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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-11-1131-PaMkLa
)		
BROTMAN MEDICAL CENTER, INC.,)	Bk. No.	07-19705-BB
)		
Debtor.)		
_____)		
RETHA GREEN,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
BROTMAN MEDICAL CENTER, INC.)		
CREDITOR'S TRUST,)		
)		
Appellee.)		
_____)		

Argued and Submitted on January 20, 2012
at Pasadena, California

Filed - January 31, 2012

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

Honorable Sheri A. Bluebond, Bankruptcy Judge, Presiding

Appearances: Freddie Fletcher, Esq. argued for appellant Retha Green; Paul S. Arrow of Buchalter Nemer, PC argued for appellee Brotman Medical Center, Inc. Creditor's Trust.

Before: PAPPAS, MARKELL and LAFFERTY,² 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.

² The Honorable William J. Lafferty, III, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

1 Appellant Retha Green ("Appellant")³ appeals the bankruptcy
2 court's order disallowing Appellant's claim in the chapter 11⁴
3 case of Brotman Medical Center, Inc. ("Debtor"). We REVERSE.

4 **FACTS**

5 Appellant was the mother of Linda Sue Brown ("Brown"), a
6 developmentally disabled adult. Debtor is a general acute care
7 hospital. In July 2006, Brown died after receiving medical
8 treatment at Debtor's facilities.

9 Appellant later sued Debtor, its doctors and nurses in
10 California Superior Court alleging that the defendants had
11 committed a battery against Brown and abused her as a "dependent
12 adult" as that term applies in the California Elder Abuse and
13 Dependent Adult Civil Protection Act.⁵ In a First Amended
14 Complaint ("FAC") filed August 27, 2007, Appellant sought to
15 recover \$5 million in compensatory damages and \$25 million in
16 punitive damages for "Common Law Battery," \$250,000 for Brown's
17 pain and suffering, Brown's medical costs, and \$25 million in
18 punitive damages for "Abuse of [a] Dependent Adult."

19 The defendants, including Debtor, filed demurrers. On
20 October 25, 2007, before the hearing on the demurrers, Debtor

21 ³ Appellant appeals by and through a guardian ad litem,
22 Rosslyn Diamond.

23 ⁴ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, or
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25 ⁵ Appellant alleges Debtor fabricated a medical condition
26 for Brown, provided her with unnecessary blood transfusions,
27 performed unnecessary and improperly consented-to surgery, and
28 provided insufficient post-surgical monitoring. At the same time,
Appellant alleges Brown suffered from a different, life-
threatening condition, which went untreated by Debtor, killing her
while in Debtor's care.

1 filed a chapter 11 bankruptcy petition. When Debtor filed its
2 schedules of liabilities in the bankruptcy court on December 26,
3 2007, it indicated \$34,929,926.87 was owed to "Creditors Holding
4 Unsecured Nonpriority Claims." Brown was listed among those
5 creditors, though because of the state court litigation, the
6 "total amount of claim" for Brown was listed as "unknown," and was
7 not included in the total amount owed to unsecured creditors.

8 The state court held a hearing on October 30, 2007, and
9 sustained the demurrers, but granted Appellant twenty days to
10 amend the FAC. Appellant moved for reconsideration but, in early
11 December 2007, the demurrers were again sustained with twenty
12 days' leave to amend ("Twenty Day Period").

13 Knowing she only had twenty days to amend the FAC, and
14 recognizing Debtor's bankruptcy filing had imposed an automatic
15 stay, Appellant moved for relief from the stay in Debtor's
16 bankruptcy case on December 14, 2007 ("First Stay Motion"). In a
17 memorandum filed in support of the First Stay Motion, Appellant
18 explained the Common Law Battery and Abuse of Dependent Adult
19 causes of action she was asserting against Debtor in state court,
20 and outlined the facts she believed supported those claims.
21 Appellant requested that the bankruptcy court grant her relief "to
22 continue litigation of the pending state court lawsuit against
23 Debtor . . . including the filing of a second amended complaint
24 therein." A copy of the FAC was attached as an exhibit to the
25 First Stay Motion.

26 Debtor opposed Appellant's First Stay Motion on December 26,
27 2007. However, in its opposition, Debtor indicated it would agree
28 to stay relief if Appellant waived all potential claims against

1 Debtor, sought satisfaction of her claims solely from "applicable
2 insurance proceeds, if any," and if the bankruptcy court "barred
3 [Appellant] from filing a proof of claim in the Debtor's
4 bankruptcy case."

5 Before the bankruptcy court considered the First Stay Motion,
6 Appellant filed a Second Amended Complaint with the state court on
7 December 31, 2007, as the Twenty Day Period was about to expire.⁶
8 Appellant's Second Amended Complaint explained that Debtor is "not
9 listed as a named defendant [in the Second Amended Complaint]
10 because the bankruptcy automatic stay pursuant to 11 U.S.C. [§]
11 362(a)(1) prevents the same." Rather, Appellant "reserve[d] the
12 right to name [Debtor] as a defendant in this action upon
13 obtaining relief from the automatic stay."

14 The bankruptcy court issued a tentative ruling on Appellant's
15 First Stay Motion on February 5, 2008. That tentative ruling
16 stated in part that:

17 Court agrees that, if and when the merits of
18 movant's claims need to be resolved, state
19 court is the appropriate forum; however,
20 nothing contained in the motion explains why
21 relief from stay needs to be granted now. If
22 movant were prepared to waive any claims
23 against the estate and proceed only against
24 insurance coverage, continued prosecution of
25 this litigation would be less likely to
26 distract the debtor and its principals from
27 its reorganization efforts (and the court
28 could, therefore, be inclined to grant such
relief). Absent such a waiver, however, it
would adversely impact the debtor's
reorganization efforts if this litigation were
to move forward at this juncture.

26 Tentative Ruling on Motion for Stay Relief, Feb. 5, 2008.

27 ⁶ In the Second Amended Complaint, Appellant further
28 explained her reasoning for the Common Law Battery and Abuse of
Dependent Adult claims, and added a Medical Malpractice claim.

1 At the February 5, 2008, hearing on Appellant's First Stay
2 Motion, Appellant's lawyer explained that, because Appellant was
3 asserting intentional tort claims against Debtor, it was possible
4 that such claims would not be covered by Debtor's insurance.
5 Appellant could not, therefore, agree to waive her claims against
6 Debtor and proceed solely against insurance coverage. The
7 bankruptcy court denied Appellant's First Stay Motion without
8 prejudice in an order entered that same day. The bankruptcy court
9 thereafter established an April 8, 2008 deadline for filing proofs
10 of claim in Debtor's bankruptcy case.

11 Appellant appealed the bankruptcy court's denial of her First
12 Stay Motion to the Bankruptcy Appellate Panel. She did not file a
13 formal proof of claim by the April 8, 2008, bar date. Appellant's
14 attorney would later explain that he incorrectly understood
15 Appellant could only file a formal proof of claim in Debtor's case
16 after she secured a judgment against Debtor. Because Appellant
17 filed no proof of claim by the claims bar date, and could
18 therefore receive no distribution in Debtor's bankruptcy case,
19 Debtor argued to the BAP that the appeal of the First Stay Motion
20 was moot.

21 The Panel decided the bankruptcy court did not abuse its
22 discretion in denying Appellant's First Stay Motion, and affirmed
23 its order. However, in its Memorandum decision, the Panel
24 rejected Debtor's mootness argument. The Panel explained that
25 Appellant's FAC sufficiently alleged a "claim" for purposes of the
26 Bankruptcy Code, and that Appellant could assert that claim in
27 Debtor's bankruptcy case before receiving a judgment against
28 Debtor in state court. Moreover, the Panel noted that Appellant's

1 First Stay Motion, "which included a copy of the complaint, may be
2 sufficient to provide notice of her claim and may serve as an
3 informal proof of claim." Green v. Brotman Med. Ctr., Inc.
4 (In re Brotman Med. Ctr., Inc.), BAP no. CC-08-1056, slip. op. at
5 10 (9th Cir. BAP, August 15, 2008).

6 Appellant filed a second motion for relief from the automatic
7 stay in Debtor's bankruptcy case on September 10, 2008 ("Second
8 Stay Motion"). Debtor opposed Appellant's motion. On October 30,
9 2008, the bankruptcy court denied Appellant's Second Stay Motion,
10 adopting extensive findings of facts and conclusions of law
11 prepared by Debtor's counsel in doing so. Among these is a
12 finding that Debtor does not have insurance to defend against
13 intentional torts.

14 Debtor filed a Second Amended Chapter 11 Plan (the "Plan")
15 and Disclosure Statement on November 3, 2008. The Disclosure
16 Statement indicated that, to date, proofs of claim for
17 \$29,728,025.41 in unsecured claims had been submitted, and Debtor
18 estimated the total allowable unsecured claims against the
19 bankruptcy estate to be approximately \$18-22 million. Thus, even
20 for properly submitted proofs of claim, Debtor's estimate of
21 allowable claims only included those which it considered to be
22 "[un]objectionable as [f]iled."

23 The Plan provided for the creation of a Creditor Trust
24 ("Trust") to oversee plan distributions to allowed Class 4 claims,
25 which included "General Unsecured Claims," such as Appellant's.

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1 It also provided that \$7.5 million⁷ was available for the benefit
2 of such claims and any "small claims." The Plan gives the Trust
3 "the sole right and authority to [f]ile, settle, compromise,
4 withdraw or litigate to judgment objections to Class 4 Claims."
5 It also recognized that pre-confirmation wrongful death claimants
6 were to be enjoined by the discharge injunction "from commencing
7 or continuing any action to collect such Claim except in
8 conformity with . . . ADR Procedures [outlined in Exhibit H to the
9 Plan]." Per the Plan, if Debtor and a claimant participated in a
10 good faith mediation effort without reaching a settlement, the
11 claimant could then receive relief from the injunction.

12 The Plan was confirmed March 30, 2009, and the Trust was
13 created. On May 11, 2009, Appellant filed a formal proof of claim
14 in Debtor's chapter 11 case ("Formal POC"). On the Formal POC
15 form, Appellant checked a box indicating the form amended a
16 previously filed "Informal Claim," and that the informal claim was
17 a "Motion for relief from stay: Filed on: 12/14/07." Appellant
18 identified the claim's amount as "[greater than] \$250,000.00," and
19 stated the basis for the claim was a "[w]rongful death incident to
20 battery & abuse of dependent adult." In a footnote to the Formal
21 POC, Appellant explained that "[a]n informal claim was made by
22 filing [a] motion for relief from stay on 12/14/07. This claim
23 amends with a formal claim. In re Pizza of Hawaii, Inc., 761 F.2d
24 1374, 1381 (9th Cir. 1985); [Sambo's Rests., Inc. v. Wheeler
25 (]In re Sambo's Rests., Inc.[)], 754 F.2d 811, 815 (9th Cir.

26 _____
27 ⁷ Of this amount, \$3.5 million was cash provided from Debtor
28 to the Trust. The remaining \$4 million was in the form of an
unsecured note issued by Debtor for the benefit of allowed Class 4
claims.

1 1985)."

2 Attorneys for the Trust contacted Appellant's counsel about
3 the Formal POC on June 19, 2009, indicating the Trust disputed the
4 claim, and directing Appellant to pursue the ADR procedures set
5 forth in Exhibit H to the Plan. The Trust's attorneys also
6 advised that Appellant's claim could be quickly resolved if she
7 would agree to limit her recovery to available insurance proceeds
8 and would not seek recovery from the Trust.

9 On July 5, 2009, Appellant responded to the Trust, indicating
10 she was willing to participate in the mediation program.
11 Appellant also indicated she would waive her right to receive
12 distributions from the Trust if she was paid \$250,000 from
13 available insurance coverage.

14 After not hearing from the Trust for several months,
15 Appellant initiated contact to verify the status of her claim in
16 the ADR process. The Trust informed Appellant that her claim was
17 being handled by another law firm which, ultimately, directed
18 Appellant to yet another law firm. That firm put Appellant in
19 contact with the party overseeing the ADR process, Judicate West.
20 While Judicate West contacted Appellant in October 2009, and
21 decided on an acceptable mediator, no mediation date was scheduled
22 because it needed to verify dates with the Trust. No mediation
23 dates were ever scheduled through this process.

24 The Trust finally contacted Appellant in March 2010,
25 requesting a status update. Appellant responded that she had
26 heard nothing about her claim since her contact with Judicate West
27 in October 2009. After an informal settlement discussion between
28 the Trust and Appellant, Appellant rejected the Trust's offer to

1 settle her claim for \$75,000 to \$100,000. The Trust again offered
2 to stipulate to relief from stay for Appellant if she would agree
3 to limit her recovery to available insurance coverage and to
4 withdraw "the proof of claim presently on file." On April 27,
5 2010, the Trust notified Appellant that, if she did not agree to
6 such a stipulation within the next ten days, it would file an
7 objection to Appellant's claim with the bankruptcy court.

8 The matter did not settle and, on July 12, 2010, the Trust
9 filed a motion asking the bankruptcy court to disallow Appellant's
10 claim. In support of its motion, the Trust asserted Appellant was
11 barred from pursuing her claim by the Plan discharge and
12 injunction, and that Appellant had not "avail[ed] herself" of the
13 ADR process through which relief from the injunction could be
14 obtained. The Trust asserted that Appellant's claim should be
15 disallowed because no proof of claim was filed until after the bar
16 date. Appellant opposed the Trust's motion, arguing that her two
17 stay relief motions were sufficient to constitute an informal
18 proof of claim.

19 An initial hearing on the Trust's motion was conducted in the
20 bankruptcy court on August 11, 2010. Rather than discussing the
21 informal proof of claim issue, the bankruptcy court used that
22 hearing to advance the ADR process by committing the parties to
23 continue mediation. The Trust's claim objection hearing was
24 continued until after the parties met for mediation.

25 At about the same time it filed its motion for disallowance
26 of Appellant's claim, the Trust made its first distribution to
27 Class 4 claimants. In a May 25, 2010, status report to the
28 bankruptcy court, Debtor stated that, in spite of the fact that

1 the Trust was "still analyzing, reconciling and resolving several
2 Class 4 Claims," it would make its first distribution to Class 4
3 claimants "within the next few months." At the August 2010,
4 hearing on the Trust's objection to Appellant's claim, the Trust
5 represented that Appellant's claim was "one of the remaining open
6 claims that we need to resolve in order to make a distribution to
7 creditors." Hr'g Tr. 3:9-11, Aug. 11, 2010. By November 23,
8 2010, Appellant held the sole remaining contested claim.

9 Apparently, the Trust decided it did not "need to resolve"
10 Appellant's claim before making a distribution to other Class 4
11 claimants; it distributed \$1,463,056.62 to such claimants by
12 October 30, 2010. At the same time, the Trust established a
13 \$250,000 "reserve" for the potential payment of Appellant's claim.
14 As of March 31, 2011, the Trust had made a second distribution,
15 and the aggregate distribution to Class 4 claimants was
16 \$3,482,365.30.

17 Appellant and Debtor participated in an unsuccessful
18 mediation on January 19, 2011. The bankruptcy court reconvened
19 the hearing on the Trust's claim objection on January 26, 2011;
20 the only remaining issue was the timeliness of Appellant's claims
21 in the bankruptcy case.

22 At the hearing, the bankruptcy court expressed concern that
23 Appellant had never filed a motion to have her First Stay Motion
24 deemed an informal proof of claim. Appellant disputed she was
25 required to make such a motion. While the bankruptcy court
26 insisted there was such a requirement, it conceded it could not
27 cite Appellant to authority from the bench for the proposition.
28 The bankruptcy court then sustained the Trust's claim objection on

1 the basis that Appellant had missed the claims bar date because
2 she had not filed a motion to have her First Stay Motion
3 considered an informal proof of claim.

4 Counsel for Appellant pressed the bankruptcy judge to explain
5 the basis for her ruling in more detail. The bankruptcy court
6 declined, directed the Trust's attorney to draft an order
7 disallowing Appellant's claim, and indicated that "the order that
8 I sign will include my reasons as stated on the record." Hr'g Tr.
9 12:21-22, Jan. 26, 2011 (emphasis added). The only reason stated
10 on the record for the court's decision to disallow Appellant's
11 claim was that the court would not "make rulings unless somebody
12 requests them in a motion," Appellant "never sought that relief,"
13 and "there was a bar date [and Appellant] did not file by the bar
14 date." Hr'g Tr. 11:5-7 and 11:25-12:1, Jan. 26, 2011.

15 The bankruptcy court entered an order disallowing Appellant's
16 claim on February 9, 2011. That order, drafted by the Trust's
17 attorneys, provides that "[Appellant] has never moved this Court
18 for leave to file a late proof of claim, for a finding that her
19 May 2009[,] Proof of Claim relates back to an earlier informal
20 proof of claim or for a finding that her first motion for relief
21 from stay constitutes an informal proof of claim." However, in
22 spite of the bankruptcy court's indication at the hearing that its
23 order would be based solely on the reasons stated on the record,
24 the order also provides, "[t]o the extent that [Appellant's]
25 opposition to the [Trust's claim objection] may be construed as a
26 request for [consideration as an informal proof of claim], these
27 requests are denied." The attorney-drafted order then lists a
28 litany of other reasons why the Trust's claim objection was

1 sustained, including that Appellant's case was distinguishable
2 from other informal proof of claim cases on the evidence; "[t]here
3 is nothing about the conduct of [Appellant] in this case that
4 evidences an intent to take actions that were the functional
5 equivalent of filing a proof of claim"; Appellant "took steps to
6 avoid having her claim adjudicated in a federal forum"; and
7 Appellant "sought only to preserve her right to proceed with the
8 Prepetition State Court Action."

9 Appellant filed a motion asking the bankruptcy court to
10 reconsider its February 9 order; the motion was denied on
11 March 11, 2011 because, in the court's view, the motion simply
12 restated the arguments rejected by the court in its February 9,
13 2011, order. Appellant filed a timely notice of appeal on
14 March 22, 2011

15 JURISDICTION

16 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
17 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158.

18 ISSUES

19 Whether the bankruptcy court erred in determining that
20 Appellant's First Stay Motion did not meet the requirements for an
21 informal proof of claim.

22 Whether the bankruptcy court abused its discretion in
23 disallowing Appellant's claim on the grounds that it was untimely.

24 STANDARDS OF REVIEW

25 We review a bankruptcy court's decision to allow or disallow
26 a proof of claim for an abuse of discretion. Bitters v. Networks
27 Elec. Corp. (In re Networks Elec. Corp.), 195 B.R. 92, 96 (9th
28 Cir. BAP 1996) ("the bankruptcy court has sole jurisdiction and

1 discretion to allow or disallow the claim under federal law.").

2 The existence of an informal proof of claim is a question of
3 law reviewed de novo. Hi-Tech Commc'ns Corp. v. Poughkeepsie Bus.
4 Park, LLC (In re Wheatfield Bus. Park, LLC), 308 B.R. 463, 465
5 (9th Cir. BAP 2004) (citing Dicker v. Dye (In re Edelman),
6 237 B.R. 146, 150 (9th Cir. BAP 1999)). De novo review requires
7 the Panel to independently review an issue, without deference to
8 the bankruptcy court's conclusions. See Cal. Franchise Tax Board
9 v. Wilshire Courtyard (In re Wilshire Courtyard), 459 B.R. 416,
10 423 (9th Cir. BAP 2011) (citing First Ave. W. Bldg., LLC v. James
11 (In re Onecast Media, Inc.), 439 F.3d 558, 561 (9th Cir. 2006)).

12 In applying an abuse of discretion test, we first "determine
13 de novo whether the [bankruptcy] court identified the correct
14 legal rule to apply to the relief requested." United States v.
15 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). If the
16 bankruptcy court identified the correct legal rule, we then
17 determine whether its "application of the correct legal standard
18 [to the facts] was (1) illogical, (2) implausible, or (3) without
19 support in inferences that may be drawn from the facts in the
20 record." Id. (internal quotation marks omitted). If the
21 bankruptcy court did not identify the correct legal rule, or if
22 its application of the correct legal standard to the facts was
23 illogical, implausible, or without support in inferences that may
24 be drawn from the facts in the record, the bankruptcy court has
25 abused its discretion. Id.

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27

28

1 DISCUSSION

2 I.

3 **There is no procedural prerequisite that a creditor**
4 **file a motion to have the bankruptcy court consider an**
5 **informal proof of claim.**

6 At the January 26, 2011, hearing on the Trust's motion to
7 disallow Appellant's claim, the bankruptcy court declined to
8 consider the merits of Appellant's arguments that her First Stay
9 Motion satisfied the requirements for a timely-filed informal
10 proof of claim. The bankruptcy court instead insisted Appellant
11 was required to first file a motion with the court to consider
12 such documents as an informal proof of claim. Because Appellant
13 had not done so, the bankruptcy court granted the Trust's request
14 to disallow Appellant's tardy formal proof of claim.

15 In making this decision, the bankruptcy court abused its
16 discretion because it applied an incorrect legal rule. There is
17 no requirement in the Code, Rules, or case law that a creditor
18 must ask the bankruptcy court to determine that an informal proof
19 of claim exists before that claim is allowed. To the contrary,
20 bankruptcy courts routinely determine the existence of informal
21 proofs of claims in proceedings initiated by parties other than
22 the creditor found to hold such a claim. See, e.g., In re Pizza
23 of Hawaii, Inc., 761 F.2d at 1374 (lack of a formal proof of claim
24 raised, in the first instance, by debtor on appeal); Pac. Res.
25 Credit Union v. Fish (In re Fish), 456 B.R. 413 (9th Cir. BAP
26 2011) (proof of claim issue raised through a debtor's objection to
27 a claim as late-filed).

28 In this case, there was no procedural impediment preventing
the bankruptcy court from considering whether Appellant's filings

1 constituted an informal proof of claim, even though Appellant had
2 not filed a motion with the court asking it to do so. The court's
3 disallowance of the claim based on the "requirement" that
4 Appellant first make such a motion was in error.

5
6 **II.**

7 **Appellant's First Stay Motion constituted**
8 **an informal proof of claim.**

9 Though the bankruptcy court did not discuss it at the
10 hearing, in its February 9, 2011, order sustaining the Trust's
11 objection to Appellant's claim, the court indicated that, even if
12 Appellant was not required to file a motion to have the First Stay
13 Motion considered an informal proof of claim, she did not meet the
14 informal proof of claim requirements. The order then provided
15 various reasons why the First Stay Motion was not an informal
16 proof of claim.

17 As counsel for the Trust conceded at oral argument, the
18 bankruptcy court's order merely adopted the findings of fact and
19 conclusions of law drafted by counsel for the Trust. As a result,
20 that order must be reviewed with special scrutiny. See Anderson
21 v. City of Bessemer City, 470 U.S. 564, 571-72 (1985) (recognizing
22 "the potential for overreaching and exaggeration on the part of
23 attorneys preparing findings of fact when they have already been
24 informed that a judge has decided in their favor"); Jess v. Carey
25 (In re Jess), 169 F.3d 1204, 1208-09 (9th Cir. 1999) (recognizing
26 that the wholesale adoption of a party's proposed findings by a
27 trial court is a "frequently criticized" and disfavored practice);
28 Cinevision Corp. v. City of Burbank, 745 F.2d 560, 581 n.30 (9th
Cir. 1984) (finding that, where a trial court engages in the

1 "disfavored practice" of adopting a prevailing party's proposed
2 order, an appellate court "must give the order 'special
3 scrutiny.'").

4 Based on this record, it appears that the Trust, knowing it
5 was the prevailing party, engaged in inappropriate overreaching
6 and exaggeration in drafting the order adopted by the bankruptcy
7 court. Cf. Anderson, 470 U.S. at 572. At the January 26, 2011,
8 hearing on the Trust's objection, the bankruptcy court sustained
9 that objection solely because Appellant had not first moved to
10 have the court consider the First Stay Motion as an informal proof
11 of claim. While the bankruptcy court instructed counsel that the
12 Trust-drafted order was to recite the court's reasons for its
13 ruling "as stated on the record," the order submitted by the
14 Trust's attorneys and entered by the court included extensive
15 findings and conclusions beyond those addressed by the court on
16 the record. In particular, the order provides that, because the
17 facts of this case are not a replica of those in other informal
18 proof of claim cases, Appellant did not "evidence[] an intent to
19 take actions that were the functional equivalent of filing a proof
20 of claim." In addition, while not mentioned by the court at the
21 hearing, the order intimated that Appellant could only have
22 properly demonstrated an informal proof of claim by taking steps
23 to have her claim adjudicated in a "federal forum."

24 These legal standards, adopted by the bankruptcy court in the
25 order, however, are not those applicable to determine whether an
26 informal proof of claim exists. The informal proof of claim
27 doctrine is well-established in the Ninth Circuit. Indeed, this
28 Panel recently addressed the rules for informal proofs of claims

1 in In re Fish, 456 B.R. at 413, where, as here, a creditor, among
2 other filings, relied upon pre-claims-bar-date stay relief motions
3 as an informal proof of claim.

4 In essence, a creditor may establish the existence of a
5 timely proof of claim by amending a pre-claims-bar-date "informal
6 proof of claim" by filing a post-claims-bar-date formal proof of
7 claim. In re Fish, 456 B.R. at 417 (citing In re Edelman,
8 237 B.R. at 154). To be effective as an informal proof of claim,
9 a document must satisfy several conditions. In re Edelman,
10 237 B.R. at 155. The creditor must offer the bankruptcy court
11 proof of the "(1) presentment of a writing; (2) within the time
12 for the filing of claims; (3) by or on behalf of the creditor;
13 (4) bringing to the attention of the court; (5) the nature and
14 amount of a claim asserted against the estate." In re Fish,
15 456 B.R. at 417⁸ (citing In re Edelman, 237 B.R. at 155).
16 However, bankruptcy courts should be "liberal" in the kind of
17 documentation accepted as an informal proof of claim. In re
18 Sambo's Rests., Inc., 754 F.2d at 816.

19 A creditor's request for relief from the automatic stay, with
20 accompanying attachments, meets the informal proof of claim
21 "presentment of a writing" requirement. See In re Pizza of
22 Hawaii, Inc., 761 F.2d at 1381; In re Fish, 456 B.R. at 418. In
23 addition, if a creditor requests stay relief to join a debtor as a
24 defendant in a civil action, such action is, itself, sufficient to
25 show the creditor "inten[ds] to hold the estate liable." In re

26 ⁸ Fish's fifth requirement – that the claimant state "the
27 nature and amount of a claim asserted against the estate" – is
28 sometimes formulated as a requirement that the claimant's writing
indicate that the claimant "intend[s] to hold the estate liable."
In re Pizza of Hawaii, Inc., 761 F.2d at 1381.

1 Pizza of Hawaii, Inc., 761 F.2d at 1381. Documents attached to a
2 stay relief request that detail the nature and contingent amount
3 of the claim asserted against the debtor only further demonstrate
4 the creditor's intent to hold the estate liable. Id. And where a
5 claim is based on a pending lawsuit, an inexact claim amount is
6 sufficient to demonstrate the "amount of a claim asserted against
7 the estate." Id.; In re Fish, 456 B.R. at 418.

8 Appellant provided the bankruptcy court, and the Panel on
9 appeal, with an extensive evidentiary record to support the
10 existence of its informal proof of claim. For these purposes,
11 however, only those materials presented, and brought to the
12 bankruptcy court's attention, before the claims bar date, April 8,
13 2008,⁹ are relevant. In re Fish, 456 B.R. at 417.

14 When Debtor filed its October 25, 2007, chapter 11 petition,
15 Appellant had filed a complaint against Debtor in state court.
16 Soon after Debtor's bankruptcy filing, however, the state court
17 sustained Debtor's demurrer to the FAC, giving Appellant twenty
18 days to amend the complaint. Yet, Appellant could not amend the
19 complaint against Debtor because of the automatic stay invoked by

20 ⁹ Much of the evidentiary record, while clearly indicating
21 an intent to hold Debtor liable for Appellant's claim, was not
22 presented to the bankruptcy court before the claims bar date. For
23 example, the record documents repeated offers by Debtor to
24 stipulate to stay, injunction, and discharge relief in exchange
25 for Appellant's agreement to waive Debtor's liability and to only
26 pursue insurance. While Appellant's rejection of those offers may
27 evidence her intent to hold Debtor liable, many of the offers and
28 rejections were made after the claims bar date. In addition,
Appellant's Second Amended Complaint clearly indicates Debtor was
not a named defendant in that complaint solely because of the
automatic stay, and that, upon receiving stay relief, Appellant
planned to pursue Debtor. Again, while this evidences Appellant's
intent to hold Debtor liable, and while the state court had the
complaint prior to the claims bar date, there is no indication the
complaint was presented to the bankruptcy court before April 8,
2008.

1 Debtor's bankruptcy filing. See § 362(a)(1) (indicating the
2 automatic stay prevents the commencement or continuation of a pre-
3 petition judicial action against a debtor).

4 On December 14, 2007, Appellant filed the First Stay Motion
5 with the bankruptcy court, with an accompanying memorandum, and a
6 copy of her FAC. Included in Appellant's memorandum was a
7 description of the causes of action she asserted against Debtor,
8 and the facts she believed support those causes of action.¹⁰ By
9 filing the First Stay Motion, with its accompanying attachments,
10 Appellant presented a sufficient writing to the bankruptcy court
11 prior to the date for timely filing a proof of claim. Appellant,
12 the creditor seeking to establish an informal proof of claim,
13 brought her claim to the bankruptcy court's attention through the
14 First Stay Motion. The motion and accompanying memorandum clearly
15 explain the nature of Appellant's claim against Debtor for common
16 law battery and abuse of a dependent adult, and, by stating she
17 will pursue Debtor upon receiving stay relief, these documents

18 ¹⁰ Debtor argues that Appellant's filing of the Second
19 Amended Complaint rendered the FAC a legal nullity, insufficient
20 to establish an informal proof of claim. Even if the FAC is a
21 nullity for purposes of pleading under state law, however, the
22 bankruptcy court and Panel need not rely solely upon the FAC as
23 Appellant's informal proof of claim. Appellant's First Stay
24 Motion is also sufficient to constitute an informal proof of
25 claim. Regardless of its legal effect in the state court
26 litigation, the FAC attached to the First Stay Motion can be
27 considered to supplement the motion, providing information on the
28 nature and amount of the claim Appellant intended to pursue
against Debtor once stay relief was granted. Indeed, as the
Panel's August 15, 2008, unpublished decision in this case
observes, "although [Appellant] has not obtained a judgment
against the debtor in the state court action, the causes of action
asserted in the complaint constitute claims within the meaning of
§ 101(5)(A)." Green v. Brotman Med. Ctr., Inc. (In re Brotman
Med. Ctr., Inc.), BAP No. CC-08-1056 slip op. at 8 (9th Cir. BAP
Aug. 15, 2008) (citing In re Dow Corning Corp., 211 B.R. 545, 560
(Bankr. E.D. Mich. 1997)).

1 evidence Appellant's intent to hold Debtor liable for her claim.
2 In addition, the FAC attached to the motion further documented her
3 claim against Debtor, her intention to hold Debtor liable for the
4 claim, and the potential amounts of that claim, contingent on the
5 litigation process.

6 Debtor responded to Appellant's First Stay Motion on
7 December 26, 2007. In that response, Debtor indicated a
8 willingness to stipulate to stay relief in exchange for Appellant
9 waiving all potential claims against Debtor, and agreeing to only
10 pursue insurance proceeds, if any. The bankruptcy court adopted
11 that concept, and, in its February 5, 2008, tentative ruling on
12 Appellant's First Stay Motion, indicated it would be inclined to
13 grant stay relief if Appellant would waive any claims against
14 Debtor and proceed only against insurance coverage. Debtor's
15 suggestion, and the bankruptcy court's subsequent adoption of this
16 "claim waiver" concept further evidenced that, well before the
17 claims bar date, Debtor and the bankruptcy court were presented
18 adequate information to indicate Appellant intended to hold Debtor
19 liable for the claims asserted in her FAC.

20 When Appellant filed her Formal POC on May 11, 2009, she
21 indicated it amended the "informal claim," i.e., her December 14,
22 2007, First Stay Motion. Appellant's First Stay Motion and
23 accompanying documents were sufficient to put Debtor and the
24 bankruptcy court on notice that she intended to assert a claim
25 against Debtor, and to satisfy the informal proof of claim
26 requirements. Debtor was keenly aware of this, as evidenced by
27 its attempts to persuade Appellant to waive that claim in exchange
28 for Debtor's agreement to allow the state court litigation to

1 continue.

2 III.

3 **Allowing Appellant's proof of claim does not prejudice the Trust.**

4 The Trust argues that Appellant's informal proof of claim
5 should not be allowed because it would prejudice the Trust and
6 other creditors. We disagree.

7 Even where a creditor satisfies the informal proof of claim
8 requirements, a bankruptcy court may disallow an amended proof of
9 claim if allowing the claim would prejudice the debtor or others.

10 See In re Sambo's Rests., Inc., 754 F.2d at 816-17. Among the
11 factors used to determine potential prejudice are "bad faith or
12 unreasonable delay in filing the amendment, impact on other
13 claimants, reliance by the debtor or other creditors, and change
14 of the debtor's position." Wall Street Plaza, LLC v. JSJF Corp.
15 (In re JSJF Corp.), 344 B.R. 94, 102 (9th Cir. BAP 2006) (quoting
16 Roberts Farms Inc. v. Bultman (In re Roberts Farms Inc.), 980 F.2d
17 1248, 1251-52 (9th Cir. 1992)). The burden of identifying actual
18 prejudice that would result from allowing an amendment is on the
19 party objecting to the amendment. See In re Sambo's Rests., Inc.,
20 754 F.2d at 817.

21 There is no evidence in this case that Appellant's conduct
22 constitutes bad faith. It has not been disputed that Appellant
23 missed the claims bar date because her lawyer misunderstood the
24 nature of the term "claim" in the bankruptcy lexicon. Until the
25 appeal of her First Stay Motion was decided by the BAP on August
26 15, 2008, Appellant operated under the mistaken impression that
27 she did not yet hold a claim for bankruptcy purposes and could not
28 file a proof of claim until she secured a judgment against Debtor.

1 Of course, under § 101(5)(A), Appellant likely held a contingent
2 claim against Debtor as soon as her state law causes of action
3 arose.

4 By the time Appellant filed her Formal POC in May 2009
5 amending her informal proof of claim, Debtor's chapter 11 plan had
6 been confirmed. Debtor's Disclosure Statement estimated the total
7 allowable claims against its bankruptcy estate was approximately
8 \$18-22 million. That estimate, however, did not include an amount
9 for "objectionable" claims, regardless of whether a proof of claim
10 had been filed for those claims or not. Because Debtor continued
11 to object to Appellant's claim, it is unlikely the Disclosure
12 Statement's estimate of allowable claims would have included an
13 amount for her claim even if she had met the claims bar date. It
14 is therefore unlikely that either Debtor or any other claimants
15 relied on the lack of Appellant's claim in the confirmation
16 process.¹¹

17 Even so, the Trust argues that, if Appellant's claim is
18 allowed at this point, other claimants will potentially be
19 impacted because distributions have been made to those claimants
20 that may need to be disgorged if Appellant's claim is sufficiently
21 large. However, the first of those distributions was made at
22 least a year after Appellant filed her Formal POC. In other
23 words, the Trust was fully aware of Appellant's claim at the time

24 ¹¹ At the same time, the Disclosure Statement included a
25 figure for total submitted claims, whether objectionable or not,
26 which would have included Appellant's claim had she submitted it
27 before the claims bar date. However, the Trust has not indicated
28 that unsecured creditors relied upon that figure, rather than the
estimated allowable claims amount, when calculating their
potential pro rata distribution and deciding to vote in favor of
the Plan.

1 it made the distributions. While the Trust's reports initially
2 represented to the bankruptcy court that it needed to "resolve
3 [Appellant's claim] in order to make a distribution to creditors,"
4 the Trust instead established a reserve of \$250,000 on account of
5 Appellant's claim, which was the exact amount Appellant had
6 previously indicated she would accept to settle her claim. If
7 claimants will be impacted by allowing Appellant's proof of claim
8 at this point, it is because the Trust chose to proceed in making
9 distributions in the face of Appellant's unsettled claim.¹² While
10 waiting to make distributions would have delayed payment to
11 claimants, prejudice requires there to be a "legal detriment to
12 the party opposing." In re JSJF Corp., 334 B.R. at 102. There is
13 no indication in the record that a delay in distributions in this
14 case was a legal detriment to any party, let alone to the Debtor.

15 Finally, the Trust has not changed its position based on the
16 absence of a timely claim from Appellant. Rather, since Appellant
17 filed the FAC in state court, Debtor and the Trust have attempted
18 to settle Appellant's claim by securing her agreement to waive
19 Debtor's liability. The Trust also delayed making distributions
20 under the Plan until establishing a reserve in an amount it likely
21 believed was sufficient to settle Appellant's claim. In short,
22 Appellant's claim was no surprise to Debtor or the Trust, and it
23 has not been shown that allowing her claim would prejudice Debtor,
24 the Trust, or others.

25

26 ¹² Of course, at this point, any discussion of prejudice to
27 other creditors is largely hypothetical. Until Appellant's claim
28 is liquidated, there is no way to determine whether other
unsecured creditors will be impacted by allowance of Appellant's
claim or not.

1 **CONCLUSION**

2 Because it applied an incorrect legal rule in making its
3 decision, the bankruptcy court abused its discretion when it
4 granted the Trust's motion to disallow Appellant's proof of claim.
5 Based upon our independent review, we conclude Appellant's First
6 Stay Motion, with its accompanying memorandum and exhibits, was
7 sufficient to satisfy the requirements for a timely-filed informal
8 proof of claim. Appellant's Formal POC served to amend that
9 informal proof of claim. The Trust has not identified any actual
10 prejudice that will result from allowing Appellant's proof of
11 claim as timely.

12 The order of the bankruptcy court is REVERSED.
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