

SIGNED.



Dated: April 22, 2008

James M. Marlar
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
FIRST MAGNUS FINANCIAL) No. 4:07-bk-01578-JMM
CORPORATION,)
Debtor.) **MEMORANDUM DECISION**

The Debtor has asked this court to bar the proof of claim filed by WNS, Inc., as untimely. The court set a bar date of January 3, 2008. WNS filed its proof of claim one day late, on January 4, 2008.

WNS argues that its attorney, Nancy March, misunderstood the discussion held between her and the court at a hearing held on December 7, 2007, and wherein she felt that her client had until January 7, 2008 within which to file a claim. Thus, in her view, the January 4 filing was early. The transcript of December 7, 2007, does allow for that interpretation. Additionally, due to Ms. March's long-standing exemplary reputation and ethical professionalism in practice before this court over the last 14 years, the court easily finds her explanation to be credible. This case does not present a matter of "neglect," but instead only a matter of misunderstanding.

Moreover, the estate is not shown to have suffered any prejudice due to the late filing. WNS has been actively involved in the case since the outset, and through various pleadings and/or arguments, has made it known that it believes itself to hold a claim alleged to be in the millions of dollars. As such, WNS, even had it not filed a proof of claim, could have argued

1 that its claim was entitled to recognition as an "informal" proof of claim. *See, e.g., In re Holm*, 931
2 F.2d 620, 622 (9th Cir. 1991); *In re Wheatfield Business Park, LLC*, 308 B.R. 463, 466-67 (9th Cir.
3 BAP 2004). Happily, the case did not develop to this point.

4 To the extent that the court is required to find excusable neglect under FED. R. BANKR.
5 P. 9006(b)(1), the court so finds. Ms. March's misunderstanding was understandable, explainable
6 and not irresponsible.

7 The relevant cases support this decision. The four factors to be considered by the
8 court in deciding this issue are:

- 9
10 1) the danger of prejudice to the opposing party; 2) the length of
11 the delay and its potential impact on judicial proceedings; 3) the
12 reason for the delay, including whether it was within the
reasonable control of the movant, and 4) whether the movant
acted in good faith.

13 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498,
14 123 L.Ed.2d 74 (1993); *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004), *cert. den.*, 544 U.S.
15 961, 125 S.Ct. 1726, 161 L.Ed.2d 602 (2005); *In re Merritt*, 2008 WL 559694 at *3 & n.6 (Bankr.
16 D. Or. 2008). Weighing each of the factors and applying them to the facts, the court concludes that
17 it would be unjust to disallow the claim solely on the basis that it was filed one day late.

18 Additionally, since the missed deadline was based on a court order, this court also has
19 the authority "to use its own discretion in the enforcement of deadlines set in its own orders."
20 *Thompson v. United States*, 202 B.R. 466, 467 (S.D. Ind. 1996).

21 A separate order will be entered which denies the Debtor's request to disallow the
22 WNS claim on the basis of untimeliness.

23
24 DATED AND SIGNED ABOVE.
25
26
27
28

1 COPIES served as indicated below
2 on the date signed above:

3 John R. Clemency
4 Todd A. Burgess
5 Lawrence J. Rosenfeld
6 Garland A. Brown, Jr.
7 Greenberg Traurig, LLP
8 2375 E. Camelback Rd., Suite 700
9 Phoenix, AZ 85016
10 Attorneys for Debtor

(clemencyj@gtlaw.com)
(burgess@gtlaw.com)
(rosenfeldl@gtlaw.com)
(browng@gtlaw.com)

11 Nancy J. March
12 DeConcini McDonald Yetwin & Lacy, P.C.
13 2525 E. Broadway Blvd., #200
14 Tucson, AZ 85716
15 Attorneys for WNS North America, Inc.

(nmarch@dmyl.com)

16 Robert E. Michael
17 Robert E. Michael. & Associates. PLLC
18 950 Third Ave., Suite 2500
19 New York, NY 10022
20 Attorneys for WNS North America, Inc.

(robert.e.michael.esq@gmail.com)

21 Michael D. Warner
22 Rachel R Obaldo
23 Warner Stevens, L.L.P.
24 301 Commerce St., Suite 1700
25 Fort Worth, TX 76102
26 Attorneys for Official Committee of Unsecured Creditors

(mwarner@warnerstevens.com)
(robaldo@warnerstevens.com)

27 Renee Sandler Shamblin
28 Office of the U.S. Trustee
230 N. First Ave., Suite 204
Phoenix, AZ 85003-1706

(renee.s.shamblin@usdoj.gov)

By M.B. Thompson
Judicial Assistant

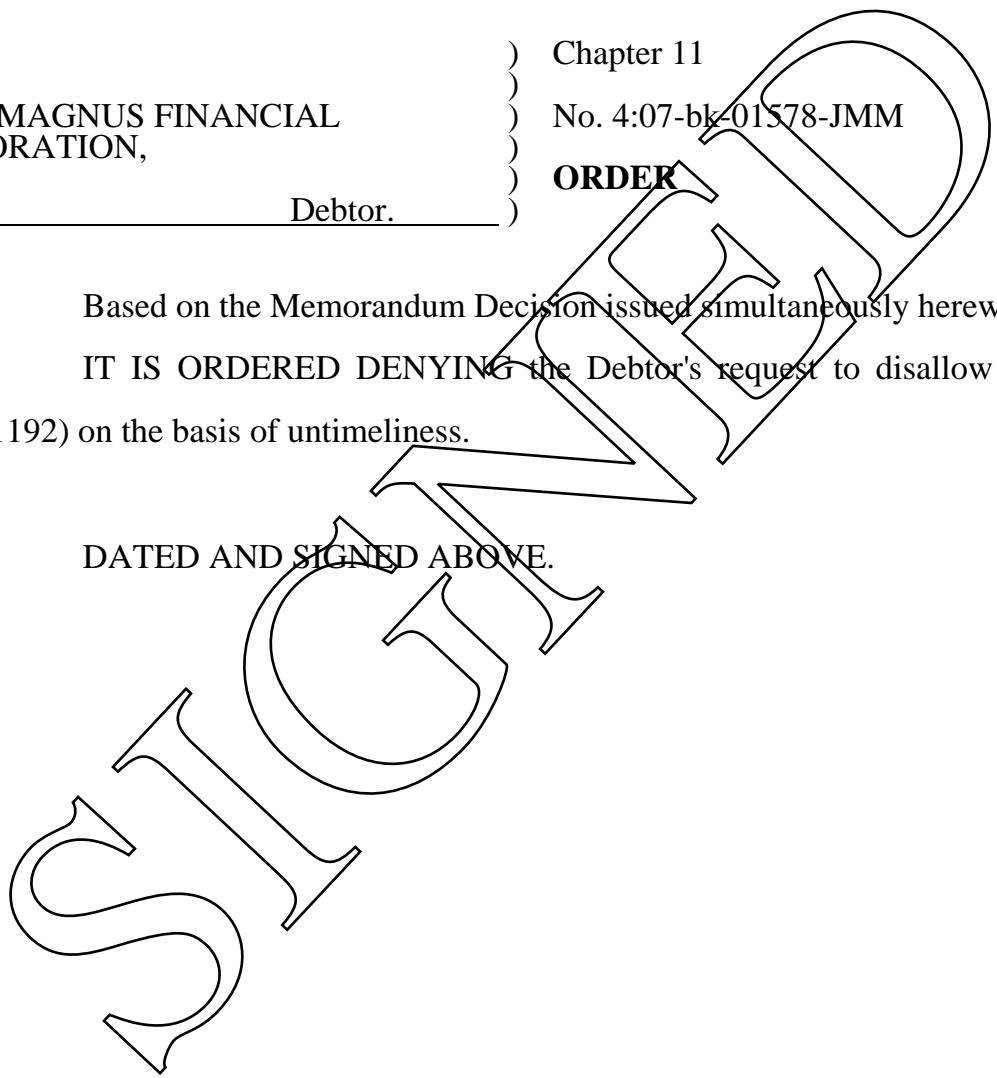
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 11
FIRST MAGNUS FINANCIAL) No. 4:07-bk-01578-JMM
CORPORATION,)
Debtor.) **ORDER**

Based on the Memorandum Decision issued simultaneously herewith,
IT IS ORDERED DENYING the Debtor's request to disallow the WNS claim
(Dkt. #1192) on the basis of untimeliness.

DATED AND SIGNED ABOVE.



1 COPIES served as indicated below
2 on the date signed above:

3 John R. Clemency
4 Todd A. Burgess
5 Lawrence J. Rosenfeld
6 Garland A. Brown, Jr.
7 Greenberg Traurig, LLP
8 2375 E. Camelback Rd., Suite 700
9 Phoenix, AZ 85016
10 Attorneys for Debtor

(clemencyj@gtlaw.com)
(burgess@gtlaw.com)
(rosenfeldl@gtlaw.com)
(browng@gtlaw.com)

11 Nancy J. March
12 DeConcini McDonald Yetwin & Lacy, P.C.
13 2525 E. Broadway Blvd., #200
14 Tucson, AZ 85716
15 Attorneys for WNS North America, Inc.

(nmarch@dmyl.com)

16 Robert E. Michael
17 Robert E. Michael & Associates, PLLC
18 950 Third Ave., Suite 2500
19 New York, NY 10022
20 Attorneys for WNS North America, Inc.

(robert.e.michael.esq@gmail.com)

21 Michael D. Warner
22 Rachel R Obaldo
23 Warner Stevens, L.L.P.
24 301 Commerce St., Suite 1700
25 Fort Worth, TX 76102
26 Attorneys for Official Committee of Unsecured Creditors

(mwarner@warnerstevens.com)
(robaldo@warnerstevens.com)

27 Renee Sandler Shamblin
28 Office of the U.S. Trustee
230 N. First Ave., Suite 204
Phoenix, AZ 85003-1706

(renee.s.shamblin@usdoj.gov)

By M.B. Thompson
Judicial Assistant

SIGNED