

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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IN RE: CASE NO. 02-74974

Centennial HealthCare Corporation, et al.,

CHAPTER 11

Debtors.

JUDGE MASSEY

_____| |

Unsecured Claims Administrator,

Movant,

v.

CONTESTED MATTER

Andrea Franks,

Respondent.

_____| |

ORDER DENYING OBJECTION TO CLAIM

Andrea Franks filed claim no. 2641 in which she asserts that Debtors are liable to her pursuant to a judgment of a Massachusetts court in the amount of \$114,148.42, of which \$25,000 was assessed as punitive damages. The Court has reviewed the first (and only) page of that proof of claim accessible on the website of the Court-approved claims agent, The Trumbull Group, Inc. The parties did not provide the court with a copy of the proof of claim, and the Court cannot determine whether it consisted of more than one page. Ms. Franks's cause of action, based apparently on sexual harassment, was litigated in the state courts after the stay was modified by this Court to permit such litigation. The parties agree that the claim consists of two basic parts: actual damages and punitive damages.

James R. Sacca, as Unsecured Claims Administrator (the “Administrator”), under the Debtor’s confirmed plan of reorganization objected to the claim on the ground that the allowance of punitive damages is “inappropriate in a bankruptcy context,” citing *Matter of GAC Corp.*, 681 F.2d 1295, 1301 (11th Cir. 1982). The *GAC* case is inapposite because it was decided under the Bankruptcy Act. This case is governed by the Bankruptcy Code. The Administrator also cites *In re Hillsborough Holdings Corp.*, 146 B.R. 1015 (Bankr. M.D.Fla. 1992). In that case the bankruptcy court disallowed punitive damages on equitable grounds, citing the *GAC* case and *In re Bicoastal Corp.*, 134 B.R. 50 (Bankr. M.D.Fla.1991). The *Bicoastal* case does not support the proposition for which it was cited. The rationale stated in *Hillsborough* was that punitive damages are meant to punish the wrong-doer, but that in a bankruptcy case, the entities punished would be innocent creditors if punitive damage claims shared *pari passu* with other claims of the same class. That policy argument, even if it had merit, is irrelevant because under the Bankruptcy Code, the fact that a claim includes punitive damages is not a ground for disallowing any portion of the claim. Indeed, the Bankruptcy Code expressly recognizes claims for punitive damages.

Section 502(a) provides that a claim proof of which is filed is deemed allowed subject to objection. Section 502(b) provides that if an objection is made, the court, after notice and a hearing, “shall allow such claim in such amount,” unless one of nine exceptions applies. (Emphasis added.) None of the exceptions provided in section 502(b) mentions punitive damages. Judges have no power to add punitive damages as a tenth exception to the general rule that claims shall be allowed as filed.

Section 726(a)(4) of the Bankruptcy Code expressly recognizes that distributions may be made on claims for punitive damages in a Chapter 7 case, albeit on a subordinated basis. It can

operate in the Chapter 11 context where an effort is made to pay punitive damages to the detriment of unsecured creditors. This is so because section 1129(a)(7) forbids confirmation of a plan over the objection of a class of creditors that would receive more in Chapter 7 case than they would under the plan. Except for subsections (a)(7) and (b) of section 1129, the division of future earnings and of distributions from the sale of assets is a matter of negotiation among the plan proponent, creditors and equity holders. Creditors that do not wish to have their claims diluted by claims for punitive damages can bargain to subordinate the latter. Nothing in the Administrator's argument addresses these safeguards for general unsecured creditors. It follows from this analysis that the Administrator's argument that allowance of claims for punitive damages is never appropriate in bankruptcy is without merit.

At the hearing on the objection, counsel for the Administrator alluded to a provision in the confirmed plan that the Administrator believes would subordinate the punitive damage portion of the claim to the claims of other general unsecured creditors. The objection did not mention such a plan provision, which would not be a basis for objecting to the allowance of the claim but rather would merely regulate when, if ever, the punitive damage claim would be paid. The claim stands allowed as filed and should receive the treatment provided for it in the confirmed plan. If the parties have a dispute about what the confirmed plan provides, either one is free to bring that dispute before the Court.

For the reasons stated, the objection of the Administrator to claim no. 2641 filed by Andrea Franks is DENIED.

IT IS SO ORDERED.

Dated: August 29, 2005.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE