UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CATHERINE A. OSCAR	:	
Debtor	:	Bankruptcy No. 04-18900F

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MEMORANDUM

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Bank One N.A. ("as Trustee for Structured Asset Securities Corporation Amortizing Residential Collateral Trust Mortgage Pass-Through Certificates, Series 2002-BC3") has filed a motion seeking to "allow filing of a proof of claim after the bar date." The chapter 13 debtor opposes this motion.

The following facts are not disputed.

I.

On June 30, 2004, the above-captioned debtor filed a voluntary petition in bankruptcy under chapter 13.[1] Notice was thereafter sent to the debtor and her creditors informing them, inter alia, that the bar date for filing claims pursuant to Fed. R. Bankr. P. 3002 was January 18, 2005.

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[1]I take judicial notice, under Fed. R. Evid. 201 (incorporated into bankruptcy cases by Fed. R. Bankr. P. 9017), of the docket entries of this case, as well as the documents filed therein. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1200 n.3 (3d Cir. 1991); Levine v. Egidi, 1993 WL 69146, at *2 (N.D. Ill. 1993); In re Paolino, 1991 WL 284107, at *12 n.19 (Bankr. E.D. Pa. 1991); see generally In re Indian Palms Associates, Ltd., 61 F.3d 197 (3d Cir. 1995).

Bank One did not file any proof of claim by January 18, 2005. The debtor, through her attorney, filed a hand-written proof of claim on behalf of Bank One, dated January 18, 2005. The debtor's proof of claim was filed as secured by real estate. It also disclosed the total amount due the creditor as follows: "$ 0 (513,400 (disputed)claim)." The debtor's claim further listed the amount of the arrearage due Bank One at "$ 0."

On February 3, 2005, the debtor filed an amended chapter 13 plan, which has not yet been confirmed. Her amended plan calls for trustee payments of only $10 per month for sixty months. A confirmation hearing is scheduled for April 19, 2005.

On February 8, 2005, Bank One filed the instant motion. If granted, it intends to file a proof of claim secured by real estate. Motion, Ex. C. This proposed claim would assert a total amount due of $502,952.36, and an arrearage of $60,594.31.

II.

In its motion, Bank One argues that its failure to file a proof of claim by January 18, 2005 should be viewed as "excusable neglect" under Fed. R. Bankr. P. 9006(b)(2), and that a late claim should now be permitted. Motion, ¶ 10-11. It further contends that the debtor would suffer no prejudice by such late filing since the debtor's proposed amended plan has not yet been confirmed, and the disputed nature of the claim

can be resolved by the claims objection process or within the adversary proceeding now pending involving these two parties. See Adv. No. 04-0812.[2]

The debtor counters that the deadline placed upon Bank One for filing a timely proof of claim was imposed by Fed. R. Bankr. P. 3002, and is not subject to the excusable neglect standard found in Rule 9006. Response, ¶ 2. Thus, the debtor contends that I have no power to grant this creditor the relief it now seeks.

A.

While I do not agree with the debtor's ultimate position, I concur with her assertion that the relief sought by Bank One is not governed by the excusable neglect standard found in Rule 9006. I reach this conclusion as follows:

> Bankruptcy Rule 3002(c) provides in relevant part:
>
> > In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code. . . .[3]

Thus, in chapter 13 cases, the proof of claims bar date is set by this procedural rule at 90 days from the date first set for the meeting of creditors. In Ms.

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[2]The debtor commenced an adversary proceeding against Bank One and other defendants alleging violations of federal and state consumer lending laws. By separate memorandum and order, I have set aside the entry of default against Bank One. Therefore, the merits of that proceeding will be considered in the near future.

[3]The exceptions found in Rule 3002(c) are not germane to this dispute.

Oscar's bankruptcy case, the meeting of creditors was scheduled for October 20, 2004; thus, the claims deadline was fixed at January 18, 2005— 90 days later.

The excusable neglect provision is derived from Bankruptcy Rule 9006(b)(1), which states:

> Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(emphasis added).

Thus, the power of a bankruptcy judge to apply the excusable neglect standard of Rule 9006(b)(1) is expressly constrained by the limitations found in Bankruptcy Rules 9006(b)(2) and (b)(3). Rule 9006(b)(3) in turn states:

> The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

(emphasis added).

There is no excusable neglect basis for enlarging the claims bar date included in Rule 3002(c). Accordingly, the excusable neglect standard found in Rule 9006(b)(1) does not authorize extensions of the claims deadline imposed in chapter 13 cases, in light of the limiting language of Rule 9006(b)(3). See, e.g., Jones v. Arross, 9 F.3d 79, 81 (10th Cir. 1993); In re Coastal Alaska Lines, Inc., 920 F.2d 1428, 1432 (9th Cir. 1990); In re

Aboody, 223 B.R. 36 (B.A.P. 1st Cir. 1998); see also Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 389 n.4 (1993).[4]

B.

This conclusion, however, does not end the analysis of the procedural rules relevant to this contested matter for two distinct reasons.

First, while Rule 3002(c) establishes a claims bar date for chapter 13 cases, Rule 3002(a) provides only that "[a]n unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed . . . ." No reference is made in Rule 3002(a) to the necessity of a secured creditor to file a proof of claim.

In light of the language of this procedural rule, most courts have concluded that secured creditors in chapter 7, 12 and 13 cases (all governed by Rule 3002) may, but need not, file a proof of claim. For example, as noted by the Eleventh Circuit Court of Appeals in In re Bateman, 331 F.3d 821, 827 (11th Cir. 2003):

> An unsecured creditor is required to file a proof claim for its claim to be allowed, but filing is not mandatory for a secured creditor. See Fed. R. Bankr. P. 3002(a). In fact, a secured creditor need not do anything during the course of the bankruptcy proceeding because it will always be able to look to the underlying collateral to satisfy its lien.

[4]As will be discussed below, Rule 3004 is also germane to this dispute. The provisions of Rule 9006(b)(2) and (b)(3) do not prevent a court from enlarging the time found in 3004 for "excusable neglect." At least one court, though, has held that a creditor may not use the excusable neglect standard to allow an untimely claim filed by a debtor on its behalf under Rule 3004. In re Branch, 228 B.R. 831, 834 (Bankr. W.D. Va. 1998). Moreover, in this contested matter, the debtor did timely file a claim on Bank One's behalf.

See, e.g., In re Cromer, 185 B.R. 1, 2-3 (Bankr. N.D.N.Y. 1994); In re Wells, 125 B.R. 297 (Bankr. D. Colo. 1991); In re Novak, 103 B.R. 403, 414 (Bankr. E.D.N.Y. 1989); In re Bender, 86 B.R. 809 (Bankr. E.D. Pa. 1988); Matter of Mikrut, 79 B.R. 404 (Bankr. W.D. Wis. 1987); see also In re Bilinski, 1998 WL 721083 (E.D. Pa. 1998); In re Lorax Corp., 307 B.R. 560, 567 n.16 (Bankr. N.D. Tex. 2004). But see, e.g., In re Dennis, 230 B.R. 244 (Bankr. D.N.J. 1999); In re Jordan, 79 B.R. 49 (Bankr. N.D. Ala. 1987).

This majority viewpoint is consistent with the procedure under the former Bankruptcy Act of 1898. See, e.g., Newman v. First Sec. Bank of Bozeman, 887 F.2d 973, 975-76 (9th Cir. 1989); In re Bain, 527 F.2d 681, 685 (6th Cir. 1975); Clem v. Johnson, 185 F.2d 1011 (8th Cir. 1950), cert. denied, 341 U.S. 909 (1951).

The reason secured creditors have no obligation to file a proof of claim under Rule 3002 stems from the general effect that bankruptcy filings in chapter 7, 12 and 13 cases have upon liens. With certain exceptions, liens will pass through bankruptcy unaffected by any discharge. 11 U.S.C. § 502(d)(2). See, e.g., Johnson v. Home State Bank, 501 U.S. 78 (1991); Long v. Bullard, 117 U.S. 617 (1886); see also Newman v. First Sec. Bank of Bozeman, 887 F.2d at 975-76. Therefore,

> [i]f the [secured] creditor is content not to participate in the bankruptcy proceedings, (or is unaware of them), and fails to file any proof of claim, and neither the debtor nor any other person files a proof on behalf of the lien creditor, its lien will not be avoided . . . .

In re Bender, 86 B.R. at 811.

Consequently, in this dispute, the January 18th deadline for creditors to file unsecured claims did not apply to Bank One, insofar at its security interest was concerned.[5]

Second, one must also consider that the debtor filed a secured proof of claim on behalf of Bank One, as permitted by Rule 3004. That procedural rule states:

> If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. A proof of claim filed by a creditor pursuant to Rule 3002 or Rule 3003(c), shall supersede the proof filed by the debtor or trustee.

This rule, which does not contain language restricting its applicability to unsecured claims, see In re Branch, 228 B.R. at 834; In re Ford, 205 B.R. 960, 965 (Bankr. N.D. Ala. 1996), is at the heart of this contested matter.

Rule 3004 allows a debtor to file a proof of claim on behalf of a creditor if the creditor has failed to do so by the date of the meeting of creditors. Moreover, the deadline for the debtor to do so extends thirty days beyond the bar date set by Rule 3002(c). See In re Kolstad, 928 F.2d 171 (5th Cir.), cert. denied, 502 U.S. 958 (1991). Creditors may file superceding claims in accordance with Rule 3002.

The debtor here filed its proof of claim under Rule 3004 on the last day of the bar date deadline applicable to creditors. The debtor argues, in effect, that her doing so precludes Bank One from now filing its own proof of claim, asserting that Rule 3004 requires superceding claims to be filed prior to the Rule 3002(c) bar date.

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[5]I need not now address the potential advantages to a secured creditor in filing a proof of claim. See generally In re Alderman, 150 B.R. 246 (Bankr. D. Mont. 1993).

In essence, the debtor implicitly suggests in her supplemental memorandum, at 2-3 (while expressly arguing in her response to the motion, ¶ 4, that I need not decide the effect of Bank One's failure to file a claim), that Rule 3004 may allow a debtor to conclusively establish the amount, status and priority of a claim for any creditor—including a secured creditor—who allows the bar date to pass in chapter 7, 12 and 13 cases (but presumably not in chapter 11 cases, since excusable neglect may be raised) without filing a claim. In other words, Ms. Oscar intends to later contend that if a chapter 13 debtor files a proof of claim for a secured creditor within the Rule 3004 deadline, and if the secured creditor does not file a superceding claim within the Rule 3002(c) deadline, then the secured creditor is bound by the amount set forth by the debtor's claim on its behalf. Bank One apparently is concerned that the debtor's claim on its behalf may have such an effect, thus triggering the instant motion and dispute.

One court in this district found such a construction of a Rule 3004 claim unpersuasive:

> In its present form, B. Rule 3004 would seem to preclude <u>any</u> filing superseding a claim by a creditor if it has failed to do so by the bar date, pursuant to B. Rule 3002(c), even if the debtor or trustee filed a claim on the creditor's behalf within 30 days <u>after</u> the bar date, as the debtor or trustee is empowered to do. This could be read as binding a creditor who fails to file a proof of claim of its own to the terms of any proof of claim filed by the debtor or trustee, no matter how far off the mark of the creditor's legitimate claim it is.
>
> The new version of B. Rule 3004 should not be read to so completely place the non-filing creditor at the mercy of debtor or the trustee. Rather, as Collier suggests, 8 COLLIER ON BANKRUPTCY, ¶ 3004.3, at 3004-6 (15th ed. 1989), "such claim, as with any claim, will be subject to technical amendment." We therefore believe that, as long as the creditor seeks to "amend" the proof of claim filed on its behalf within a

> reasonable time after it is filed, the creditor should be able to attempt to supersede the claim filed on its behalf.

In re Frascatore, 98 B.R. 710, 722 n.11 (Bankr. E.D. Pa. 1989) (emphases in original).

A similar interpretation of Rule 3004 was offered by the Court of Appeals for the Fifth Circuit in In re Kolstad, 928 F.2d 171 (5th Cir. 1991). The Fifth Circuit noted that the concept of a "superceding" claim is broader than the concept of an "amended" claim in the bankruptcy context, with only the former barred beyond the Rule 3002(c) bar date under the language of Rule 3004, but not the latter:

> In response, Kolstad contends that by allowing a timely creditor's proof of claim to "supersede" that filed by a debtor, Rule 3004 impliedly negates a later-filed creditor "amendment." This argument misinterprets the pertinent terms, however, for a "superseding" claim by its nature may include a broader spectrum of demands against the debtor than an "amendment," which, as noted, must adjust or correct the terms of the claim originally filed.

Id., at 175; see also In re Bishop, 122 B.R. 96 (Bankr. E.D. Mo. 1990); 9 Collier on Bankruptcy, ¶ 3004.06, at 3004-5 (15th ed. rev. 2004) ("[I]f the creditor fails to timely file timely [i.e, by the Rule 3002 deadline], the claim filed pursuant to Rule 3004 will stand, although such claim, as with any other claim, will be subject to technical amendment.").

While the Kolstad analysis is not universally accepted, see In re Hamilton, 179 B.R. 749 (Bankr. S.D. Ga. 1995), I find it persuasive for the following reasons.

The concept of amending a proof of claim beyond the claims deadline is designed to ameliorate the rigors of the bar date, while protecting the legitimate interests of all parties in the prompt administration of the estate. See, e.g., Hoos & Co. v. Dynamics Corp., 570 F.2d 433 (2d Cir. 1978). Courts have long permitted creditors to amend claims in order to correct omissions or modify information erroneously provided. See, e.g.,

Hutchinson v. Otis, Wilcox & Co., 190 U.S. 552 (1903); In re Anderson-Walker Industries, Inc., 798 F.2d 1285 (9th Cir. 1986).

The rationale given by some courts for permitting claims to be amended is that bankruptcy courts are courts of equity and thus should allow for such corrections, see In re Anderson-Walker Industries, Inc., 798 F.2d at 1287; other courts liken a proof of claim to a pleading, and amendments to pleadings after the relevant limitations period have long been permitted. See Fidelity and Deposit Co. of Md. v. Fitzgerald, 272 F.2d 121, 129 n.8, 130 n.13 (10th Cir. 1959), cert. denied, 362 U.S. 919 (1960).

Just as a pleading, if properly amended, will relate back in time to the original pleading, an amended claim filed after the bar date will relate back to the original, timely filed claim. See, e.g., Matter of Pizza of Hawaii, Inc., 761 F.2d 1374 (9th Cir. 1985); Fidelity and Deposit Co. of Md. v. Fitzgerald, 272 F.2d at 130; In re Brown, 159 B.R. 710, 714 (Bankr. D.N.J. 1993).

A subsequently filed proof of claim, however, amends an earlier claim only if it is not a "new claim." See, e.g., In re Kolstad, 928 F.2d at 175. Conversely, if a new claim is being asserted, then the original claim is not being amended. Therefore, were a creditor to file a new claim after the bar date, an objection to its filing could be sustained. See, e.g., In re International Horizons, Inc., 751 F.2d 1213 (11th Cir. 1985).

One bankruptcy court explained a creditor's ability to amend a previously filed proof of claim in these terms:

> [C]ourts liberally allow claim amendments when the purpose is to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recovery on the facts set forth in the original claim. See [In re] Int'l Horizons, Inc., 751 F.2d [1213, 1216 (11th Cir. 1985)] (citations omitted). See also [In re] Norris Grain [Co.], 81

> B.R. [103, 106 (Bankr. M.D. Fla. 1987), aff'd, 131 B.R. 747 (M.D. Fla. 1990), aff'd, 969 F.2d 1047 (11th Cir. 1992)] (noting amendment traditionally permitted if it arises out of same transaction or occurrence underlying original timely filed claim). Similarly, amendment is freely permitted so long as the initial claim provides adequate notice of the existence and nature of the claim, as well as the creditor's intent to hold the estate liable.

In re Marineland Ocean Resorts, Inc., 242 B.R. 748, 753-54 (Bankr. M.D. Fla. 1999); see In re International Horizons, Inc., 751 F.2d at 1216 ("[T]he Service's amendment asserts a new claim—i.e. a claim not arising out of the same occurrence or transaction as the timely filed proofs of claims filed by the Service in these cases.").

While a creditor's attempt to change the classification of a claim from general unsecured to priority or to secured status may, to some courts, represent a "new claim" rather than an amendment, see Matter of Alliance Operating Corp., 60 F.3d 1174, 1175 (5th Cir. 1995), it is generally held that an increase in the amount of a claim, without a change in its status, does not represent a new claim, but is a proper amendment, since the basis and priority of the claim remain unchanged. See, e.g., In re Hemingway Transport, Inc., 954 F.2d 1, 10 (1st Cir. 1992) ("Moreover, as a general rule, amendments intended merely to increase the amount of a claim grounded in the same right to payment are not considered 'new' claims under the Code."); Fidelity and Deposit Co. of Md. v. Fitzgerald, 272 F.2d at 131.

In the instant motion, although Bank One argues for the application of the excusable neglect standard, it also expressly requests leave to amend the debtor's proof of claim filed on its behalf:

> Bank One therefore should be permitted to amend the 1/18 Proof Of Claim to accurately reflect the total amount of Bank One's secured claim and amount of arrearage.

Motion, ¶ 21.[6]

The debtor does not satisfactorily explain why Rule 3004 should preclude a creditor from amending a proof of claim filed on its behalf by a debtor, with the amendment relating back to the debtor's timely filed claim. She suggests no policy arguments which would prevent the application of this pleading principle to claims filed under Rule 3004, but not to claims filed under Rule 3002 (or Rule 3003). So long as no new claim is asserted, then, consistent with the language of Rule 3004, a creditor may "amend" an earlier proof of claim filed by the debtor on its behalf. In re Kolstad, 928 F.2d at 175-76; see generally In re Hill, 286 B.R. 612 (Bankr. E.D. Pa. 2002) ("Where a creditor who opts to remain outside the bankruptcy process is subsequently pulled in when the debtor files a proof of claim on its behalf, there must be some flexibility to mitigate the

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[6]The debtor complains that Bank One's motion is not styled as seeking to amend her claim, thus overlooking the alternative nature of the pleading. Moreover, even if Bank One's motion did not expressly seek to amend debtor's proof of claim, this motion is a contested matter governed by Fed. R. Bankr. P. 9014. Contested matters incorporate Fed. R. Bankr. P. 7054 which, in turn, incorporates Fed. R. Civ. P. 54. See, e.g., In re Ladd, 319 B.R. 599, 603 (B.A.P. 8th Cir. 2005). Rule 54(c) provides in part:

> Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

Thus, a court "is obliged to award [a party] the relief to which she is entitled under the evidence adduced at trial, so long as such relief is within the court's jurisdiction. . . . It does not matter that the relief has not been requested. In re Jodoin, 196 B.R. 845, 851-52 (Bankr. E.D. Cal. 1996) (citations and footnote omitted), aff'd, 209 B.R. 132 (B.A.P. 9th Cir. 1997).

unfairness of binding the creditor to that filed claim because of the passage of the bar date.").[7]

In this contested matter, Bank One's proposed proof of claim would constitute only an amendment to the earlier proof filed by the debtor, and would not represent a new claim. It seeks only to modify the amount of the earlier secured claim filed.[8] The basis for the secured claim would be the same. Thus, no new claim would be asserted. See In re Kolstad, 928 F.2d at 175-76 (IRS permissibly sought to amend the debtor's proof of claim by increasing the amount claimed due).

C.

[7]In In re Hamilton, 179 B.R. at 752-54, the bankruptcy court opined that principles of "due process" and "good faith" would adequately protect a creditor from the debtor's misuse of Rule 3004, thus obviating the need to permit creditor "amendments" to such claims. The analysis in Hamilton does not consider the right of a secured creditor to choose to avoid participating in a bankruptcy case and look solely to the recovery of its collateral. Since a debtor has thirty days beyond the 3002(c) bar date to file a claim on a creditor's behalf, the Hamilton analysis could render a secured creditor's bystander approach unwise.

Furthermore, Hamilton does not offer any distinction between claims filed under Rules 3002 and 3003— which undoubtedly can be amended—and Rule 3004. Thus, its analysis is unpersuasive.

I also note that one court reached a result similar to Kolstad by relying in part on Rule 3008—permitting reconsideration of allowed claims after the bar date. See In re Cook, 205 B.R. 617 (Bankr. N.D. Ala. 1996). Nevertheless, I find the traditional claims amendment analysis to this problem most apposite.

[8]The debtor argues that the claim she filed on behalf of Bank One stated that she owed it no debt. I observe, though, that the debtor's claim could also be construed as a secured claim in the amount of $513,400, which the debtor disputes (and to which she believes she has no obligation). However the debtor's claim is construed though, the proposed claim by Bank One would only amend the earlier claim.

The general right to amend a proof of claim does not, however, require that such amendments be authorized in all circumstances. Leave to amend is discretionary, and an amendment to a proof of claim may be barred by the general concept of laches. See In re Roberts Farms Inc., 980 F.2d 1248 (9th Cir. 1992); In re Hunt, 146 B.R. 178, 184 (Bankr. N.D. Tex. 1992); In re Vlavianos, 71 B.R. 789, 795 (Bankr. W.D. Va. 1986).[9] This is also true of amendments to claims filed under Rule 3004. See In re Stoiber, 160 B.R. 307 (Bankr. N.D. Ohio), aff'd, 73 A.F.T.R. 2d 94-865 (N.D. Ohio 1993).

Laches is founded upon two elements: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." Costello v. United States, 365 U.S. 265, 282 (1961); see also U.S. Fire Ins. Co. v. Asbestospray, Inc., 182 F.3d 201, 208 (3d Cir. 1999); Waddell v. Small Tube Products, Inc., 799 F.2d 69, 74 (3d Cir. 1986).

In discussing potential prejudice caused by a late-filed amended claim, it is important to recognize that prejudice does not arise because the amended claim may later be allowed:

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[9] A similar analysis applies when an amendment to a pleading is sought under Rule 15:

> If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason–such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.–the leave should, as the rules require, be "freely given."

Foman v. Davis, 371 U.S. 178, 182 (1962).

> The bankruptcy judge thought there was harm to other creditors because if the bank's claim is allowed, the entitlements of the unsecured creditors will be cut down. This is a misunderstanding of what it means for an error to be harmful in the sense of "prejudicial," that is, entitling the person harmed to complain. To say that an error is prejudicial means not that if the error is corrected someone will lose, which is almost always true, but that the error itself imposed a cost, as by misleading someone. Obviously there will be losers if the bank's claim is allowed, because the pool of assets available to the other creditors will be diminished, but the fact that the proof of claim failed to comply with Rule 3001 did not mislead or otherwise harm anyone.

Matter of Stoecker, 5 F.3d 1022, 1028 (7th Cir. 1993).

In this contested matter, based upon this evidentiary record, I cannot conclude that Bank One's proposed amended claim would unfairly prejudice the debtor or other creditors and therefore be barred by laches.

The facts do not present the situation where the debtor filed a proof of claim on behalf of Bank One, thereafter confirmed a plan based upon its unchallenged claim on behalf of the creditor, and then made substantial payments to other creditors in reliance upon Bank One's silence. See In re Hill, 286 B.R. at 621; In re Stoiber, 160 B.R. at 309. Instead, the record reflects that the debtor filed her proof of claim on behalf of Bank One, and shortly thereafter proposed her amended plan. Bank One almost immediately (and well before any confirmation of that plan) filed its instant request to amend its claim.

Under these circumstances, Bank One's amendment to the January 18th proof of claim would cause no prejudice to the debtor or creditors. See In re Kolstad, 928 F.2d at 176 ("If IRS's amendment is correct, then Kolstad seriously, if inadvertently, understated his employment tax liability and should not take unfair advantage of that fact in

his reorganization efforts."). Accordingly, there is no basis to deny Bank One the relief it now seeks.[10]

An appropriate order shall be entered.

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[10]The debtor relies heavily upon the decision In re Hill, 286 B.R. 612 (Bankr. E.D. Pa. 2002). As noted in the text, I find Hill distinguishable on its facts. As described in that reported opinion:

> Even assuming that Matrix had filed its claim as an amendment, amendments are not automatically allowed but are "left to the sound discretion of the bankruptcy court." Id. [U.S. v. Jones, 2000 WL 1175717 (W.D. Mich. 2000).] In exercising that discretion, I would refuse to permit Matrix to amend the Debtor's claim. Matrix did not file its Proof of Claim until more than three months after Debtor filed his proof of claim on its behalf. Compare In re Bishop, supra, 122 B.R. at 96-97 (allowing creditor to amend the proof of claim filed on its behalf by debtor where creditor attempted to amend the debtor's claim within a few days after it was filed). There is no evidence that Matrix took any action in Debtor's bankruptcy case during that three month period to protect its rights. It allowed Debtor's plan to be confirmed without objection. Indeed, it waited for more than two months after Debtor's plan was confirmed to file its Proof of Claim and thereafter took no steps to gain allowance of the purported amendment. Accordingly, at the time this matter was brought before the Court by the Debtor in September 2002, Debtor had been making payments under his confirmed plan pursuant to the only allowed Matrix claim for in excess of two years. Matrix has not offered any "excuse of justification for its inactivity." United States v. Jones, supra, 2000 WL 1175717, at *3. The "Bankruptcy Code and Rules provide clear and precise procedural mechanisms under which claimants, particularly sophisticated entities" can protect their interests. In re Kelley, supra, 259 B.R. at 586. I will not reward Matrix's failure to follow those procedures by accepting its untimely Proof of Claim as an amendment when it has failed to offer any reason whatsoever for its inaction.

Id. at 621.

In contrast to Hill, Bank One filed its request to amend the debtor's claim within three weeks of its filing and prior to confirmation and so prior to any distribution to creditors. Moreover, the debtor's proposed amended chapter 13 plan, filed February 3, 2005, obligates her to pay only $10 per month to the trustee: a nominal amount, totaling $600. (The debtor proposes to tender certain payments probably directly to a secured creditor on her auto loan.) Moreover, the plan provides that $500 will be paid to debtor's counsel as an administrative expense. Given the commission due the chapter 13 trustee (viz. 7%), little if any of the debtor's trustee payments would be distributed to her creditors.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CATHERINE A. OSCAR	:	
Debtor	:	Bankruptcy No. 04-18900F

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ORDER

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AND NOW, this 14th day of April 2005, for the reasons stated in the accompanying memorandum, it is hereby ordered that the motion of Bank One is granted. Bank One is granted leave to file a secured proof of claim that amends the earlier claim filed by the debtor on its behalf. Such a claim shall be filed within ten days from the date of this order.

It is further ordered that the confirmation hearing and trustee's motion to dismiss, both presently scheduled for 10:00 A.M. on April 19, 2005, shall instead be heard at 2:30 P.M. on April 19, 2005 in Bankruptcy Courtroom #2.

BRUCE FOX
United States Bankruptcy Judge

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