

**MAR 31 2006**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**NOT FOR PUBLICATION**

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

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In re:	)	BAP No.	WW-05-1365-RSKr
	)	BAP No.	WW-05-1439-RSKr
SHARYN KAE MEENDERINCK,	)		(related appeals)
	)		
Debtor.	)	Bk. No.	04-23705
	)		
_____	)		
LLOYD M. MARTINDALE, JR.;	)		
SANDRA L. MARTINDALE; ROBERT	)		
J. FRENCH; CHARLENE FRENCH;	)		
TERRI J. NOTEBOOM; DANIEL W.	)		
NOTEBOOM; JEFFREY KIMBROUGH;	)		
CAROLYN S. KIMBROUGH; JEANNE	)		
F. KIMBROUGH,	)		
	)		
Appellants,	)		
	)		
v.	)	<b><u>MEMORANDUM</u></b> <sup>1</sup>	
	)		
SHARYN KAE MEENDERINCK,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on March 24, 2006  
at Seattle, Washington

Filed - March 31, 2006

<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

1 Appeal from the United States Bankruptcy Court  
2 for the Western District of Washington

3 Honorable Thomas T. Glover, Bankruptcy Judge, Presiding.  
4

5 Before: Russell,<sup>2</sup> Smith and Kirscher,<sup>3</sup> Bankruptcy Judges.  
6

7 **INTRODUCTION**  
8

9 The bankruptcy court confirmed the debtor's chapter 13<sup>4</sup> plan  
10 over certain creditors' objections that she was ineligible due to  
11 excessive unsecured debt, viz, their claims of over \$600,000. The  
12 creditors moved for reconsideration, asserting that their claims  
13 should have been calculated for eligibility purposes. However,  
14 the bankruptcy court refused to reconsider the plan confirmation.

15 In a separate claim objection proceeding, the court then  
16 disallowed the creditors' claims on either lack of standing or res  
17 judicata grounds, i.e., that the claims were subsumed in a federal  
18 receivership action against the debtor, which had been settled  
19 postpetition.  
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21 \_\_\_\_\_  
22 <sup>2</sup> Hon. Barry Russell, Chief Bankruptcy Judge for the Central  
District of California, sitting by designation.

23 <sup>3</sup> Hon. Ralph B. Kirscher, Chief Bankruptcy Judge for the  
24 District of Montana, sitting by designation.

25 <sup>4</sup> Unless otherwise indicated, all "Code," "chapter" and  
26 "section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
1330 prior to its amendment by the Bankruptcy Abuse Prevention and  
27 Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23  
28 (2005). "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, which make applicable certain Federal Rules of Civil  
Procedure ("FRCP"). "RCW" references are to the Revised Code of  
Washington.



1 unauthorized uses, including making Ponzi payments. See  
2 Complaint, SEC v. RDI et al., Civil Action No. 3:02-CV-0605-H,  
3 U.S. Dist. Ct., N.D. Tex., Dallas Div.

4 The District Court appointed Lawrence S. Warfield as the  
5 receiver (the "Receiver") in the SEC Action to collect, preserve  
6 and maintain the defendants' assets (the "Receivership Assets").  
7 The Receiver also established a claims procedure for defrauded  
8 investors who wanted to participate in the distribution of the  
9 Receivership Assets.

10 In 2002, the Receiver filed a lawsuit against Debtor and  
11 others whom he alleged had acted as "facilitators" by soliciting  
12 new investors in the RDI Trading Program, and who both profited  
13 from commissions therefrom and possessed investment monies  
14 belonging to RDI. See Third Amended Complaint, Warfield v. Byron,  
15 et al., Case No. 3:02-CV-1371-R, Dist. Ct., N.D. Tex., Dallas  
16 Div.<sup>5</sup> In May, 2004, a final judgment (the "Receiver's Judgment")  
17 was entered against Debtor in the amount of \$213,561.50 plus post-  
18 judgment interest. The Receiver's Judgment was then registered in  
19 Washington's Whatcom County.

20 On another front, 21 investors, nine of whom are the  
21 appellants herein ("Appellants"), filed a lawsuit against Debtor  
22 and other defendants in the Whatcom County Superior Court  
23 ("Creditors' Action"). Their Fourth Amended Complaint, filed in  
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25 <sup>5</sup> We take judicial notice of Plaintiff's Third Amended  
26 Complaint in the Receiver's Action as evidence of the causes of  
27 action asserted therein, but otherwise do not "take as  
28 conclusively established [any] extrajudicial facts that are  
mentioned" in the complaint. Wetherbee v. Willow Lane, Inc. (In  
re Bestway Prods., Inc.), 151 B.R. 530, 540-41 & n.33 (Bankr. E.D.  
Cal. 1993), aff'd, 165 F.3d 339 (9th Cir. BAP 1994).

1 July, 2004, asserted counts for: securities fraud pursuant to the  
2 Washington State Securities Act; negligence; common law fraud;  
3 breach of fiduciary duty; constructive trust; and negligent  
4 misrepresentation. Collectively, they sought \$840,000 in damages  
5 representing their lost investments.

6  
7 **Events in Bankruptcy**  
8

9 Facing execution of the Receiver's Judgment upon her home,  
10 Debtor filed a voluntary chapter 13 petition on October 22, 2004.  
11 The Creditors' Action was thereby stayed.

12 At the time Debtor filed her bankruptcy petition, only  
13 individual debtors with noncontingent and liquidated unsecured  
14 debt of less than \$307,675 were eligible for chapter 13 relief.  
15 See § 109(e). On her bankruptcy schedule of unsecured debt,  
16 Debtor included the \$213,561.50 Receiver's Judgment and indicated  
17 that her total noncontingent and liquidated unsecured debt was  
18 \$224,748.84, thereby coming within the limit. She further  
19 indicated, on her schedules, that she had no secured debt, nor any  
20 known priority unsecured debt.<sup>6</sup>

21 Although Debtor identified the pending Creditors' Action in  
22 her statement of financial affairs, she neither listed their  
23 claims nor gave them notice of her bankruptcy. Debtor later  
24 stated that she believed Appellants' claims were part of the

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<sup>6</sup> The IRS later filed a proof of claim for \$8,506.36, which  
27 included \$3,674.24 in general unsecured, \$2,523.61 in priority  
28 unsecured, and \$2,308.51 in secured debt. However, the total  
unsecured debt amount was insufficient to affect the outcome of  
this appeal.

1 Receivership Action. See Answer to Complaint (Dec. 21, 2004), p.  
2 2, ¶ 9. Debtor's good faith was not challenged in these  
3 proceedings.

4 Debtor filed a chapter 13 plan which proposed to pay \$100 a  
5 month for 36 months. According to the plan, Debtor intended to  
6 use the equity in her home to retain legal counsel in an attempt  
7 to reopen and defend against the Receiver's Action. In actuality,  
8 postpetition, Debtor refinanced her home and reached an approved  
9 settlement with the Receiver whereby she paid him \$100,000 in  
10 satisfaction of the Receiver's Judgment. See Satisfaction of  
11 Judgment (June 17, 2005).

12 Then, Appellants, upon learning of the bankruptcy, filed  
13 proofs of claim against Debtor's estate totaling \$642,881.66.<sup>7</sup>

14 Appellants also filed a § 523 adversary proceeding contending  
15 that their debt was nondischargeable due to Debtor's alleged fraud  
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17 <sup>7</sup> The proofs of claim were as follows:

18	Lloyd & Sandra Martindale	\$313,562.37
19	Jeffrey & Carolyn Kimbrough	159,580.94
20	Jeanne Kimbrough	30,686.55
21	Dan & Terri Noteboom	10,000.00
22	Dan & Terri Noteboom	40,772.94
23	Robert & Charlene French	88,278.86
24		<hr/> \$642,881.66

25 A proof of claim for securities fraud filed by Glen and Karen  
26 Blankers for \$79,429.34 is also in the Excerpts of Record.  
27 However, the Blankers are not named defendants in either the  
28 Creditors' Action or the § 523 Complaint. Nor are they appellants  
in this case.

Debtor has incorrectly argued, therefore, that the total  
amount of Appellants' claims was \$765,297.34. See Appellee's  
Brief at 6. Besides the Blankers' claim, she has included in her  
total Claim No. 9, which was an unrelated duplicate claim, and  
incorrectly listed the Jeanne Kimbrough claim as \$39,685.55, which  
was the amount then disallowed by the court. See Objection to  
Proofs of Claim (July 20, 2005), at 17 and Order on Objection to  
Certain Claims (Oct. 26, 2005).

1 (§ 523(a)(2)) and violation of securities laws (§ 523(a)(19)).<sup>8</sup>  
2 Debtor's Answer generally denied the allegations. She also  
3 explained that the outcome of the Receiver's Action would have  
4 been different if she had retained counsel.

5 Appellants' claims prompted the chapter 13 trustee to file an  
6 "Objection to Confirmation of Plan and Motion to Dismiss Case."  
7 The trustee stated that the filed unsecured proofs of claim  
8 exceeded the limits of § 109(e), and therefore Debtor was  
9 ineligible for chapter 13 relief.

10 Appellants filed a brief in support of the trustee's motion,  
11 arguing that their claims were both "noncontingent" and  
12 "liquidated," and therefore should be figured into the § 109(e)  
13 calculation.

14 Debtor responded that Appellants' claims were "contingent"  
15 and "unliquidated" and therefore did not apply against the Code's  
16 debt limits. She stated that the upcoming trial in the § 523  
17 adversary proceeding would liquidate the collective claim.

18 Debtor also filed a formal objection to Appellants' claims.  
19 For all such claims she asserted that they were lacking in  
20 supporting documentation and, therefore, she challenged their  
21 validity and amount. To further discredit the claims, Debtor  
22 noted that another investor/plaintiff from the Creditors' Action  
23 had already settled for \$400,000, yet Appellants' proofs of claim  
24 still added up to nearly the full amount demanded in the  
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26  
27 <sup>8</sup> This trial is pending. However, since debts of a kind  
28 specified in §§ 523(a)(2) and (a)(19) are dischargeable in a  
chapter 13 case, Appellants' counsel explained, at oral argument,  
that their goal is to convert the case to chapter 7.

1 Creditors' Action (\$840,000).<sup>9</sup> She also denied her liability for  
2 the damages, noting that any liability would be determined at the  
3 future trial.

4 The bankruptcy court heard oral argument on the trustee's  
5 objection/motion to dismiss on July 27, 2005, and at that time,  
6 overruled the trustee's objection.<sup>10</sup> (A transcript of this hearing  
7 has not provided as part of the Excerpts of Record.)

8 Next, the bankruptcy court addressed the matter of plan  
9 confirmation on August 1, 2005. (A transcript of this hearing has  
10 not been provided as part of the Excerpts of Record.) An "Order  
11 Confirming Chapter 13 Plan" was entered on August 5, 2005. The  
12 confirmation order was thus a final order denying the trustee's  
13 motion to dismiss Debtor's case for ineligibility as well as  
14 determining that Debtor's chapter 13 plan met the requirements of  
15 the Code.

16 Appellants filed a timely motion to reconsider the  
17 confirmation order, which tolled the appeal time and preserved the  
18 eligibility issue for appeal. See Fed. R. Bankr. P. 8002(b). The  
19 bankruptcy court denied the motion in an order entered on August  
20 22, 2005. Appellants filed a timely notice of appeal.<sup>11</sup>

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23 <sup>9</sup> Even using the corrected claim total of \$642,881.66 (see  
24 n. 7 supra), that sum exceeds \$440,000, which is the difference in  
\$840,000 minus \$400,000.

25 <sup>10</sup> See Bk. Dkt. for 7/25/2005 (Notice of Intent to Argue) and  
7/27/2005 (Minutes of Hearing stating "Objection overruled.").

26 <sup>11</sup> Although the notice of appeal named only the order denying  
27 the motion for reconsideration, the issues on appeal concern  
28 matters that were first addressed in the underlying plan  
confirmation and dismissal hearings. We have jurisdiction to  
consider the merits of the plan confirmation order, and do so.



1 Next, on September 28, 2005, the bankruptcy court heard  
2 Debtor's claim objections. The court stated that Appellants would  
3 not be allowed to collaterally attack the confirmed plan, and  
4 noted that the eligibility issue was on appeal. The court also  
5 questioned whether the claims came under the auspices of the  
6 Receiver's Action. It concluded:

7 I'm going to disallow the claims because I think  
8 you're subsuming the receivership; that's what I think.  
9 I'll disallow the claims on that basis.

10 Tr. of Proceedings (Sept. 28, 2005), p. 10:3-6.

11 The bankruptcy court's order sustaining Debtor's claim  
12 objections and disallowing Appellants' claims was entered on  
13 October 26, 2005, and was timely appealed by Appellants. Both the  
14 plan confirmation/reconsideration appeal and the disallowance  
15 appeal have been consolidated for oral argument.

#### 16 ISSUES

- 17
- 18 1. Whether the bankruptcy court erred in determining that  
19 Debtor met the § 109(e) eligibility requirements for  
20 chapter 13 relief.
  - 21
  - 22 2. Whether the bankruptcy court erred in disallowing  
23 Appellants' claims on lack of standing or res judicata  
24 grounds, i.e., that the claims were subsumed in the  
25 Receiver's Action.
  - 26
  - 27
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1 **STANDARD OF REVIEW**

2 The bankruptcy court's findings of fact are reviewed for  
3 clear error and its conclusions of law are reviewed de novo.  
4 Scovis v. Henrichsen (In re Scovis), 249 F.3d 975, 980 (9th Cir.  
5 2001).

6 The determination of the amount of liquidated debt for  
7 purposes of § 109(e) is a factual question. See Ho v. Dowell (In  
8 re Ho), 274 B.R. 867, 875 n.9 (9th Cir. BAP 2002) (citing Scovis,  
9 249 F.3d at 982).

10 An order confirming a chapter 13 plan is reviewed for an  
11 abuse of discretion, see Bank of Am. Nat'l Trust & Sav. Ass'n v.  
12 Slade (In re Slade), 15 B.R. 910, 913 (9th Cir. BAP 1981), as is  
13 an order denying a motion for reconsideration. Hale v. U.S.T. (In  
14 re Basham), 208 B.R. 926, 930 (9th Cir. BAP 1997), aff'd sub nom.  
15 Hale v. U.S.T. (In re Byrne), 152 F.3d 924 (9th Cir. 1998)  
16 (table). A bankruptcy court necessarily abuses its discretion if  
17 it bases its decision on an erroneous view of the law or on  
18 clearly erroneous factual findings. Warrick v. Birdsell (In re  
19 Warrick), 278 B.R. 182, 184 (9th Cir. BAP 2002).

20 Standing is legal question that we review de novo, see Hillis  
21 Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d 581, 584 (9th  
22 Cir. 1993), as is the availability of res judicata, or claim  
23 preclusion. See Khaligh v. Hadaegh (In Re Khaligh), \_\_\_ B.R.  
24 \_\_\_, \_\_\_, 2006 WL 456424 at \*9 (9th Cir. BAP 2006) (citing Robi  
25 v. Five Platters, Inc., 838 F.2d 318, 321 (9th Cir. 1988)). We  
26 also review de novo a bankruptcy court's interpretation and  
27 application of state or federal law. Conestoga Servs. Corp. v.  
28 Executive Risk Indem., Inc., 312 F.3d 976, 981 (9th Cir. 2002).

1 DISCUSSION

2  
3 A. Chapter 13 Eligibility: § 109(e)

4  
5 Appellants, together with the chapter 13 trustee, objected to  
6 Debtor's chapter 13 plan and moved to dismiss her case on the  
7 grounds that she was ineligible for such relief under the debt  
8 limits of that chapter. Essentially, the eligibility question was  
9 litigated at the time of plan confirmation.

10 Debtor had the burden of proof on all essential elements for  
11 confirmation, including that "the plan complies with the  
12 provisions of this chapter [13] and with the other applicable  
13 provisions of this title [11]" and whether "the plan has been  
14 proposed in good faith and not by any means forbidden by law." 11  
15 U.S.C. §§ 1325(a)(1) & (a)(3).

16 Appellants maintain that the bankruptcy court erred in  
17 overruling their objection based on ineligibility under § 109(e).  
18 They contend that their claims, which were not listed on Debtor's  
19 schedules, were nonetheless noncontingent and liquidated, at the  
20 petition date, and therefore that the bankruptcy court should have  
21 including them in the § 109(e) calculation.

22 Section 109(e) provides, in pertinent part:

23 Only an individual with regular income that owes, on  
24 the date of the filing of the petition, noncontingent,  
25 liquidated, unsecured debts of less than \$307,675 and  
26 noncontingent, liquidated, secured debts of less than  
27 \$922,975 . . . may be a debtor under chapter 13 of this  
28 title.

11 U.S.C. § 109(e).

1           Only contingent or unliquidated debts are excluded from the  
2 § 109(e) eligibility computation; disputed debts are not excluded  
3 solely on that basis. See Sylvester v. Dow Jones & Co., Inc. (In  
4 re Sylvester), 19 B.R. 671, 673 (9th Cir. BAP 1982).

5           The determination of the amount of liquidated claims for  
6 purposes of § 109(e) is a factual question, but determining  
7 whether a claim is contingent or liquidated is a legal question.  
8 See Ho, 274 B.R. at 875 n.9.

9           The Ninth Circuit Court of Appeals has announced a clear-cut  
10 and simple procedure for establishing eligibility in a case such  
11 as ours--where the amount of debt is set forth in the schedules  
12 and Debtor's good faith has not been challenged:

13                   We now simply and explicitly state the rule for  
14 determining Chapter 13 eligibility under § 109(e) to be  
15 that eligibility should normally be determined by the  
debtor's originally filed schedules, checking only to see  
if the schedules were made in good faith.

16 Scovis, 249 F.3d at 982.

17           The Ninth Circuit explained that this rule was grounded in  
18 both the plain terms of § 109(e) and Congressional intent to make  
19 the eligibility determination "similar in nature to the subject  
20 matter jurisdiction context for purposes of determining diversity  
21 jurisdiction." Id. (citing Comprehensive Accounting Corp. v.  
22 Pearson (Matter of Pearson), 773 F.2d 751, 757 (6th Cir. 1985)).  
23 Generally, only if there are allegations of bad faith does Ninth  
24 Circuit law allow the court to look past the schedules to other  
25 evidence in evaluating the claims amount. Scovis, 249 F.3d at 981  
26 (citing Quintana v. IRS (In re Quintana), 107 B.R. 234, 239 n.6  
27 (9th Cir. BAP 1989), aff'd, 915 F.2d 513 (9th Cir. 1990)).

28           Debtor's schedules listed \$224,748.84 in noncontingent and



1 A duly filed proof of claim is presumptively valid and deemed  
2 allowed, unless a party in interest objects. See Garner v. Shier  
3 (In re Garner), 246 B.R. 617, 620 (9th Cir. BAP 2000); Fed. R.  
4 Bankr. P. 3001(f), 3007; 11 U.S.C. § 502(a). The filing of an  
5 objection to a proof of claim "creates a dispute which is a  
6 contested matter" within the meaning of Rule 9014 and must be  
7 resolved after notice and opportunity for hearing. See Adv. Comm.  
8 Notes to Fed. R. Bankr. P. 9014; Jorgenson v. State Line Hotel,  
9 Inc. (In re State Line Hotel, Inc.), 323 B.R. 703, 710 (9th Cir.  
10 BAP 2005).

11 The party objecting to the proof of claim must produce  
12 sufficient evidence to "show facts tending to defeat the claim by  
13 probative force equal to that of [its] allegations . . . ."  
14 Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell), 223  
15 F.3d 1035, 1039 (9th Cir. 2000) (alteration added) (quoting Wright  
16 v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991)); see also  
17 Ashford v. Consol. Pioneer Mortgage (In re Consol. Pioneer  
18 Mortgage), 178 B.R. 222, 226 (9th Cir. BAP 1995), aff'd sub nom.  
19 Ashford v. Naimco, Inc. (In re Consol. Pioneer Mortgage Entities),  
20 91 F.3d 151 (9th Cir. 1996) (table). If the objector produces  
21 sufficient evidence to negate the claim's validity, the burden of  
22 persuasion shifts back to the claimant, who then has the ultimate  
23 burden to demonstrate that the claim deserves to share in the  
24 distribution of the debtor's assets. See Spencer v. Pugh (In re  
25 Pugh), 157 B.R. 898, 901 (9th Cir. BAP 1993).

26 Debtor objected to the claims on the grounds, inter alia,  
27 that they lacked proper documentation and, therefore, the claims'  
28 validity was put into dispute. However, the bankruptcy court

1 disallowed the claims on lack of standing or res judicata grounds,  
2 i.e., concluding that Appellants were "subsuming" the Receiver's  
3 duties, or, as a corollary, that their claims were "subsumed" in  
4 the Receiver's Action against Debtor.

5 A "claim" in bankruptcy means  
6 right to payment, whether or not such right is reduced to  
7 judgment, liquidated, unliquidated, fixed, contingent,  
8 matured, unmatured, disputed, undisputed, legal, equitable,  
9 secured, or unsecured . . . .

10 11 U.S.C. § 101(5) (A).

11 Appellants filed proofs of claim based on allegations that  
12 Debtor's prepetition conduct constituted actual fraud under  
13 Washington common law or securities fraud which is actionable  
14 under the Washington Securities Act.<sup>13</sup>

15 Debtor now contends that Appellants' claims were barred  
16 because the District Court had exclusive jurisdiction over the  
17 Receivership Assets, an injunction was in place, and Appellants

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18 <sup>13</sup> Specifically, RCW 21.20.430 provides statutory damages for  
19 a victim of fraud or misrepresentation in the sale of securities:

20 (1) Any person, who offers or sells a security in  
21 violation of any provisions of RCW 21.20.010, 21.20.140  
22 (1) or (2), or 21.20.180 through 21.20.230, is liable to  
23 the person buying the security from him or her, who may  
24 sue either at law or in equity to recover the  
25 consideration paid for the security, together with  
26 interest at eight percent per annum from the date of  
27 payment, costs, and reasonable attorneys' fees, less the  
28 amount of any income received on the security, upon the  
tender of the security, or for damages if he or she no  
longer owns the security. Damages are the amount that  
would be recoverable upon a tender less (a) the value of  
the security when the buyer disposed of it and (b)  
interest at eight percent per annum from the date of  
disposition.

RCW 21.20.430 (Thompson/West, Westlaw through Feb. 15, 2006  
legislation).

1 would first have to obtain permission from District Court to  
2 proceed with their state law or bankruptcy action. She reasons,  
3 because Appellants' remedy under RCW 21.20.430 requires the tender  
4 of their securities to the defendants, that their action would be  
5 enjoined by the Receiver's Action. The injunction states:

6       5. All persons, including Defendants and Relief  
7 Defendants, and their officers, agents, servants,  
8 employees, attorneys, and all persons in active concert or  
9 participation with them, who receive actual notice of this  
10 Order by personal service or otherwise, are enjoined from  
11 in any way interfering with the operation of the  
12 Receivership or in any way disturbing the Receivership  
13 Assets and from filing or prosecuting any actions or  
14 proceedings which involve the Receiver or which affect the  
15 Receivership Assets, specifically including any proceeding  
16 initiated pursuant to the United States Bankruptcy Code,  
17 except with the prior permission of this Court. Any  
18 actions so authorized to determine disputes relating to  
19 Receivership Assets shall be filed in this Court.

20 Order Appointing Temporary Receiver (Mar. 25, 2002), pp. 4-5.

21       Appellants counter, and we agree, that their securities are  
22 not part of the Receivership Assets. The Washington statute  
23 provides, in pertinent part, that any owner of a security which  
24 was sold to them in violation of the law may

25       recover the consideration paid for the security, together  
26 with interest at eight percent per annum from the date of  
27 payment, costs, and reasonable attorneys' fees, less the  
28 amount of any income received on the security, upon the  
29 tender of the security, or for damages if he or she no  
30 longer owns the security.

31 RCW 21.20.430, supra (emphasis added).

32       Appellants own the securities, not RDI or Debtor. There is  
33 no evidence in the record that the Receiver attempted to recover  
34 the securities directly from Appellants. In fact, as investors,  
35 they were able to make claims directly to the Receiver.

36 Therefore, the tender of their securities would not be enjoined as



1 involving Receivership Assets. Nor would Appellants' action  
2 interfere in the Receiver's Action. To the contrary, Appellants'  
3 tender of their securities would aid the Receiver in his recovery  
4 of the Receivership Assets, once the securities have passed to  
5 Debtor.

6 Furthermore, the order appointing the Receiver only expressly  
7 prohibited the prosecution of any civil action against the  
8 defendants in the SEC Action, wherein Debtor was not a defendant.  
9 See Order Appointing Temporary Receiver, supra, p. 7, ¶ 9. No  
10 party has contended that Debtor's personal assets could not be  
11 subject to a lawsuit. We conclude that Appellants had standing to  
12 assert their state law claims.

13 In addition, their claims were not barred by claim  
14 preclusion. Under federal law, res judicata or claim preclusion  
15 bars a party from bringing a claim where: (1) a court of competent  
16 jurisdiction (2) has rendered a final judgment on the merits (3)  
17 on the same cause of action in (4) a previous action involving the  
18 same parties or their privies. Siegel v. Fed. Home Loan Mortgage  
19 Corp., 143 F.3d 525, 528 (9th Cir. 1998). Claim preclusion bars  
20 not only all grounds for recovery that were previously asserted,  
21 but it also bars all grounds for recovery that could have been  
22 asserted in the prior action. Id. at 528-29; Robertson v.  
23 Isomedix, Inc. (In re Int'l Nutronics, Inc.), 28 F.3d 965, 969  
24 (9th Cir. 1994).

25 The Receiver was not appointed to represent the investors,  
26 but rather stood in the shoes of RDI and the other defendants in  
27 the District Court Action. The Receiver asserted claims belonging  
28 to the Receiver's estate, i.e., RDI and its affiliates, against

1 their fellow perpetrators of the fraudulent securities. Thus, the  
2 claims asserted by the Receiver against Debtor included: (1)  
3 fraudulent transfer; (2) conversion; (3) unjust enrichment; (4)  
4 civil conspiracy; (5) breach of fiduciary duty; (6) fraud; (7)  
5 negligent misrepresentation; and (8) violations of the federal  
6 securities laws. See Third Amended Complaint, supra.

7 Appellants, on the other hand, asserted claims based on  
8 violations of Washington state's securities laws and common law  
9 causes of action, such as fraud, which they hold against Debtor.  
10 Appellants' claims were beyond the scope of the District Court's  
11 injunction, and they were not part of the Receiver's Action. See  
12 Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805  
13 (9th Cir. 2001) (stating that a federal court cannot exercise  
14 supplemental jurisdiction over state law claims if it lacks  
15 original jurisdiction in the case). Therefore, the necessary  
16 requirements for claim preclusion were not met and it was not  
17 available.

18 In summary, we agree with Appellants that the bankruptcy  
19 court's order disallowing the claims was not supported by the  
20 record evidence or the law.<sup>14</sup> Debtor did not carry her burden to  
21 negate Appellants' standing to assert their claims. We do not  
22 decide whether or not there may be other grounds to disallow  
23 Appellants' claims. Therefore, we reverse the bankruptcy court's  
24 order and remand for further proceedings in this matter.

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26 <sup>14</sup> Both the hearing transcript and the argument on appeal  
27 suggest that the bankruptcy court may have been searching for a  
28 basis upon which to grant the objection and over which it would  
have jurisdiction, considering that the plan confirmation order  
was on appeal. See Tr. of Proceedings (Sept. 28, 2005), pp. 8-10.

1 **CONCLUSION**

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3 Debtor's eligibility for chapter 13 relief was correctly  
4 determined from her schedules, which indicated that her total  
5 noncontingent and liquidated unsecured debt did not exceed the  
6 limits of § 109(e). Debtor also met the Code's requirements for  
7 plan confirmation. There were no grounds to reconsider the  
8 bankruptcy court's order confirming her plan. Therefore, the plan  
9 confirmation order and order denying Appellants' motion for  
10 reconsideration are AFFIRMED.

11 Postconfirmation, the bankruptcy court's disallowance of  
12 Appellants' claims, on the ground that Appellants lacked standing  
13 or were precluded from bringing their claims because they were  
14 either subsumed, or were subsumed by, the Receiver's Action, was  
15 erroneous. We therefore REVERSE the claim objection order, AND  
16 REMAND for the bankruptcy court's further consideration of this  
17 matter.

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