

MAR 21 2006

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

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:)
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WHITE MOUNTAIN COMMUNITIES)
HOSPITAL, INC.,)
)
Debtor.)
_____)
)
GOLDSTEIN, HORNER & HORNER;)
M. LYNN BILLINGS, DAVID L.)
WILLIAMS,)
)
Appellants,)
)
v.)
)
WHITE MOUNTAIN COMMUNITIES)
HOSPITAL, INC.,)
)
Appellee.)
_____)

BAP No. AZ-05-1272-MoSB
Bk. No. 00-06189-PHX-RTB

M E M O R A N D U M¹

Argued and Submitted on January 20, 2006
at Phoenix, Arizona

Filed - March 21, 2006

Appeal from the United States Bankruptcy Court
for the District of Arizona

Hon. Redfield T. Baum, Sr., Chief Bankruptcy Judge, Presiding.

Before: MONTALI, SMITH and BRANDT, Bankruptcy Judges.

¹This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, issue preclusion or claim preclusion. See 9th Cir. BAP Rule 8013-1.

1 A creditor and his counsel filed an application to recover
2 attorneys' fees and costs as an administrative expense of the
3 estate under 11 U.S.C. § 503(b)²; the creditor contended that he
4 made a substantial contribution to the estate and that his counsel
5 is therefore entitled to reasonable compensation. The bankruptcy
6 court denied the creditor's request. We AFFIRM.

7
8 **I.**
FACTS

9 A. Overview

10 Appellant David L. Williams, M.D. ("Williams") is an
11 unsecured creditor and former employee of appellee White Mountain
12 Communities Hospital, Inc. ("Debtor"). During the course of the
13 case, Williams and Debtor engaged in protracted litigation over
14 the allowance of his claim. In addition and among other things,
15 Williams opposed all plans of reorganization proposed by Debtor
16 (the last of which was confirmed over Williams' objection),
17 unsuccessfully sought the appointment of an examiner, and
18 unsuccessfully objected to the nunc pro tunc employment of special
19 counsel. H. Lee Horner, Jr. ("Horner") and Williams' wife, M.
20 Lynn Billings ("Billings"), represented Williams throughout the
21 case, incurring more than \$85,000 in fees and \$18,500 in costs.

22 After the bankruptcy court allowed Williams' unsecured claim
23 in the amount of \$40,080.00, Williams and his counsel
24 (collectively, "Appellants") filed a bill of costs seeking
25 reimbursement of \$46,843.61 in fees and expenses. In their

26 _____
27 ²Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 supplement to the bill of costs, Appellants contended that they
2 were seeking only 30 percent of their fees and costs and would
3 seek the remaining 70 percent in a separate section 503(b) motion
4 for making a substantial contribution to the estate. The
5 bankruptcy court entered an order allowing the costs in the amount
6 of \$3,558.11.

7 Appellants then filed an "Application by De Facto Creditors'
8 Committee Counsel for Attorneys Fees and Costs for Having Made a
9 Substantial Contribution to the Case." In this application,
10 Appellants simply contended that seventy percent of the discovery
11 undertaken and services provided prior to the hearing on the
12 claims objection constituted work that contributed substantially
13 to the estate.³ Debtor opposed the application. On January 11,
14 2005, the bankruptcy court denied the application without
15 prejudice, indicating that a generalized apportionment of seventy
16 percent of the fees did not satisfy the requisites for
17 demonstrating "substantial contribution," but allowing Williams
18 and his counsel to file an amended application to specify those
19 portion of fees and expenses actually attributable to actions
20 resulting in substantial contribution to the estate.

21 Appellants then filed an "Amended Application by De Facto
22 _____

23 ³Williams and his counsel said that they used the 70 percent
24 figure because Debtor had contended that at least 70 percent of
25 the fees and costs requested by Williams in his cost bill
26 following the claims objection hearing related to confirmation
27 issues and not objection issues. "[A]pplicants agree with
28 debtor's counsel that to go back and apportion each and every
deposition, court pleading, etc. would be unduly burdensome to all
concerned, thus the 70% figure has been applied herein; 70% of the
costs and fees incurred being operative to serve the issues of
confirmation, asset concealment, improper transfer of assets, and
commercial unreasonableness of prior plans."

1 Creditors' Committee Counsel for Attorneys Fees and Costs for
2 Having Made a Substantial Contribution to the Case" (the
3 "Application"). Debtor opposed the Application. The court held a
4 hearing on the Application on May 23, 2005, noting that Appellants
5 still had not apportioned the fees in any meaningful manner to
6 show what tasks had resulted in substantial contribution. As an
7 example, the court pointed out that Appellants were requesting
8 fees and costs relating to depositions of witnesses identified as
9 witnesses for the claims objection hearing but not for the
10 confirmation hearing:

11 . . . All of those witnesses were listed as witnesses in
12 the claims litigation and either all, or almost all, of
13 their testimony was used, at a minimum, by deposition
14 designations.

15 It's now asserted that a number of those witnesses
16 all related only to confirmation issues and had nothing
17 to do with the claims litigation. The record doesn't
18 support that contention. The claims litigation
19 contained an approximate 30-page pre-trial statement.
20 And I believe every deponent was listed as a witness by
21 Dr. Williams who carefully designated portions of that
22 testimony by page and line in the pretrial statement and
23 the supplement thereto. Conversely, none of those
24 witnesses were listed in the confirmation pretrial
25 statement as witnesses.

26 It's just inconceivable to the Court that the . . .
27 allocations now made to support the claim for
28 substantial contribution aren't born[e] out by the
record in this case. It appears to the Court that these
witnesses were primarily witnesses in the claims
litigation case. And more importantly, were not
witnesses in the confirmation case.

And so as I said at the outset, when I denied the
application the first time, I did so in part because I
didn't think there had been a sufficient allocation of
the time and costs sought as between those matters
clearly representing Dr. Williams and those matters that
might fall under the category of substantial
contribution. And I find myself with the same view
today. As I noted in a simple sense, the numbers sought
are essentially the same.

1 And so in conclusion, I don't [think] the applicant
2 has made a showing to meet the elements as a substantial
3 contribution that would allow this Court to determine
4 what attorneys' fees and what costs, if any, would
5 qualify under this section an award to them of some
6 amount reimbursing them for that.

7 Transcript of Hearing on May 23, 2005 (emphasis added).

8 The court entered its order denying the Application on June
9 3, 2005. Williams and his counsel filed a premature notice of
10 appeal on June 1, 2005, but the appeal is timely pursuant to Rule
11 8002(a), since the bankruptcy court announced its decision at the
12 hearing and in a minute entry dated May 23, 2005.

13
14 B. Case History Relevant to Applicant's Substantial Contribution
15 Claim

16 Debtor, a nonprofit corporation, owns and operates a 23-bed
17 acute care hospital and medical office facilities in
18 Springerville, Arizona. In June 2000, Debtor filed a voluntary
19 chapter 11 petition. At that time, Debtor was managed by David S.
20 Wanger ("Wanger"). On August 7, 2002, Wanger was replaced by Ann-
21 Coleman Hall ("Hall").

22 While Wanger was still the manager and chief executive
23 officer ("CEO") of Debtor, Debtor filed a plan of reorganization
24 that was essentially a liquidation plan under which unsecured
25 creditors would receive nothing. On October 15, 2002, Williams
26 filed an objection to the disclosure statement supporting this
27 plan and a counter-motion to appoint an examiner. Other creditors
28 objected to the plan and disclosure statement as well and Wanger
filed his own motion to appoint a trustee before Williams filed
his counter-motion for appointment of examiner.

1 Approximately one week after Williams filed his counter-
2 motion requesting appointing an examiner, Debtor filed its own
3 motion to employ an auditor of Debtor's financial affairs; Debtor
4 noted in its response to Williams' counter-motion that it shared
5 Williams' concerns about Wanger's prior management of the hospital
6 and the auditor would reveal any inaccuracies and inconsistencies
7 in accounting.

8 By the time of the hearing on all of the objections to the
9 disclosure statement, Wanger's motion for appointment of trustee,
10 and Williams' motion for appointment of examiner, Debtor realized
11 that its financial situation was improving dramatically under new
12 management (Hall) and thus the liquidation plan could be
13 withdrawn. Thereafter, in March 2003, Debtor proposed its second
14 amended plan of reorganization in which it projected that
15 unsecured creditors would be paid in full.⁴ In the amended
16 disclosure statement supporting this plan, Debtor noted that it
17 was the sole member of WMCH Development Corporation ("WMCH
18 Development"), another not-for-profit corporation. WMCH
19 Development owned an apartment complex consisting of thirty-two
20 HUD housing units; while the apartment complex was not property of
21 Debtor's estate, Debtor's equity interest in WMCH Development was.

22 On April 14, 2003, Williams objected to the amended
23 disclosure statement and filed an amended request regarding the
24 appointment of an examiner. In this request to appoint an
25 examiner or trustee, Williams requested that a trustee liquidate

26
27 ⁴Interestingly, all of the depositions for which Williams
28 seeks reimbursement and fees occurred months after Debtor proposed
a full-pay plan and before the hearing on the objection to
Williams' claim.

1 Debtor's interest in WMCH Development. Debtor opposed Williams'
2 motion to appoint a trustee or examiner. Debtor notes in its
3 appellate brief at page 7 that the bankruptcy court denied the
4 request to appoint the examiner; that order is not a part of the
5 voluminous record in this appeal.

6 On July 3, 2003, Debtor filed a third amended plan ("the
7 Plan"), as modified, which provided the same treatment (projected
8 payment in full) as the second amended plan filed in March 2003.
9 On July 17, 2003, the bankruptcy court approved the disclosure
10 statement (the "Disclosure Statement") accompanying the Plan over
11 the objections of Williams. The court did, however, allow
12 Williams to attach a comment to the Disclosure Statement urging
13 creditors to vote against the Plan.

14 On August 20, 2003, Debtor objected to Williams' unsecured
15 claim in the amount of \$160,161.00. On August 25, 2003, Williams
16 filed an objection to confirmation of the Plan. On December 12,
17 2003, Williams filed an amended claim in the amount of \$851,215;
18 Debtor contended that the claim should be allowed only in the
19 amount of \$4,080.00.

20 Debtor and Williams engaged in substantial discovery
21 regarding the allowance of Williams' claim. In a joint pretrial
22 statement filed by the parties, Williams stated that he would
23 elicit the testimony of 25 witnesses in the hearing on the
24 allowance of his claim. On March 12, 2004, Williams filed an
25 amendment to the pretrial statement indicating that he would rely
26 on the deposition testimony of 15 of those witnesses in support of
27 his claim.

28 After conducting a trial on the claims objection, the

1 bankruptcy court entered an order on May 18, 2004, allowing
2 Williams an unsecured claim in the amount of \$40,080.00. The
3 record reflects no appeal of that order.

4 On April 9, 2004, Williams moved for relief from stay to
5 allow for the appointment of a state court receiver to liquidate
6 the apartments owned by WMCH Development. Debtor opposed this
7 motion. The bankruptcy court conducted an expedited hearing on
8 the motion for relief from stay and for appointment of state court
9 receiver and denied both requests.

10 On April 22, 2004, Debtor issued a notice to creditors of the
11 final hearing on confirmation of the Plan. Williams filed a
12 supplemental objection to confirmation of the Plan. On May 3,
13 2004, Debtor filed a ballot report indicating that the four
14 impaired classes of creditors (including unsecured creditors)
15 overwhelmingly voted in favor of the Plan, despite Williams'
16 statement in the Plan package soliciting rejection of the Plan by
17 other creditors. Notwithstanding this support for the Plan by
18 other creditors, Williams continued to press his objections to
19 confirmation.

20 On May 17, 2004, the parties filed a joint pretrial statement
21 regarding the confirmation trial. Williams did not identify or
22 designate any of the witnesses or deposition testimony he used for
23 the hearing on the objection to his claim. On May 24, 2004, the
24 court conducted a confirmation trial and Williams did not call any
25 of the witnesses that he identified in his pre-trial list for the
26 claims objection hearing.

27 On May 24, 2004, the bankruptcy court entered a minute
28 entry/order specifically overruling the objections of Williams to

1 the Plan. The court expressly addressed Williams' contention that
2 Debtor's equity interest in WMCH Development (which owned the
3 apartments) should be sold to satisfy creditors. The court held
4 that under the law governing non-profit corporations, any sale of
5 the apartments or WMCH Development could not be used to pay
6 creditors of Debtor. Rather, such proceeds would have to be re-
7 invested for "community benefit purposes." On June 9, 2004, the
8 court entered an order confirming the Plan over the objections of
9 Williams.

10 Prior to the confirmation hearing, Debtor's counsel
11 discovered that the law firm of McDermott and Trayner had received
12 postpetition payments from Debtor for postpetition services
13 without obtaining court approval of employment or court approval
14 of the fees. Debtor made a demand on McDermott and Trayner for
15 return of these funds. The McDermott firm then filed an
16 application to be employed as special counsel nunc pro tunc. Both
17 Debtor and Williams opposed this motion, noting (among other
18 things) that McDermott had to waive its prepetition claim in the
19 amount of \$38,381.05. After Debtor and McDermott reached a
20 compromise whereby McDermott agreed to withdraw/waive its
21 prepetition claim, agreed to waive the unpaid amount of its
22 postpetition claim (\$1,553.53), and agreed to refund the estate
23 \$7,500 from the \$28,632.50 it received from Debtor postpetition,
24 Debtor withdrew its objection to McDermott's nunc pro tunc
25 employment application. Williams, however, did not withdraw his
26 objection. The court eventually overruled Williams' objection,
27 approved the compromise, approved McDermott's nunc pro tunc
28 employment, and approved McDermott's fees in the amount of

1 \$21,132.50, which McDermott had already received.

2 In their arguments that they made substantial contributions
3 to the estate, Appellants contend that their efforts resulted in a
4 better plan for unsecured creditors,⁵ that they uncovered
5 potential assets (the apartment complex owned by WMCH
6 Development), and that they achieved the withdrawal of McDermott's

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11 ⁵In particular, Appellants contend that they solicited
12 testimony at the confirmation hearing that Debtor did not intend
13 to sell the hospital. See Appellants' Opening Brief at page 9.
14 This benefit is illusory. First, sale of the hospital in and of
15 itself is not detrimental to creditors if the sale generates
16 sufficient income to satisfy plan obligations. Second, Appellants
17 did not obtain a modification of the Plan whereby Debtor promised
18 that no such sale would occur. Therefore, any sale would
19 presumably not breach the Plan. While Debtor's representative may
20 have testified that Debtor has no intent to sell the hospital,
21 Williams would have to prove that Debtor did intend to sell the
22 hospital when the statement was made in order for it to be
23 actionable.

24 In any event, even if Debtor had modified the Plan to promise
25 that no sale would occur, such a modification would not
26 necessarily benefit creditors. As noted by the Granite Partners
27 court:

28 Here, the applicants' objections to the disclosure
statement did not alter the character of the document,
and did not, therefore, rise to the level of a
substantial contribution. [Citation omitted].
Additional language incorporated to quell an objector's
concerns does not necessarily signify the merit or
importance of the objection; it often means the
opposite. Rather than argue over insubstantial and
relatively unimportant disputes, the proponent simply
makes the change, or the court directs it to be made, to
move the process along. Further, it is not enough that
the objecting party achieve some greater clarity in the
document. He must demonstrate an actual or concrete
benefit, such as the facilitation of the successful
reorganization or added value."

29 Granite Partners, 213 B.R. at 449.

1 claim.⁶ For the reasons discussed below, however, Appellants have
2 not demonstrated how their services and actions resulted in a
3 direct, substantial contribution to the estate.

4
5 **II.**
ISSUE

6 Did the bankruptcy court err in denying the request of
7 Williams and his counsel for reimbursement of fees and legal
8 expenses under section 503(b) for making a substantial
9 contribution to the estate?

10
11 **III.**
STANDARD OF REVIEW

12 A bankruptcy court's findings of fact are reviewed for clear
13 error, and conclusions of law are subject to de novo review.
14 Devers v. Bank of Sheridan, Montana (In re Devers), 759 F.2d 751,
15 753 (9th Cir. 1985). Review under the clearly erroneous standard
16 is "significantly deferential, requiring a 'definite and firm
17 conviction that a mistake has been committed.'" Granite State
18 Ins. Co. v. Smart Modular Technologies, Inc., 76 F.3d 1023, 1028
19 (9th Cir. 1996) (quoting Concrete Pipe & Products of Cal., Inc. v.
20 Construction Laborers Pension Trust for Southern Cal., 508 U.S.
21 602, 623 (1993)).

22 The bankruptcy court "has wide discretion to determine the
23 appropriate amount of expenses to be awarded" under section 503(b)

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25 ⁶On pages 10 and 11 of their Opening Brief, Appellants
26 discuss payments to Charles Craven, which they contend are
27 improper. We do not see the relevancy of this issue to this
28 appeal. Even if it were relevant, the issue was not raised before
the trial court. We will not consider issues raised for the first
time on appeal. Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir.
1999) ("[A]n appellate court will not consider issues not properly
raised before the [trial] court.").

1 and the "allowance of administrative expenses should also be left
2 to the trial court's discretion." Haskins v. U.S. (In re Lister),
3 846 F.2d 55, 56-57 (10th Cir. 1988) (emphasis in original). We
4 therefore review the bankruptcy court's denial of Williams'
5 application for administrative expenses under an abuse of
6 discretion standard. Id. Reversal under the abuse of discretion
7 standard is possible only "when the appellate court is convinced
8 firmly that the reviewed decision lies beyond the pale of
9 reasonable justification under the circumstances." Harman v.
10 Apfel, 211 F.3d 1172, 1174 (9th Cir. 2000). The appellate court
11 cannot simply substitute its judgment for that of the lower court.
12 United States v. Henderson, 241 F.3d 638, 646 (9th Cir. 2000).

13
14 **IV.
DISCUSSION**

15 Section 503(b) lists several fees and expenses which are
16 entitled to administrative expense priority, including the
17 "actual, necessary expenses" of creditors "making a substantial
18 contribution" in a chapter 11 case and "reasonable compensation"
19 of an attorney of a creditor providing such substantial
20 contribution:

21 (b) After notice and a hearing, there shall be allowed
22 administrative expenses, other than claims allowed under
section 502(f) of this title, including--

23 . . .

24 (3) the actual, necessary expenses, other than
25 compensation and reimbursement specified in
paragraph (4) of this subsection, incurred by --

26 . . .

27 (D) a creditor . . . in making a substantial
28 contribution in a case under chapter 9 or 11
of this title;

1 (4) reasonable compensation for professional
2 services rendered by an attorney or an accountant
3 of an entity whose expense is allowable under
4 subparagraph (A), (B), (C), (D), or (E) of
5 paragraph (3) of this subsection, based on the
6 time, the nature, the extent, and the value of such
7 services, and the cost of comparable services other
8 than in a case under this title, and reimbursement
9 for actual, necessary expenses incurred by such
10 attorney or accountant[.]

11 See 11 U.S.C. §§ 503(b) (3) (D) and (b) (4) .

12 A. Appellants Have Not Demonstrated That They Provided a
13 "Substantial Contribution" to the Estate

14 A creditor seeking administrative priority for his legal fees
15 and costs bears the burden of proof to demonstrate that he has
16 made a substantial contribution to the estate. See Andrew v.
17 Coopersmith (In re Downtown Investment Club III), 89 B.R. 59, 64
18 (9th Cir. BAP 1988) ("The burden of proof under Bankruptcy Code
19 § 503(b) (4) to show that a substantial contribution was made is on
20 the party seeking compensation[.]"); see also In re Catalina Spa &
21 R.V. Resort, Ltd., 97 B.R. 13, 17 (Bankr. C.D. Cal. 1989) (same);
22 In re Granite Partners, L.P., 213 B.R. 440, 447 (Bankr. S.D.N.Y.
23 1997) ("applicant bears the burden of proving, by a preponderance
24 of the evidence, that he has rendered a substantial
25 contribution").

26 The measure of any "substantial contribution" is the extent
27 of the benefit to the estate. Cellular 101, Inc. v. Channel
28 Communications, Inc. (In re Cellular 101, Inc.), 377 F.3d 1092,
1096 (9th Cir. 2004), citing Christian Life Center Litigation
Defense Comm. v. Silva (In re Christian Life Center), 821 F.2d
1370, 1373 (9th Cir. 1987). The benefits conferred must be direct
and not "incidental" or "minimal." Cellular 101, 377 F.3d at

1 1098. They must foster, and not retard, progress of the
2 reorganization. Id. at 1096. Substantial contribution "requires
3 contribution which provides tangible benefits to the bankruptcy
4 estate and the other unsecured creditors." In re D.W.G.K.
5 Restaurants, Inc., 84 B.R. 684, 689 (Bankr. S.D. Cal. 1988).
6 "Services provided solely for the creditor, such as prosecuting a
7 creditor's claim, are not compensable." In re Woodhall, 141 B.R.
8 700, 701 (Bankr. D. Ariz. 1992). "Extensive participation alone
9 does not warrant an award of fees as an administrative claim."
10 Id. at 701-02; see also D.W.G.K., 84 B.R. at 689.

11 In denying a request for reimbursement of fees and expenses
12 by creditors, the D.W.G.K. court observed certain tenets every
13 court deciding a section 503(b) (3) and (b) (4) should heed:

14 Compensation cannot be freely given to all creditors who
15 take an active role in bankruptcy proceedings.
16 Compensation must be preserved for those rare occasions
17 when the creditor's involvement truly fosters and
18 enhances the administration of the estate. See, In re
19 Richton International Corp., 15 B.R. at 854. Such an
20 involvement takes the form of constructive contributions
21 in key reorganizational aspects, when but for the role
22 of the creditor, the movement towards final
23 reorganization would have been substantially diminished.
24 The integrity of § 503(b) can only be maintained by
25 strictly limiting compensation to extraordinary creditor
26 actions which lead directly to significant and tangible
27 benefits to the creditors, debtor, or the estate. While
28 § 503 was enacted to encourage meaningful creditor
participation, it should not become a vehicle for
reimbursing every creditor who elects to hire an
attorney.

24 D.W.G.K., 84 B.R. at 90. Simply put, in order for a creditor or
25 its counsel to recover compensation for its services under section
26 503(b), it must show that the services (1) benefitted the estate
27 and unsecured creditors; (2) had a "direct, significant, and
28 demonstrable effect on the estate;" and (3) were not duplicative

1 of services performed by others. In re Lloyd Securities, Inc.,
2 183 B.R. 386, 394 (Bankr. E.D. Penn. 1995), aff'd, 75 F.3d 853 (3d
3 Cir. 1996).

4 An examination of the record demonstrates that Williams did
5 not provide any services to the estate that had a "direct,
6 significant, and demonstrable effect on the estate." Id.
7 Examination of the various "contributions" for which Williams and
8 his counsel seek compensation provided, at best, incidental
9 benefits and were duplicative of those provided by the debtor.
10 Williams and his counsel contend that their single-minded campaign
11 against Debtor and any reorganization plan it promoted, including
12 the ones which proposed to pay unsecured creditors in full and the
13 one which was approved by creditors and confirmed by the court
14 over Williams' vigorous objections, benefitted the estate. It did
15 not; to the contrary, this campaign caused the estate to incur
16 further fees to fight objections which were ultimately overruled.

17 While Debtor did initially file a liquidation plan, it
18 amended the plan to provide full payment to creditors after it
19 obtained new management and its financial condition improved
20 dramatically. After Debtor amended its plan to provide full
21 payment to creditors, Williams and his counsel incurred most of
22 the fees for which they seek recovery; these fees were incurred
23 while Debtor's objection to Williams' claim was pending. There is
24 no causal connection between these fees and Debtor's decision to
25 provide full payment to unsecured creditors through a plan; that
26 decision was made before the fees were incurred.

27 Williams also contends that he and his counsel provided a
28 substantial benefit to the estate by moving the court to appoint

1 an examiner, trustee or receiver. The court refused this request;
2 no benefit was provided. Appellants argue, however, that this
3 unsuccessful effort led the Debtor to modify the Plan to provide
4 full payment and to seek its own audit of Debtor's books. The
5 record does not support this argument. Debtor requested an
6 auditor at approximately the same time Williams filed his first
7 counter-motion for examiner. Even after the auditor was appointed
8 and after Debtor modified its plan to provide full payment to
9 unsecured creditors, Williams continued his unsuccessful efforts
10 to have a trustee, receiver or examiner appointed, filing repeated
11 motions that were denied. Thus, Appellants cannot establish a
12 direct causal link or "credible connection" between their
13 litigation tactics and any benefits accruing to the estate and the
14 unsecured creditors. Granite Partners, 213 B.R. at 447.

15 Moreover, the successes claimed were achieved in large part
16 by the efforts of Debtor and its counsel. Debtor sought an
17 independent auditor, Debtor modified the Plan once new management
18 enabled it to achieve greater financial stability, Debtor objected
19 to McDermott's nunc pro tunc employment application and negotiated
20 a compromise whereby McDermott waived its prepetition claim and
21 refunded a portion of its postpetition payments. Appellants'
22 efforts were largely duplicative of efforts of others and thus do
23 not constitute "substantial contributions." Lloyd Securities,
24 Inc., 183 B.R. at 394.

25 We therefore agree with the bankruptcy court that Appellants
26 did not carry their burden to demonstrate that their work has
27 substantially contributed to the estate. They did not facilitate
28 the progress of the case; in fact, their efforts arguably impaired

1 progress, causing Debtor to incur further administrative fees to
2 fight for confirmation of a plan overwhelmingly approved by
3 creditors. The record reflects no "extraordinary creditor actions
4 which [led] directly to significant and tangible benefits to the
5 creditors, debtor or the estate." D.W.G.K., 84 B.R. at 90.

6 B. Appellants Have Not Demonstrated that Their Costs Were
7 "Actual and Necessary" and that Their Fees Were Reasonable

8 In addition to proving that it made a "substantial
9 contribution" to the estate, a creditor seeking to recover
10 compensation as an administrative expense under section 503(b)
11 must also demonstrate that its request represents "actual,
12 necessary expenses" and "reasonable compensation" for professional
13 services. Catalina Spa, 97 B.R. at 17 ("In addition to the
14 requirement that the creditor show that the services rendered a
15 significant and demonstrable benefit, an administrative expense
16 may not be allowed absent a finding that the expense is necessary
17 for preserving the estate."); D.W.G.K., 84 B.R. at 689 (same).

18 Section 503(b) (3) (D) "requires the bankruptcy judge to
19 scrutinize claimed expenses for waste and duplication to ensure
20 that expenses were indeed actual and necessary. It further
21 requires the judge to distinguish between expenses incurred in
22 making a substantial contribution to the case and expenses lacking
23 that causal connection, the latter being noncompensable." Hall
24 Fin'l Group, Inc. v. DP Partners Ltd. P'ship (In re DP Partners
25 Ltd. P'ship), 106 F.3d 667, 673 (5th Cir. 1997). In order to keep
26 administrative costs to the estate at a minimum, "actual and
27 necessary" are construed narrowly. Microsoft Corp. v. DAK Indus.,
28 Inc. (In re DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995).

1 Even after the bankruptcy court provided Appellants with an
2 opportunity to supplement their request by specifying those
3 portion of fees and expenses actually attributable to actions
4 resulting in substantial contribution to the estate, Appellants
5 did not do so. Rather, Appellants simply provided some narrative
6 about the purported benefits it provided without linking fees or
7 categories of work to those benefits. In other words, Appellants
8 did not show a causal connection between the fees incurred and the
9 purported benefits it provided to the estate. The record shows no
10 linkage between the fees incurred and purported benefits conferred
11 by Appellants.

12 As pointed out by the bankruptcy court, Appellants did not
13 carry their burden to show how their services resulted in tangible
14 benefits to the estate. Rather, many of the expenses and most of
15 the fees related to the claims objections process, notwithstanding
16 Appellants' cavalier contentions that depositions of witnesses
17 designated for the claims objection hearing only (and not the
18 confirmation or other hearing) related to the confirmation
19 hearing. Even if Williams' objection to confirmation had somehow
20 led to a substantial, tangible benefit to the estate, Appellants
21 have not shown that the expenses incurred were "actual and
22 necessary" to prosecute the objection or that the fees were
23 reasonable and related to the confirmation objection. Without
24 demonstrating a causal connection between the services provided
25 [i.e., the depositions of the witnesses] and the purported
26 contribution [i.e., the objection to confirmation], Appellants
27 cannot demonstrate that the fees and expenses were reasonable,
28 actual and necessary to achieve the desired result. Granite

1 Partners, 213 B.R. at 447.

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**V.
CONCLUSION**

Appellants did not carry their burden to demonstrate that their services provided a substantial contribution to the estate. In addition, they did not show that their fees and expenses were reasonable, actual and necessary. For either one of these reasons, we find no error by the bankruptcy court. Therefore, we AFFIRM.