

MAR 29 2011

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No. NV-10-1323-DHKi
6	KIMMI HALL,)	Bk. No. 09-19942-BAM
7	Debtor.)	
8	_____)	
9	WISHENGRAD LAW OFFICES, LLC,)	
10	Appellant,)	
11	v.)	M E M O R A N D U M¹
12	YVETTE WEINSTEIN, Chapter 7)	
13	Trustee; KIMMI HALL; INTERIM)	
14	FUNDING,)	
	Appellees.)	
	_____)	

Argued and Submitted on February 18, 2011
at Las Vegas, Nevada

Filed - March 29, 2011

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding

Appearances: Layke M. Stolberg for Appellant Wishengrad Law
Office, LLC.
Elizabeth E. Stevens for Appellee Yvette
Weinstein.

Before: DUNN, HOLLOWELL and KIRSCHER, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Creditor Wishengrad Law Offices, LLC, represented by Evan
2 Wishengrad, its name partner (collectively, "Wishengrad"),
3 appeals the bankruptcy court's order granting the chapter 7
4 trustee's motion to approve the settlement of a personal injury
5 lawsuit initiated prepetition by the debtor, Kimmi Hall.² We
6 AFFIRM.

7
8 **FACTS**

9 Four years before filing for bankruptcy, the debtor
10 sustained injuries during an armed robbery at a Wells Fargo bank
11 branch in Las Vegas, Nevada. The debtor initiated a personal
12 injury lawsuit against Wells Fargo Bank, NA ("Wells Fargo") with
13 Wishengrad as her attorney.³

14 The debtor filed her chapter 7 petition on June 11, 2009.
15 The debtor did not file any schedules with her petition. Soon
16 after the petition date, Wishengrad contacted Yvette Weinstein,
17 the chapter 7 trustee ("trustee"), advising her of the personal
18 injury lawsuit. He also informed the trustee that the personal
19 injury lawsuit had a potential recovery of \$2 to \$3 million.

20 The trustee filed an application to employ Wishengrad as
21 special counsel to litigate the personal injury lawsuit and a
22

23
24 ² Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

26 ³ The debtor asserted vicarious liability, negligence,
27 negligent infliction of emotional distress, negligent hiring and
28 premises liability. She also included a loss of consortium claim
on behalf of her husband.

1 breach of contract lawsuit⁴ on behalf of the bankruptcy estate
2 ("Wishengrad employment application"). The debtor objected to
3 the Wishengard employment application. Before the bankruptcy
4 court could hold a hearing on the Wishengrad employment
5 application, the debtor converted her bankruptcy case from
6 chapter 7 to chapter 13 on September 4, 2009.⁵

7 The debtor soon filed an application to employ another
8 attorney, Peter Christiansen, to prosecute the personal injury
9 lawsuit ("Christiansen employment application").⁶ The bankruptcy
10 court granted the Christiansen employment application over the
11 trustee's objection.⁷

12 Wishengard subsequently filed two proofs of claim: an
13 unsecured claim in the amount of \$102,505.46 for attorney's fees
14

15 ⁴ The debtor scheduled Jae Ha as a creditor with a general
16 unsecured claim in the amount of \$280,000, based on a state court
17 judgment against her. See docket nos. 58 and 100. Ha initiated
18 the breach of contract lawsuit against the debtor, which arose
19 out of his purchase of the debtor's business. See docket no. 53.
20 The debtor appealed the state court judgment. See docket no. 54.
The debtor apparently filed for bankruptcy to prevent Ha from
executing on the state court judgment against her. Id.

21 ⁵ As a result, the trustee became an administrative claimant
22 (docket nos. 127 and 156).

23 ⁶ According to Christiansen's declaration (docket no. 49) in
24 support of the debtor's objection to Wishengrad's employment
25 application, the debtor had filed a complaint against Wishengrad
with the Nevada State Bar Association. The debtor substituted
Christiansen for Wishengrad on July 24, 2009.

26 ⁷ In granting the Christiansen employment application, the
27 bankruptcy court found that Wishengrad held interests adverse to
28 the debtor and/or the bankruptcy estate, as he was both a
creditor and fiduciary of the debtor.

1 and costs for the breach of contract lawsuit, and a secured claim
2 in the amount of \$370,569.50 for attorney's fees and costs for
3 the personal injury lawsuit.

4 Before the chapter 13 plan confirmation hearing could take
5 place, the trustee filed a motion to re-convert the bankruptcy
6 case to chapter 7. On March 18, 2010, the bankruptcy court re-
7 converted the bankruptcy case to chapter 7, with the trustee
8 reappointed by the U.S. Trustee to administer it (docket no.
9 212).

10 The debtor and Wells Fargo meanwhile entered into settlement
11 negotiations. Wells Fargo offered to settle the personal injury
12 lawsuit for \$225,000 ("settlement funds"), in exchange for the
13 release of any claims against it ("settlement"). The settlement
14 provided that the settlement funds were to be turned over to the
15 trustee for distribution. The settlement further provided for
16 the distribution of the settlement funds among the debtor, her
17 husband, and certain secured and administrative claimants
18 (collectively, "settlement creditor claims"), which did not
19 include Wishengrad. The settlement expressly reserved \$7,500 of
20 the settlement funds to be distributed among the general
21 unsecured creditors.

22 On June 22, 2010, the trustee filed a motion to approve the
23 settlement ("settlement motion").⁸ She submitted her own

24
25 ⁸ During the pendency of the chapter 13 case, on March 2,
26 2010, the debtor filed a motion for an order approving the
27 settlement between her and Wells Fargo ("debtor's settlement
28 motion"). The debtor's settlement motion was withdrawn (docket
no. 235) after the bankruptcy court re-converted the bankruptcy
case to chapter 7 and the debtor received notice that the trustee
(continued...)

1 declaration and a declaration by Christiansen ("Christiansen
2 declaration") in support of the settlement motion (collectively,
3 "settlement declarations").⁹ She filed and served notice of the
4 hearing ("hearing notice")(docket no. 255) on the settlement
5 motion. The hearing notice provided that any opposition must be
6 supported by affidavits or declarations pursuant to Local
7 Bankruptcy Rule ("LBR") 9014(d)(1). The hearing notice made no
8 mention that evidence would be received at the hearing.

9 In the settlement motion, the trustee evaluated the
10 settlement under the criteria set forth in Martin v. Kane (In re
11 A&C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The trustee
12 emphasized that she participated in the settlement negotiations
13 and carefully considered the legal opinions given on the personal
14 injury lawsuit.

15 The trustee referenced the Christiansen declaration in
16 support of the settlement motion. In the Christiansen
17 declaration, Christiansen asserted that, in his professional
18 opinion, the settlement was reasonable. He also opined that the
19 debtor would have difficulty in proving Wells Fargo's liability
20 for a third-party criminal act. Christiansen noted that the
21 debtor's own medical experts only were able to connect 20% of her
22 medical costs to her injuries. Christiansen moreover noted that
23

24 ⁸(...continued)
25 intended to file her own motion for approval of the settlement.

26 ⁹ Christiansen actually provided the declaration in support
27 of the debtor's settlement motion. The trustee apparently
28 obtained a copy of Christiansen's declaration and appended it to
the settlement motion.

1 Wells Fargo's expert economic and occupational witness offered
2 testimony that refuted the testimony of the debtor's economic and
3 occupational witness. The trustee concluded that, based on her
4 business judgment, the settlement was in the best interests of
5 the creditors and the bankruptcy estate.

6 Wishengrad objected to the settlement motion ("settlement
7 objection"). Based on his assessment of the personal injury
8 action, as well as his own evaluation of the settlement under the
9 A&C Props. factors, Wishengrad contended that Wells Fargo's
10 settlement offer was too low. He argued that the bankruptcy
11 court should allow the personal injury action to proceed to trial
12 or allow for further settlement negotiations.

13 The bankruptcy court held a hearing on the settlement
14 motion. At the hearing, the bankruptcy court asked counsel for
15 Wishengrad whether he had evidence demonstrating that the
16 personal injury lawsuit was "a multimillion-dollar case." Hr'g
17 Tr. (July 27, 2010) at 9:22. Counsel for Wishengrad answered
18 that the evidence lay in the fact that Wishengrad had conducted
19 two mock jury trials.

20 When the bankruptcy court asked where that evidence was,
21 counsel for Wishengrad admitted that he did not provide an
22 affidavit in support of his contentions. The bankruptcy court
23 told counsel for Wishengrad that he was "making allegations
24 without evidentiary support" and noted that he had been "on
25 notice" before the hearing that "this was going to be an issue at
26 [the] hearing." Hr'g Tr. (July 27, 2010) at 10:8-11. Counsel
27 for Wishengrad explained that he believed the evidentiary issues
28 related to the timeliness of the settlement objection and again

1 admitted that he did not provide a declaration in support of his
2 arguments.¹⁰ He offered to have Wishengrad testify at the
3 hearing, as Wishengrad was present. The bankruptcy court
4 apparently declined to hear Wishengrad's testimony.

5 After listening to argument from counsel, the bankruptcy
6 court approved the settlement motion. It approved the settlement
7 motion on the following two independent grounds.

8 First, the bankruptcy court determined that Wishengrad had
9 provided no evidence to support his objections to the settlement
10 motion. The bankruptcy court noted that "[i]t's clear from the
11 local rules and from the discussion and from the objections filed
12 that if one wishes to attack a settlement supported by
13 declarations from the PI counsel, Mr. Christiansen, and from the
14 trustee one must take issues with the evidence as presented."
15 Hr'g Tr. (July 27, 2010) at 14:16-20. It found that Wishengrad
16 had no evidentiary support for the allegations made in his
17 opposition and in his counsel's statements at the hearing. The
18 bankruptcy court thus took Wishengrad's objection as without
19 evidentiary support and overruled it.

21 ¹⁰ At the hearing, counsel for Wishengrad alluded to certain
22 arguments made by Interim Funding, Inc. ("IFI") in its reply
23 (docket no. 271) to the settlement objection. (IFI had advanced
24 money to the debtor to fund her personal injury lawsuit; IFI had
25 filed a proof of claim, indicating that it was secured by a lien
26 in any proceeds from the personal injury lawsuit.) In its reply
27 to the settlement objection, IFI contended that Wishengrad had
28 filed the settlement objection more than ten days after the 14-
day deadline to file objections under LBR 9014(d) of the United
States Bankruptcy Court for the District of Nevada. IFI also
argued that Wishengrad failed to provide declarations in support
of the settlement objection, as required under LBR 9014(d).

1 Second, the bankruptcy court found that approval of the
2 settlement motion was appropriate under the A&C Props. factors.
3 The bankruptcy court analyzed the settlement under each of the
4 four A&C Props. factors.

5 The bankruptcy court first determined that the personal
6 injury case would not automatically result in a favorable verdict
7 for the debtor or the estate. Although it acknowledged that the
8 potential verdict "on one side might be high," the bankruptcy
9 court relied on Christiansen's and the trustee's views that there
10 might be no verdict in the estate's favor, and hence, no
11 distribution. Hr'g Tr. (July 27, 2010) at 15:14.

12 Based on the arguments of the trustee and the debtor, the
13 bankruptcy court found that the personal injury case would be
14 complex, more complex than the "standard fender-bender personal-
15 injury accident case," because it involved "difficult issues both
16 as to liability and as to damages" Hr'g Tr. (July 27,
17 2010) at 16:1-4.

18 The bankruptcy court did agree with Wishengrad's counsel
19 that the trustee likely would be able to collect on a judgment
20 against Wells Fargo. However, relying on the trustee's evidence
21 and analysis, the bankruptcy court found that the settlement was
22 in the best interests of creditors in that it tried to leave some
23 amount for distribution to the general unsecured creditors.

24 The bankruptcy court concluded that the first, second and
25 fourth factors under A&C Props. favored settlement of the
26 personal injury lawsuit on the terms proposed. Although it found
27 that the third factor did not favor settlement of the personal
28 injury lawsuit, the bankruptcy court believed that, on balance,

1 approval of the settlement motion was appropriate under Rule 9019
2 and A&C Props.

3 On August 9, 2010, the bankruptcy court entered an order
4 approving the settlement motion ("settlement order"). Wishengrad
5 timely appealed the settlement order.

6 7 **JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C.
9 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.
10 § 158.

11 12 **ISSUES**

13 (1) Did the bankruptcy court abuse its discretion in
14 declining to allow Wishengrad to testify before approving the
15 settlement motion?

16 (2) Did the bankruptcy court abuse its discretion in
17 granting the settlement motion?

18 19 **STANDARDS OF REVIEW**

20 We review the bankruptcy court's decision to approve a
21 settlement for an abuse of discretion. A&C Props., 784 F.2d at
22 1380. We also review the bankruptcy court's evidentiary rulings,
23 including whether to hear witness testimony, for an abuse of
24 discretion. See Zurich Am. Ins. Co. v. Int'l Fibercom (In re
25 Int'l Fibercom), 503 F.3d 933, 940 (9th Cir. 2007); Lee-Benner v.
26 Gergely (In re Gergely), 110 F.3d 1448, 1452 (9th Cir. 1997).

27 We follow a two-part test to determine objectively whether
28 the bankruptcy court abused its discretion. United States v.

1 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009). First, we
2 “determine de novo whether the bankruptcy court identified the
3 correct legal rule to apply to the relief requested.” Id.
4 Second, we examine the bankruptcy court’s factual findings under
5 the clearly erroneous standard. Id. at 1252 & n.20. We must
6 affirm the bankruptcy court’s factual findings unless those
7 findings are “(1) ‘illogical,’ (2) ‘implausible,’ or (3) without
8 ‘support in inferences that may be drawn from the facts in the
9 record.’” Id. If we determine that the bankruptcy court erred
10 under either part of the test, reversal for an abuse of
11 discretion may be appropriate. Id.

12 We may affirm on any ground supported by the record. Shanks
13 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

14 15 **DISCUSSION**

16 The impetus for this appeal originates in Wishengrad’s
17 obvious dissatisfaction with the amount of Wells Fargo’s
18 settlement offer. Wishengrad believes Wells Fargo’s settlement
19 offer is too low, based on his own assessment of the personal
20 injury lawsuit. He essentially wants the bankruptcy court to
21 require the trustee and Wells Fargo to re-negotiate the
22 settlement to reach a higher settlement amount. Based on the
23 record before us, however, we conclude that the bankruptcy court
24 properly exercised its discretion in approving the settlement
25 proposed.

26 27 A. Exclusion of testimony

28 Wishengrad challenges the bankruptcy court’s refusal to

1 allow him to testify at the hearing as to whether the settlement
2 satisfied the A&C Props. criteria. He argues that the trustee
3 did not provide sufficient evidence demonstrating that the
4 settlement was fair and equitable. Because of his extensive
5 involvement in and knowledge of the personal injury action,
6 Wishengrad asserts that he is the best person to apprise the
7 bankruptcy court as to the probability of success and the
8 complexity, expense and delay in litigating the personal injury
9 lawsuit. The bankruptcy court thus abused its discretion,
10 Wishengrad contends, by approving the settlement motion without
11 allowing and considering his testimony.

12 "The use of written testimony is an accepted and encouraged
13 technique for shortening bench trials." Adair v. Sunwest Bank
14 (In re Adair), 965 F.2d 777, 779 (9th Cir. 1992)(quoting
15 Phonetele, Inc. v. AT&T, 889 F.2d 224, 232 (9th Cir.
16 1989)(internal quotation marks omitted)). A bankruptcy court
17 does not abuse its discretion when it excludes evidence that was
18 not submitted pursuant to specified procedures. See Gergely,
19 110 F.3d at 1451-52; see also Adair, 965 F.2d at 779 (trial court
20 does not abuse its discretion "in accepting only declarations and
21 exhibits on a particular issue where the parties were afforded
22 ample opportunity to submit their evidence.")(quoting Vieux v.
23 East Bay Regional Park Dist., 906 F.2d 1330, 1342 (9th Cir.
24 1990)(internal quotation marks omitted)).

25 Here, LBR 9014(d)(1) requires that an opposition to a motion
26 be supported by affidavits or declarations.¹¹ Moreover, the

27
28 ¹¹ LBR 9014(d) in relevant part provides:

(continued...)

1 hearing notice expressly provided that the opposition must be
2 supported by affidavits or declarations pursuant to LBR
3 9014(d)(1). The hearing notice even included an excerpt of LBR
4 9014(d)(1). As demonstrated by his failure to submit
5 declarations with the settlement objection and by his counsel's
6 own admissions at the hearing, Wishengrad clearly did not follow
7 the specific local procedures, though he was apprised of the
8 opportunity to do so in the notice of hearing and was required to
9 do so under LRB 9014(d)(1).

10 Additionally, Wishengrad and his counsel should have known
11 what issues would be raised at the hearing. Wishengrad is an
12 attorney and he was represented by counsel at the hearing; based
13 on their knowledge and experience and upon reading the settlement
14 motion, they surely anticipated the issues. As the bankruptcy
15 court noted at the hearing, Wishengrad had been on notice of the
16 issues to be addressed at the hearing. Also, as we discuss
17 below, the bankruptcy court had sufficient factual basis for its
18 conclusions to render further testimony unnecessary.

19 Based on the record before us, we conclude that the
20 bankruptcy court did not abuse its discretion in refusing to
21 allow Wishengrad to testify at the hearing.

22
23 ¹¹(...continued)

24 (1) Except as set out in subsection (3) below, any
25 opposition to a motion must be filed, and service of
26 the opposition must be completed on the movant, no
27 later than fourteen (14) days preceding the hearing
28 date for the motion. The opposition must set forth all
relevant facts and any relevant legal authority. An
opposition must be supported by affidavits or
declarations

1 B. Approval of the settlement motion

2
3 1. Trustee's burden of proof

4 Wishengard argues that the trustee failed to meet her burden
5 in demonstrating that the settlement was fair and equitable under
6 the A&C Props. factors. He asserts that, contrary to the
7 evidence presented by the trustee, the factors weigh against
8 approving the settlement. Wishengrad, in particular, challenges
9 the adequacy of the trustee's evidence, claiming that she failed
10 to provide evidence in support of certain factors and that the
11 settlement declarations were unsupported by any specific expert
12 reports.¹²

13 Wishengrad, not the trustee, failed to provide any evidence
14 in support of his contention that the settlement did not satisfy
15 the A&C Props. criteria. As we noted above, Wishengrad did not
16 submit any declarations in support of the settlement objection,
17 even though local court procedures required him to do so. The
18 bankruptcy court even explicitly acknowledged that "the only
19 evidence in the record [before it was] from Mr. Christiansen and
20 . . . the trustee's declaration which have not been challenged by
21 cross-examination or otherwise" Hr'g Tr. (July 27, 2010)
22 at 15:7-9. The bankruptcy court properly exercised its
23 discretion in considering only the evidence presented to it. See

24 _____
25 ¹² Wishengard also asserts, erroneously, that the trustee
26 did not attach a copy of the settlement to the "briefs."
27 Presumably, Wishengrad is referring to the settlement motion. We
28 reviewed the settlement motion as filed in the debtor's
bankruptcy case docket; the trustee indeed appended a copy of the
settlement to the settlement motion.

1 Adair, 965 F.2d at 779.

2
3 2. Bankruptcy court's factual findings

4 Wishengrad contends that the bankruptcy court did not set
5 forth in the settlement order any factual findings supporting its
6 approval of the settlement motion. He cites Rule 7052, which
7 incorporates Fed. R. Civ. P. 52, and requires the bankruptcy
8 court to state its factual findings and legal conclusions orally
9 or in writing.

10 The bankruptcy court did not need to include its factual
11 findings in the settlement order. See Polo Bldg. Group, Inc. v.
12 Sims (In re Shubov), 187 F.3d 648 (9th Cir. 1999)(unpublished
13 table)(stating that it never required bankruptcy courts to set
14 forth their findings and reasons for approving settlements in
15 their settlement orders). As Wishengrad points out, a bankruptcy
16 court may make its factual findings and legal conclusions orally
17 under Fed. R. Civ. P. 52. Here, the bankruptcy court issued its
18 findings orally at the hearing, as shown in the transcript.

19
20 3. Fairness of the settlement agreement

21 Rule 9019(a) authorizes the bankruptcy court to approve a
22 settlement on motion by the trustee and after notice and a
23 hearing. The bankruptcy court must conduct an inquiry into all
24 "factors relevant to a full and fair assessment of the wisdom of
25 the proposed compromise." Protective Comm. for Indep.
26 Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S.
27 414, 424 (1968). That is, the bankruptcy court must find that
28 the settlement is fair and equitable in order to approve it. A&C

1 Props., 784 F.2d at 1381.

2 In conducting this inquiry, the bankruptcy court must
3 consider the following factors:

- 4 (a) the probability of success in the litigation;
5 (b) the difficulties, if any, to be encountered in the
6 matter of collection; (c) the complexity of the
7 litigation involved, and the expense, inconvenience and
8 delay necessarily attending it; and (d) the paramount
9 interest of the creditors and a proper deference to
10 their reasonable views in the premises.

11 Id.

12 The bankruptcy court has considerable discretion in
13 evaluating a proposed settlement because it "is uniquely situated
14 to consider the equities and reasonableness [of it]"
15 United States v. Alaska Nat'l Bank (In re Walsh Construction,
16 Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982). As the party
17 proposing the compromise, the trustee bears the burden in proving
18 to the bankruptcy court that the settlement is fair and equitable
19 and should be approved. A&C Props., 784 F.2d at 1382.

20 We stress that the "law favors compromise and not litigation
21 for its own sake." Id. at 1381. "As long as the bankruptcy
22 court amply considered the various factors that determined the
23 reasonableness of the compromise, the [bankruptcy] court's
24 decision must be affirmed." Id. We must determine whether the
25 settlement was reasonable, in light of the particular
26 circumstances of the case. Id. "[W]here the record supports
27 approval of the compromise, the bankruptcy court should be
28 affirmed." Id. at 1383.

29 Wishengard challenges the bankruptcy court's determinations
30 under each A&C Props. factor. Before we go through the
31 bankruptcy court's analysis of each of the factors, we note that

1 the bankruptcy court reviewed and explicitly considered the
2 evidence before it and the arguments of counsel and the trustee.

3
4 a. Probability of success in the litigation

5 The bankruptcy court made a specific finding on the record
6 that the settlement was "within the range of reasonableness given
7 the probability of success." Hr'g Tr. (July 27, 2010) at 15:10-
8 11. The bankruptcy court determined that the personal injury
9 lawsuit was not one that would "automatically result in a
10 verdict." Hr'g Tr. (July 27, 2010) at 15:13. The bankruptcy
11 court particularly relied on the settlement declarations wherein
12 both Christiansen and the trustee considered the fact that there
13 could "be no verdict and no distribution whatsoever." Hr'g Tr.
14 (July 27, 2010) at 15:16-17.

15 The trustee relied on Christiansen's assessment of the
16 personal injury lawsuit. She advised the bankruptcy court of his
17 considered views, including the difficulty in proving Wells
18 Fargo's liability, the potential decrease in the pain and
19 suffering award, and the possibility of an appeal. The trustee
20 also advised the bankruptcy court that the bankruptcy estate
21 might not benefit if the trustee decided to litigate the
22 settlement creditor claims, as such litigation would be costly.

23 Although Wishengrad claims that he conducted two mock jury
24 trials which resulted in a \$2 to \$3 million award, he did not
25 submit any supporting evidence. The record, as presented to us,
26 supports the bankruptcy court's finding as to this factor.

1 b. Difficulty of collection

2 On this factor, the bankruptcy court agreed with
3 Wishengrad's counsel that it would not be difficult to collect
4 against Well Fargo, one of the largest financial institutions in
5 the country. Even the trustee conceded that "[c]learly, Wells
6 Fargo has adequate assets to collect upon," which weighed against
7 approval of the settlement. The bankruptcy court thus concluded
8 that this second factor did not weigh in favor of approving the
9 settlement.

10
11 c. Complexity, inconvenience and expense of the
12 litigation involved

13 Wishengrad argued in the settlement objection that discovery
14 had been closed and completed and that the personal injury
15 lawsuit was ready for trial in November 2009. Aside from his
16 allegations, he did not submit any evidence demonstrating that
17 the personal injury lawsuit would not be complex, expensive,
18 inconvenient and lengthy.

19 The bankruptcy court recognized that the personal injury
20 lawsuit was not a "standard fender-bender" type of case. Given
21 the issues concerning Wells Fargo's liability and the debtor's
22 damages, the bankruptcy court determined that the personal injury
23 lawsuit was complex.

24 The record indicates (and the parties seem to agree) that
25 the personal injury lawsuit had taken several years to reach the
26 trial stage. As Wishengard himself attests, it has taken
27 hundreds of hours to prosecute and thousands of dollars to fund
28 the litigation.

1 d. Paramount interest of the creditors and a proper
2 deference to their reasonable views in the
3 premises

4 Wishengrad contended that he would likely receive nothing on
5 his claims under the settlement. At the hearing, the bankruptcy
6 court recognized that general unsecured creditors would receive
7 little under the Wells Fargo settlement agreement, as only \$7,500
8 had been set aside for their claims. It pointed out, however,
9 that the general unsecured creditors receiving even a little on
10 their claims was better than nothing at all.

11 Wishengrad did not submit any evidence demonstrating that
12 the bankruptcy estate would receive a \$2 to \$3 million judgment
13 award, if the personal injury lawsuit went to trial. The
14 bankruptcy court again noted that "the only evidence that [it
15 could] really rely upon [was] that provided by the trustee."
16 Hr'g Tr. (July 27, 2010) at 16:10-12. There is no evidence in
17 the record supporting Wishengrad's allegation that the creditors
18 would receive a larger distribution if the personal injury
19 lawsuit goes to trial.

20 CONCLUSION

21 Based on the record before us, we agree with the bankruptcy
22 court that, on balance, the A&C Props. factors weigh in favor of
23 approving the settlement. We note that the bankruptcy court made
24 appropriate findings orally at the hearing. We further determine
25 that the bankruptcy court did not abuse its discretion in
26 declining to allow Wishengrad to testify as to the propriety of
27 approving the settlement motion. We thus conclude that the
28 bankruptcy court did not abuse its discretion in approving the

1 trustee's settlement motion. We AFFIRM.

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28