28 objections like the ones in this case, even if the debtor has no

1 basis to challenge the \$5,000 amount. As the bankruptcy court  
2 observed, a typical creditor might face something like "a ten  
3 percent return" making it "more trouble to respond than the claim  
4 is worth." Transcript, April 20, 2004, p. 3:11-12.

5 At oral argument before us, counsel conceded that Debtors  
6 have no basis to claim that any goods or services were wrongly  
7 charged to them, or that any specific interest charges or fees  
8 were miscalculated or wrongly imposed, or that they can establish  
9 any other grounds for disallowance in Section 502(b). Debtors  
10 argue that it might be difficult or expensive to verify the amount  
11 of Creditors' claims, but that argument rings hollow because there  
12 is no evidence that they ever tried. Several proofs of claim even  
13 list telephone numbers for such inquiries. See Shank, 315 B.R. at  
14 816 ("debtor's objection does not indicate that she requested  
15 documentation and that it was denied").

16 Debtors' proposed standards would require creditors to  
17 provide volumes of documentation attached to every proof of claim  
18 or in response to objections based solely on non-compliance with  
19 Rule 3001(c), and that "would unduly burden the parties and would  
20 inundate the Court with documents." Cluff, 313 B.R. at 335. It  
21 would also invite abusive objections and more litigation and would  
22 serve no purpose because "[i]f there is no substantive objection  
23 to the claim, the creditor should not be required to provide any  
24 further documentation of it." Shank, 315 B.R. at 813.

25 That said, we agree with courts in the majority that  
26 creditors have an obligation to respond to formal or informal  
27 requests for information. That request could even come in the  
28 form of a claims objection, if it is sufficiently specific about

1 the information required.<sup>6</sup> This obligation to respond applies  
2 regardless whether Creditors have met their obligation to provide  
3 a summary under Rule 3001(c). See Cluff, 313 B.R. at 335-36  
4 ("using a summary also requires the creditor to make the  
5 underlying documents available for examination at a reasonable  
6 place and time, and such creditors should not underestimate the  
7 Court's willingness to compel them to do so," interpreting Form 10  
8 and Fed. R. Bankr. P. 3001 consistent with Fed. R. Evid. 1006);  
9 Shank, 315 B.R. at 816 (noting creditors' obligation to respond to  
10 "appropriate request, formal or informal").

11 If the creditor does not provide information or is unable to  
12 support its claim, then that in itself may raise an evidentiary  
13 basis to object to the unsupported aspects of the claim, or even a  
14 basis for evidentiary sanctions, thereby coming within Section  
15 502(b)'s grounds to disallow the claim. Shank, 315 B.R. at 816.  
16 (creditor who fails to provide supporting documentation "may well  
17 find itself with a disallowed claim"); Fed. R. Civ. P. 37(a)(4)  
18 and (b)(2)(A) and (C) (incorporated by Fed. R. Bankr. P. 7037 and  
19 9014(c)). We would be faced with a very different case if, for  
20 example, Debtors' objections stated that they had written to a  
21 Creditor explaining that they questioned specific charges, or that  
22 during the slide into bankruptcy they had not reviewed or retained  
23 their monthly statements, and therefore they wanted the past  
24 twelve months' credit card statements to verify the Creditor's  
25 calculation of principal, interest, and other charges. As one  
26 decision explains:

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28 <sup>6</sup> Of course, such an objection should not be inconsistent  
with sworn schedules that concede all or some portion of the debt.

1           If the debtor thinks that every one of the  
2 challenged claims is overstated, that every  
3 claimant has included illegal or unauthorized  
4 charges, or that for any reason she has no  
5 liability to any of them, she may investigate fully  
6 her theories and raise every viable claim or  
7 defense that she has. If the debtor requires  
8 documentation to make a good faith inquiry into the  
9 existence or amount of any liability and a claimant  
10 refuses a legitimate request to produce it, an  
11 objection that asserts her good faith challenge and  
12 requests disallowance of the claim due to  
13 inadequate documentation would be appropriate and  
14 could well result in entry of an order disallowing  
15 the claim or requiring its amendment. . . .

16           But if the debtor thinks, for example, in  
17 accordance with her sworn statement in Schedule D  
18 in this case, that she owes First North American  
19 National Bank only \$1,776.00 on the proof of claim  
20 filed by its assignee for \$12,992.72, the proper  
21 objection is that the claimant has not established  
22 anything in excess of the amount the debtor admits  
23 is owed, not a request for complete disallowance of  
24 the claim merely because of inadequate  
25 documentation.

26 Shank, 315 B.R. at 815.

27           Debtors' claims objections do not meet the above tests.  
28 Creditors were not required to respond.<sup>7</sup>

#### V. CONCLUSION

          We will presume that Debtors genuinely questioned and sought  
to verify the correct amounts of their credit card debts and were  
not trying to set Creditors up for a default disallowance of their  
claims because of the burden of responding. They simply chose the  
wrong method of doing so. Rather than contacting Creditors and  
asking for appropriate documentation of any claims that they

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<sup>7</sup> We recognize that the bankruptcy court reduced Creditors' claims to the amounts listed in Debtors' bankruptcy schedules, and that this grants Debtors more than we hold they were entitled to. There is no cross appeal, however, so we do not disturb this aspect of the bankruptcy court's ruling.



1 reasonably believed they might not owe, or might owe in a  
2 different amount, they filed objections that relied solely on the  
3 alleged lack of prima facie validity of the proofs of claim. That  
4 is not a sufficient objection recognized by Section 502, which  
5 deems claims allowed and directs that the bankruptcy court "shall"  
6 allow claims with limited exceptions that were not alleged by  
7 Debtors. Therefore, the bankruptcy court's allowance of  
8 Creditors' claims was proper, and the Reconsideration Order is  
9 AFFIRMED.

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