

NOV 28 2016

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NOT FOR PUBLICATION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

In re:) BAP No. EC-16-1087-KuMaJu
)
 6 ADVANCED MEDICAL SPA INC.,) Bk. No. 15-27456
)
 7 Debtor.)
)
 8 _____)
 9 MAUREEN YVONNE LAPIERRE,)
)
 10 Appellant,)
)
 11 v.) **MEMORANDUM***
)
 12 ADVANCED MEDICAL SPA INC.;)
 13 ERIC J. NIMS, Chapter 7 Trustee,)
)
 14 Appellees.)
)
 _____)

Argued and Submitted on October 20, 2016
at Sacramento, California

Filed - November 28, 2016

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

Honorable Christopher D. Jaime, Bankruptcy Judge, Presiding

Appearances: Appellant _____ argued pro se;
J. Luke Hendrix argued for Appellee Eric J. Nims,
Chapter 7 Trustee.

Before: KURTZ, MARTIN** and JURY, Bankruptcy Judges.

*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 8024-1.

**Hon. Brenda K. Martin, United States Bankruptcy Judge for
the District of Arizona, sitting by designation.

1 **INTRODUCTION**

2 Maureen Yvonne Lapierre appeals from an order denying her
3 motion for relief from the automatic stay. Lapierre sought to
4 proceed with her pending arbitration proceeding against
5 chapter 7¹ debtor Advanced Medical Spa Inc. and to collect any
6 resulting arbitration award to the extent liability insurance
7 proceeds were available to pay the award.

8 The bankruptcy court denied Lapierre's stay relief motion
9 because, according to the court, continuation of Lapierre's
10 efforts to obtain an arbitration award and to collect that award
11 from available insurance proceeds would interfere with the
12 orderly administration of Advanced Medical Spa's bankruptcy
13 estate. In so holding, however, the bankruptcy court applied an
14 incorrect standard of proof. The bankruptcy court, in balancing
15 the relative harms to the parties, stated that Lapierre had not
16 met her burden of proof to establish cause for relief from stay.
17 The bankruptcy court's statement demonstrates that it did not
18 apply the correct standard of proof to Lapierre's relief from
19 stay motion, as mandated by § 362(g).

20 Accordingly, we VACATE and REMAND so that the bankruptcy
21 court can apply the correct standard of proof.

22 **FACTS**

23 Lapierre, a former client of Advanced Medical Spa, filed a
24 state court action against the medical clinic and its president
25

26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 and primary physician Efrain Gonzalez in 2012 stating causes of
2 action for medical malpractice and medical battery.² Lapierre
3 alleged that Gonzalez was supposed to perform a laser vaginal
4 rejuvenation procedure and a labiaplasty. Lapierre further
5 alleged that Gonzalez performed different surgical procedures
6 than those to which she had consented and that he botched the
7 procedures. As a result of the botched procedures, Lapierre
8 claimed, Gonzalez burned, mutilated and disfigured her causing
9 her a great deal of physical and mental pain and suffering, which
10 is ongoing.

11 Advanced Medical Spa filed its chapter 7 bankruptcy petition
12 in September 2015. At the time of its bankruptcy filing,
13 Lapierre's prepetition action had been set for mandatory binding
14 arbitration in November 2015, but the automatic stay prevented
15 the arbitration from occurring as scheduled.³

16 In January 2016, Lapierre filed, pro se, the stay relief

17
18 ²The parties have not provided us with complete excerpts of
19 record. But we can and will take judicial notice of the parties'
20 bankruptcy filings, as reflected in the bankruptcy court's
21 electronic docket. See O'Rourke v. Seaboard Sur. Co. (In re E.R.
22 Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

23 ³Lapierre filed a prior motion for relief from stay in
24 October 2015, but that relief from stay motion was denied without
25 prejudice in November 2015. We do not know the specific reasons
26 for the denial of this first relief from stay motion because none
27 of the parties to this appeal obtained the transcript from the
28 November 10, 2015 relief from stay hearing, at which the
bankruptcy court stated its findings of facts and conclusions of
law orally on the record. According to Lapierre's opening brief,
that motion was denied because her counsel at the time committed
"procedural errors". In any event, it is clear from the record
that the parties and the bankruptcy court relied on evidence from
the first relief from stay motion in considering the second
relief from stay motion. We will do the same.

1 motion from which this appeal arose. By way of the motion,
2 Lapierre sought to have the automatic stay modified in order to
3 permit her to prosecute her arbitration proceeding to conclusion
4 and to enforce any resulting arbitration award only against any
5 available liability insurance proceeds.

6 Both the debtor and the chapter 7 trustee opposed Lapierre's
7 stay relief motion. The bankruptcy court held a hearing on the
8 stay relief motion in February 2016 and permitted the parties to
9 file supplemental briefs. Initially, the court set a continued
10 hearing on Lapierre's stay relief motion; however, after
11 receiving the parties' supplemental briefs, the bankruptcy court
12 vacated the continued hearing date and took the matter under
13 submission without further hearing.

14 In March 2016, the bankruptcy court issued its written
15 decision holding that granting Lapierre's request for relief from
16 the stay would interfere with the orderly and proper
17 administration of Advanced Medical Spa's chapter 7 estate.

18 According to the bankruptcy court, Advanced Medical Spa's
19 bankruptcy schedules indicated that the medical clinic had at
20 least 35 prepetition creditors - most of them medical malpractice
21 claimants. Some of those medical malpractice claims were covered
22 by a CNA Insurance Companies policy, some by a Lancet Indemnity
23 Insurance policy and some by no insurance.

24 The bankruptcy court noted that Lapierre's claim fell under
25 the CNA policy, which had a per claim limit of \$1 million and an
26 aggregate limit of \$3 million per policy period. The policy
27 period applicable to Lapierre's claim was December 31, 2011 to
28 December 31, 2012. The bankruptcy court further noted that the

1 CNA policy was a "wasting policy," meaning that the costs of
2 litigating claims made under the policy depleted the proceeds
3 available to pay those claims. According to the bankruptcy
4 court, in addition to Lapierre's case, there were five other
5 pending medical malpractice cases in which the claimants were
6 asserting claims against the CNA policy. The bankruptcy court
7 explained that the total aggregate amount sought by all of the
8 CNA claimants was unknown but that it likely would equal or
9 exceed the \$3 million aggregate limit - without even taking into
10 account potential litigation costs.

11 The bankruptcy court weighed Lapierre's claims of grievous
12 injury and her asserted need to expeditiously conclude her
13 prepetition arbitration against the potential prejudice the
14 estate would suffer if the court lifted the stay. The court
15 concluded that the potential prejudice to the estate outweighed
16 Lapierre's alleged injuries and need. As the court explained, if
17 it were to allow Lapierre to proceed with her arbitration, the
18 limited insurance resources available to compensate the CNA
19 claimants would be diminished by the costs of litigation incurred
20 in Lapierre's arbitration proceeding and effectively would permit
21 Lapierre to obtain preferential treatment for her claim to the
22 detriment of the five other CNA claimants. As the court further
23 explained, allowing Lapierre to proceed could prejudice all of
24 Advanced Medical Spa's creditors to the extent the CNA policy
25 proceeds were exhausted without fully compensating the CNA
26 claimants.

27 The court also expressed a great deal of concern that the
28 continuation of Lapierre's arbitration proceeding could start "a

1 race to the courthouse" and could "open the litigation
2 floodgates" which in turn would deplete the insurance proceeds
3 and/or cause the estate to incur significant administrative
4 expenses that otherwise possibly could be avoided.

5 Citing Truebro, Inc. v. Plumberex Specialty Prods., Inc.
6 (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551, 559-60
7 (Bankr. C.D. Cal. 2004), the bankruptcy court stated that
8 Lapierre had the initial burden to establish a prima facie case
9 of cause for relief from the automatic stay and that Lapierre had
10 not met this burden. As the bankruptcy court put it:

11 Ms. LaPierre has not met her burden of establishing
12 cause. Ms. LaPierre has not met her burden because the
13 court is not persuaded that the potential hardship to
14 Ms. LaPierre outweighs the potential for prejudice to
creditors, particularly those similarly-situated to
Ms. LaPierre, if the motion is granted.

15 Order Denying Stay Relief (March 30, 2016) at 4-5.

16 On March 30, 2016, the bankruptcy court entered its order
17 denying Lapierre's stay relief motion, and Lapierre timely
18 appealed.

19 JURISDICTION

20 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
21 §§ 1334 and 157(b)(2)(G). An order denying relief from the
22 automatic stay is a final and appealable order, so we have
23 jurisdiction under 28 U.S.C. § 158. See Benedor Corp. v. Conejo
24 Enters., Inc. (In re Conejo Enters., Inc.), 96 F.3d 346, 351 (9th
25 Cir. 1996).

26 ISSUE

27 Did the bankruptcy court abuse its discretion when it denied
28 Lapierre's relief from stay motion?

1 determine whether cause exists on a case-by-case basis. Id.;
2 Kronemyer v. Am. Contractors Indemn. Co. (In re Kronemyer),
3 405 B.R. 915, 921 (9th Cir. BAP 2009).

4 In In re Kronemyer, this Panel upheld the bankruptcy court's
5 consideration of the factors articulated in In re Curtis, 40 B.R.
6 795, 799-800 (Bankr. D. Utah 1984), for the purpose of
7 determining whether cause existed to lift the stay to permit the
8 creditor to proceed with prepetition litigation against the
9 debtor. In re Kronemyer, 405 B.R. at 921. As the Kronemyer
10 court stated, "We agree that the Curtis factors are appropriate,
11 nonexclusive, factors to consider in deciding whether to grant
12 relief from the automatic stay to allow pending litigation to
13 continue in another forum." Id.

14 The Curtis factors consist of the following twelve
15 nonexclusive factors:

- 16 1. Whether the relief will result in a partial or
17 complete resolution of the issues;
- 18 2. The lack of any connection with or interference with
19 the bankruptcy case;
- 20 3. Whether the foreign proceeding involves the debtor
21 as a fiduciary;
- 22 4. Whether a specialized tribunal has been established
23 to hear the particular cause of action and whether that
24 tribunal has the expertise to hear such cases;
- 25 5. Whether the debtor's insurance carrier has assumed
26 full financial responsibility for defending the
27 litigation;
- 28 6. Whether the action essentially involves third
parties, and the debtor functions only as a bailee or
conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would
prejudice the interests of other creditors, the
creditors' committee and other interested parties;

1 8. Whether the judgment claim arising from the foreign
2 action is subject to equitable subordination under
3 Section 510(c);

4 9. Whether movant's success in the foreign proceeding
5 would result in a judicial lien avoidable by the debtor
6 under Section 522(f);

7 10. The interests of judicial economy and the
8 expeditious and economical determination of litigation
9 for the parties;

10 11. Whether the foreign proceedings have progressed to
11 the point where the parties are prepared for trial, and

12 12. The impact of the stay on the parties and the
13 "balance of hurt,"

14 In re Plumberex Specialty Prods., Inc., 311 B.R. at 559-60

15 (quoting In re Curtis, 40 B.R. at 799-800).

16 In weighing the relevant factors, the bankruptcy court is
17 not required to give equal weight to all factors. In fact, the
18 balancing of potential harm to the creditor on the one hand and
19 to the debtor and the bankruptcy estate on the other hand
20 frequently is dispositive. Compare Green v. Brotman Med. Ctr.,
21 Inc. (In re Brotman Med. Ctr., Inc.), 2008 WL 8444797, at *6
22 (Mem. Dec.) (9th Cir. BAP Aug. 15, 2008) ("the bankruptcy court
23 must balance the potential hardship that will be incurred by the
24 party seeking relief if the stay is not lifted against the
25 potential prejudice to the debtor and the bankruptcy estate")
26 with In re Curtis, 40 B.R. at 806 ("The most important factor in
27 determining whether to grant relief from the automatic stay to
28 permit litigation against the debtor in another forum is the
effect of such litigation on the administration of the estate.
Even slight interference with the administration may be enough to
preclude relief in the absence of a commensurate benefit.").

In this appeal, the most critical issue we must address is

1 the bankruptcy court's comments on the burden of proof. While
2 neither the Ninth Circuit Court of Appeals nor this Panel have
3 issued a published decision addressing the standard of proof for
4 establishing cause for stay relief under § 362(d)(1), the
5 bankruptcy courts within the circuit that have squarely addressed
6 the issue are trending in a single direction. That trend is
7 well-represented by the following quote from Plumberex:

8 The burden of proof on a motion to modify the automatic
9 stay is a shifting one. To obtain relief from the
10 automatic stay, the party seeking relief must first
11 establish a prima facie case that "cause" exists for
12 relief under § 362(d)(1). Once a prima facie case has
13 been established, the burden shifts to the debtor to
14 show that relief from the stay is unwarranted. If the
15 movant fails to meet its initial burden to demonstrate
16 cause, relief from the automatic stay should be denied.

17 Id. at 557 (citations and footnotes omitted). Accord, Wang v.
18 Votteler (In re Wang), 2010 WL 6259970 at *6 (Mem. Dec.) (9th
19 Cir. BAP Sept. 23, 2010); In re Am. Spectrum Realty, Inc.,
20 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015); In re Smith, 389 B.R.
21 902, 918 (Bankr. D. Nev. 2008).⁴

22 Even though there seems to be a consensus regarding the
23 above-referenced standard of proof, there is no consensus on what
24 constitutes a prima facie case of cause for relief. This is
25 hardly surprising. Because cause for relief from the stay must
26 be decided on a case-by-case basis, In re Conejo Enterprises,

27 ⁴This trend is consistent with § 362(g), which places the
28 burden of proof on the debtor on all issues except for the issue
of debtor's equity in property (when relevant). As one leading
treatise explains, § 362(g) deals with the ultimate burden of
persuasion, whereas the rule requiring the party seeking relief
from stay to present a prima facie case of cause deals only with
the initial burden of production. See 3 Collier on Bankruptcy
¶ 362.10 (16th ed. 2016).

1 Inc., 96 F.3d at 351, it is impossible to define for all relief
2 from stay motions what will constitute a prima facie case of
3 cause. Therefore, bankruptcy courts ordinarily must rely upon
4 generic statements regarding what constitutes a prima facie case
5 - or prima facie evidence - like the following: "A party's
6 production of enough evidence to allow the fact-trier to infer
7 the fact at issue and rule in the party's favor." Black's Law
8 Dictionary (10th ed. 2014); see also In re Planned Sys., Inc.,
9 78 B.R. 852, 860 n.7 (Bankr. S.D. Ohio 1987) ("'prima facie
10 evidence' is such evidence, in judgment of law, as is sufficient
11 to establish the fact; and, if not rebutted, remains sufficient
12 for that purpose.").

13 Here, we disagree with the bankruptcy court's statement that
14 Lapierre had not established a prima facie case of cause for
15 relief from the automatic stay. The undisputed facts presented
16 to the bankruptcy court established that Lapierre was a
17 prepetition medical malpractice claimant who had pending at the
18 time the bankruptcy petition was filed an arbitration proceeding
19 against the debtor and Gonzalez that already was scheduled for
20 hearing.

21 On the issue of Lapierre's harm, Lapierre had presented some
22 evidence indicating that she was experiencing ongoing pain and
23 suffering and that she hoped to undergo corrective surgical
24 procedures to remedy her pain and suffering if she could obtain
25 an arbitration award sufficient to pay for the corrective
26 surgical procedures. The bankruptcy court's decision indicates
27 that, for purposes of the relief from stay motion, it accepted as
28

1 true Lapierre's statements on the harm she was suffering.⁵

2 On the issue of harm to Advanced Medical Spa's bankruptcy
3 estate, Lapierre represented in her motion that she only sought
4 relief from stay for the purpose of collecting whatever insurance
5 proceeds were available to pay any arbitration award she was able
6 to obtain, which necessarily would limit the potential impact on
7 Advanced Medical Spa's estate.

8 Under the specific circumstances of this case, we hold that
9 the above-referenced facts constituted a prima facie case of
10 cause for relief from the automatic stay. Our holding is
11 consistent with the legislative comments Congress made at the
12 time the Bankruptcy Code was enacted. As Congress expressed, "a

14 ⁵We acknowledge that the evidence Lapierre presented on this
15 point potentially was subject to legitimate objection. For
16 instance, we could not find in the relief from stay record any
17 **declaration testimony** by Lapierre in which she simply stated that
18 she was experiencing ongoing pain and suffering as a result of
19 the procedures Gonzalez conducted on her and that she hoped to
20 undergo corrective procedures if she could obtain sufficient
21 funds to pay for the procedures by way of an arbitration award
22 against the debtor and/or Gonzalez. Instead, she relied on a
23 declaration in which she only stated that her exhibits were true
24 and correct copies. In turn, her unauthenticated exhibits
25 frequently contained multiple layers of hearsay and also
26 contained many, many alleged facts that were irrelevant to the
27 key points Lapierre needed to prove to establish her prima facie
28 case of cause for relief from the automatic stay.

Because the parties opposing Lapierre's relief from stay
motion - and the bankruptcy court - seemed to accept as true
Lapierre's statements of harm for purposes of resolving the
relief from stay motion, we decline to resolve this appeal on the
basis of any evidentiary defects in Lapierre's presentation of
evidence in support of her prima facie case. That being said,
Lapierre must understand that, on remand, she as a pro se
litigant can be held to the same evidentiary standards that
represented parties are held to.

1 desire to permit an action to proceed to completion in another
2 tribunal may provide . . . cause” for stay relief, and “it will
3 often be more appropriate to permit proceedings to continue in
4 their place of origin, **when no great prejudice to the bankruptcy**
5 **estate would result**, in order to leave the parties to their
6 chosen forum and to relieve the bankruptcy court from many duties
7 that may be handled elsewhere.” H.R. Rep. 95-595, 341, as
8 reprinted in 1978 U.S.C.C.A.N. 5963, 6297 (emphasis added).⁶

9 In light of our holding that Lapierre established a prima
10 facie case of cause for relief from the automatic stay, the
11 bankruptcy court should have shifted the burden to Advanced
12 Medical Spa and to the bankruptcy trustee to establish that the
13 stay should remain in place. As a result, when the bankruptcy
14 court balanced the respective harms of the parties, the
15 bankruptcy court incorrectly stated that Lapierre had “not met
16 **her burden** because the court is not persuaded that the potential
17 hardship to Ms. LaPierre outweighs the potential for prejudice to
18 the debtor, the estate, and all other unsecured creditors
19” (Emphasis added.) Given that Lapierre met her burden
20 of production, the ultimate burden of persuasion was on the
21 debtor and the trustee to demonstrate that Advanced Medical Spa’s
22 harm outweighed Lapierre’s harm. § 362(g); 3 Collier on
23 Bankruptcy, supra, at ¶ 362.10.

24
25 ⁶Furthermore, we disagree with the notion that Lapierre
26 needed to establish irreparable harm. But see In re Curtis,
27 40 B.R. at 801-03. Under the circumstances of this case, it was
28 sufficient for Lapierre’s prima facie case to include evidence
tending to show that she was experiencing ongoing pain and
suffering, which she might be able to remedy if she were
permitted to proceed with the arbitration to its conclusion.

1 We are not persuaded that this error regarding the standard
2 of proof was harmless. If the bankruptcy court - in balancing
3 the parties' respective harms - had correctly assigned the
4 ultimate burden of persuasion to the parties opposing Lapierre's
5 stay relief motion, it might have balanced those harms in favor
6 of Lapierre. The facts presented to the bankruptcy court at the
7 time it ruled on Lapierre's relief from stay motion indicated a
8 close call on the issue of balancing the harms. On the one hand,
9 the court was faced with Lapierre's claims of ongoing pain and
10 suffering which she hoped to ameliorate through corrective
11 surgery funded by way of an arbitration award to be paid from the
12 CNA policy. On the other hand, the bankruptcy court was faced
13 with an estate with thirty-plus medical malpractice claims - six
14 of which (the court was told) were claims against the CNA
15 insurance policy. The bankruptcy court further was told that the
16 six claims against the CNA policy might exceed the policy limits
17 and that allowing Lapierre to proceed might cause a creditor
18 "race to the courthouse" and also might diminish estate funds
19 available to pay claims of creditors not making claims against
20 the CNA policy.

21 On these facts, the balancing of the harms reasonably could
22 have been determined in favor of either side, particularly if the
23 court had properly assigned the ultimate burden of persuasion to
24 the parties opposing the relief from stay motion. Consequently,
25 we must VACATE the the bankruptcy court's order denying relief
26 from stay and must REMAND so that the bankruptcy court can apply
27 the correct standard of proof.

28 Other facts have come to light during the course of this

1 appeal - not presented to the bankruptcy court at the time it
2 ruled on the relief from stay motion - which tend to undermine
3 the contention of potential harm to the bankruptcy estate if
4 Lapierre were to proceed with the prosecution of her arbitration
5 proceeding. Foremost among them, the bankruptcy trustee admitted
6 during oral argument before this panel that the bankruptcy estate
7 is administratively insolvent and that it has few if any assets
8 to administer. In light of this fact, we cannot conceive how
9 Lapierre's completion of her arbitration proceeding and her
10 collection of any resulting arbitration award from the CNA policy
11 proceeds could have any impact on Advanced Medical Spa's
12 bankruptcy estate or on the estate's general unsecured creditors.
13 Put bluntly, it is impossible to diminish an estate with no
14 assets.⁷

15 In addition, numerous proofs of claim were filed in the
16 bankruptcy court on March 16 and 17, 2016, on behalf of roughly
17 40 medical malpractice claimants. Among other things, the
18 information contained in some of these proofs of claims arguably
19

20
21 ⁷It was undisputed in the underlying relief from stay
22 proceeding that the CNA policy proceeds were **not** estate property
23 and were not available to satisfy the claims of Advanced Medical
24 Spa's creditors - except for those entitled to make claims
25 directly against the CNA policy. Therefore, it is unnecessary
26 for us to consider whether or when liability insurance policy
27 proceeds might qualify as property of a debtor's bankruptcy
28 estate. For a thorough discussion of the issue, see
In re Endoscopy Ctr. of S. Nevada, LLC, 451 B.R. 527, 541-47
(Bankr. D. Nev. 2011); but see also 3 Collier on Bankruptcy
¶ 362.07[3][a] (16th ed. 2016) ("the better approach is to
consider the policy proceeds to be property of the estate, at
least for purposes of requiring relief from the stay in order to
recover from the insurer on the policy.")

1 calls into question the number and amount of the claims made
2 against the CNA policy that are within the same policy period as
3 Lapierre. While the number and amount of CNA policy claims as
4 represented by Gonzalez in his declaration (and as adopted by the
5 bankruptcy court) are not immediately reconcilable on their face
6 with the claim amounts and claim dates set forth in the proofs of
7 claim, this does not necessarily mean that they cannot be
8 reconciled at all. For instance, the claim amounts might differ
9 because the proofs of claim might only take into account the
10 creditors' claims against Advanced Medical Spa, and not claims
11 against Gonzalez, even though claims against both parties
12 presumably would be covered by the CNA policy. Similarly, the
13 date of the malpractice creditors' state court complaints might
14 or might not reflect the date of their claims for purposes of
15 determining whether the claims are covered by a particular CNA
16 insurance policy coverage period.

17 To be clear, we are not saying that any of the above facts
18 that have come to light while this matter has been on appeal
19 should have been accounted for by the bankruptcy court before it
20 ruled on Lapierre's relief from stay motion. There is nothing in
21 the record to indicate that these facts were presented to the
22 bankruptcy court for consideration in conjunction with Lapierre's
23 relief from stay motion, and we generally do not consider
24 documents and evidence not presented to the bankruptcy court for
25 consideration. See Oyama v. Sheehan (In re Sheehan), 253 F.3d
26 507, 512 n.5 (9th Cir. 2001); Kirschner v. Uniden Corp. of Am.,
27 842 F.2d 1074, 1077-78 (9th Cir. 1988). Even so, we are saying
28 that, on remand, the bankruptcy court might need to address one

1 or more of these facts because they appear quite pertinent to
2 determining whether (and to what extent) Advanced Medical Spa's
3 estate might be harmed by continued prosecution of Lapierre's
4 arbitration proceeding.

5 **CONCLUSION**

6 For the reasons set forth above, we VACATE the bankruptcy
7 court's denial of Lapierre's relief from stay motion, and we
8 REMAND for further proceedings.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28