

**FILED**

**JUL 20 2005**

**NOT FOR PUBLICATION**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

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

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6 In re: ) BAP No. NV-04-1561-PKS  
7 JAMES LENNON and CARMELITA ) NV-04-1583-PKS  
8 LENNON, ) (related appeals)  
9 )  
10 ) Bk. No. BK-S-01-17252-BAM  
11 Debtors. )  
12 )  
13 )  
14 JAMES LENNON; CARMELITA LENNON, )  
15 )  
16 )  
17 Appellants, )  
18 )  
19 v. )  
20 ) **MEMORANDUM**<sup>1</sup>  
21 )  
22 TOM GRIMMETT, Chapter 7 Trustee; )  
23 TRAVERTINE CORPORATION, )  
24 )  
25 )  
26 Appellees. )

Argued and Submitted on  
June 23, 2005 at Las Vegas, Nevada

Filed - July 20, 2005

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

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding

Before: PERRIS, KLEIN and SMITH, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.



1 until he was removed from that position at a November 1999  
2 shareholders' meeting. The Management Agreement was formally  
3 terminated in January 2001.

4 Debtors filed their chapter 7 petition approximately six months  
5 later. Tom Grimmett was appointed to serve as the chapter 7 trustee  
6 ("the trustee"). Debtors' bankruptcy schedules disclosed assets of  
7 approximately \$23,000 and liabilities of approximately \$4.2 million,  
8 most of which debtors designated as unsecured priority tax claims.  
9 Debtors listed the debt owed to Lexington as an unsecured claim, but  
10 did not disclose as an asset Lennon's claim for compensation under  
11 the Management Agreement or that he had purported to assign that  
12 right to Lexington as security.<sup>3</sup>

13 In March 2002, Lexington, claiming to be a successor in  
14 interest to Lennon by virtue of the assignment, filed a Demand for  
15 Arbitration against Travertine, arguing that Lennon was entitled to  
16 compensation under the Management Agreement in an amount between \$3  
17 and \$4.5 million. A few months later, a Minnesota district court  
18 granted Travertine's motion to stay arbitration on the basis that  
19 Lennon's transfer of his right to compensation under the Management  
20 Agreement was not a valid assignment. Shortly after the district  
21 court issued its decision, Lennon filed an Amended Demand for  
22 Arbitration listing himself as the claimant. The Amended Demand  
23 was, in all other material respects, the same as that filed by  
24

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25 <sup>3</sup> Debtors' Schedule F (Creditors Holding Unsecured  
26 Nonpriority Claims) lists the creditor as Spartan Properties, Inc.,  
which is the general partner of Lexington. For ease of reference,  
we will refer to Lexington.

1 Lexington. Lennon filed a Second Amended Demand for Arbitration,  
2 stating that his right to compensation was subject to the assignment  
3 to Lexington. While the Minnesota Court of Appeals reversed the  
4 state trial court, the Minnesota Supreme Court ultimately agreed  
5 with the trial court, holding that Lennon's "purported assignment of  
6 his right to compensation to Lexington-Silverwood is void."  
7 Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267, 274 (Minn.  
8 2004). Debtors did not at any point in the original chapter 7 case,  
9 which lasted over three years, amend their schedules to disclose the  
10 claim against Travertine as a potential asset of their bankruptcy  
11 estate.<sup>4</sup>

12 Less than a week after the Minnesota Supreme Court decided that  
13 the assignment to Lexington was void, debtors filed a motion to  
14 convert to chapter 11. Debtors proposed to proceed with arbitration  
15 of the claim against Travertine in chapter 11 and to fund a  
16 liquidating plan with the proceeds of the arbitration. The trustee  
17 filed an opposition to debtors' motion to convert and, in the  
18 alternative, a motion to immediately reconvert to chapter 7.  
19 Shortly thereafter, the trustee filed a Motion to Approve Sale of  
20 Estate Asset, in which he sought court approval to settle Lennon's  
21 claim under the Management Agreement against Travertine for  
22 \$900,000. Debtors opposed the settlement, arguing that the claim  
23 against Travertine was worth \$15 million.

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24  
25 <sup>4</sup> A debtor is under a continuing duty to amend his or her  
26 bankruptcy schedules and statement of financial affairs. See, e.g.,  
Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 784 (9th Cir.  
2001).

1 Citing In re Croston, 313 B.R. 447 (9th Cir. BAP 2004), the  
2 bankruptcy court concluded that debtors had a one-time absolute  
3 right to convert to chapter 11 under § 706(a).<sup>5</sup> However, the court  
4 barred debtors from taking any action regarding estate assets  
5 pending consideration of whether the case should be reconverted to  
6 chapter 7. The bankruptcy court held a hearing on November 3, 2004,  
7 at which it announced two decisions. First, the court ordered  
8 debtors' case reconverted to chapter 7. A representative of the  
9 United States Trustee was present at the hearing and he immediately  
10 reappointed the trustee in the reconverted chapter 7 case. The  
11 court then approved the trustee's proposed settlement of the  
12 estate's claim against Travertine. Debtors timely appealed both  
13 orders.

#### 14 ISSUES<sup>6</sup>

15 I. Whether the bankruptcy court erred in reconverting debtors'  
16 case to chapter 7.

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18 <sup>5</sup> Section 706(a) states, in pertinent part, that "[t]he  
19 debtor may convert a case under this chapter to a case under chapter  
20 11, 12, or 13 of this title at any time, if the case has not been  
converted under section 1112, 1208, or 1307 of this title."

21 <sup>6</sup> Debtors' complaints about Travertine's alleged lack of  
22 standing are of no consequence in these appeals. The trustee and  
23 the IRS moved for reconversion, not Travertine. Debtors do not  
24 suggest that either of the moving parties lacked standing to request  
25 reconversion. While debtors complain about Travertine's appearance  
26 before the bankruptcy court, they do not argue that the bankruptcy  
court committed reversible error in allowing Travertine to be heard.  
To the extent debtors are contesting Travertine's standing to appear  
in these appeals, Travertine and the trustee raise the same issues  
on appeal. Their appellate briefs are almost identical, and they  
have submitted separate but identical excerpts of record in both  
appeals.

1 II. Whether the court erred in approving the settlement  
2 agreement.

3 STANDARDS OF REVIEW

4 We review the bankruptcy court's order converting debtors' case  
5 to chapter 7 for an abuse of discretion. In re Consol. Pioneer  
6 Mortgage Entities, 248 B.R. 368 (9th Cir. BAP 2000), aff'd, 264 F.3d  
7 803 (9th Cir. 2001). The bankruptcy court's approval of the  
8 settlement with Travertine is also reviewed for an abuse of  
9 discretion. In re Arden, 176 F.3d 1226, 1228 (9th Cir. 1999); In re  
10 Mickey Thompson Entm't Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP  
11 2003). A court abuses its discretion if it does not apply the  
12 correct law or if it rests its decision on a clearly erroneous  
13 finding of material fact. United States v. Sprague, 135 F.3d 1301,  
14 1304 (9th Cir. 1998).

15 DISCUSSION

16 I. Reconversion to Chapter 7

17 A chapter 7 case that has been converted to chapter 11 is  
18 subject to reconversion to chapter 7 "for cause." § 1112(b).<sup>7</sup> See

19 \_\_\_\_\_  
20 <sup>7</sup> Section 1112(b) states that, with certain exceptions not  
21 implicated here,

22 on request of a party in interest or the United States trustee  
23 or bankruptcy administrator, and after notice and a hearing,  
24 the court may convert a case under this chapter to a case under  
25 chapter 7 of this title or may dismiss a case under this  
26 chapter, whichever is in the best interest of creditors and the  
estate, for cause[.]

There is no argument in this appeal that dismissal rather than  
conversion was in the best interest of creditors and the estate. As  
(continued...)

1 also In re Croston, 313 B.R. 447, 452 (9th Cir. BAP 2004). Section  
2 1112(b) provides a list of examples of cause for conversion. The  
3 list set forth in § 1112(b) is not exhaustive. A bankruptcy court  
4 may “consider other factors as they arise and use its powers to  
5 reach appropriate results in individual cases.” In re Gonic Realty  
6 Trust, 909 F.2d 624, 626 (1st Cir. 1990).

7 Courts, including this Panel, have held that a debtor’s bad  
8 faith may be cause for conversion. Carolin Corp. v. Miller, 886  
9 F.2d 693, 698-99 (4th Cir. 1989); Croston, 313 B.R. at 452. While  
10 debtors devote much space in their opening brief to arguing that  
11 their case could not have been dismissed for bad faith, we need not  
12 address this subject because the bankruptcy court did not order  
13 debtors’ case converted for bad faith. The order converting does  
14 not mention bad faith as a basis for conversion, and the court made  
15 no findings of bad faith when it ruled on the record at the hearing.  
16 Appellees contend that debtors acted in bad faith in several  
17 regards, but they argue that the bankruptcy court should be affirmed  
18 based only on three of the enumerated examples of cause set forth in  
19 § 1112(b). This confirms our conclusion that the bankruptcy court  
20 did not convert for bad faith.<sup>8</sup>

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23 <sup>7</sup>(...continued)  
24 a result, we will hereafter refer only to conversion.

25 <sup>8</sup> Appellees also argue that there was cause to appoint a  
26 chapter 11 trustee. We do not address this argument because the  
court ordered debtors’ case reconverted to chapter 7, thereby  
mooting this issue.

1 Appellees argue that conversion was warranted under  
2 § 1112(b)(1), (2) and (3), which provide that cause for conversion  
3 includes:

4 (1) continuing loss to or diminution of the estate and  
5 absence of a reasonable likelihood of rehabilitation;

6 (2) inability to effectuate a plan;

7 (3) unreasonable delay by the debtor that is prejudicial  
8 to creditors[.]

9 Of these grounds, § 1112(b)(2) is the most clearly implicated in  
10 this case.<sup>9</sup>

11 “‘Inability to effectuate a plan’ means that the debtor lacks  
12 the ability to formulate a plan or to carry one out.” 4 NORTON  
13 BANKRUPTCY LAW AND PRACTICE 2d § 82:5 (Rev. 7/93) (quoting § 1112(b)(2)).  
14 Dismissal under § 1112(b)(2) is warranted if there is no reasonable  
15 expectation that a chapter 11 plan can be confirmed within a  
16 reasonable amount of time. In re Orienta Coop. Ass’n, 256 B.R. 508,  
17 511 (Bankr. W.D. Okla. 2000).

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20 <sup>9</sup> Section 1112(b)(1) requires the absence of a reasonable  
21 likelihood of rehabilitation. Rehabilitation under § 1112(b)(1) is  
22 distinct from reorganization and means “to put back in good  
23 condition and reestablish on a sound basis.” 4 NORTON BANKRUPTCY LAW  
24 AND PRACTICE 2D § 82:4 (Rev. 7/93). Where, as here, a liquidating  
25 plan is contemplated, § 1112(b)(1) does not serve as a basis for  
26 conversion. Id. See also In re GPA Tech. Consultants, Inc., 106  
B.R. 139, 142 (Bankr. S.D. Ohio 1989). Section 1112(b)(3) requires  
undue delay by the debtor. Appellees did not establish any factual  
basis for application of this statutory basis for conversion.  
Debtors’ chapter 11 case was only approximately two weeks old when  
the court ordered the case reconverted. As a result, the bankruptcy  
court rejected unreasonable delay as a basis for conversion.  
See Transcript of November 3, 2004 Hearing, 42:2-14.



1 At this stage, this is a single asset bankruptcy case. Chapter  
2 11 plans that enable debtors to liquidate their property in a  
3 reasonable manner are permissible under the Bankruptcy Code.  
4 "However, even a liquidating plan must aim toward a result  
5 consistent with the purposes and objectives of Chapter 11." In re  
6 Hoosier Hi-Reach, Inc., 64 B.R. 34, 38 (Bankr. S.D. Ind. 1986). One  
7 of the primary purposes of chapter 11 is maximizing the creditors'  
8 return. Orienta, 256 B.R. at 511.

9 [T]he plan confirmation process often involves significant  
10 costs that are avoided in the chapter 7 context. In deciding  
11 whether a chapter 11 case should be converted . . . the court  
12 should consider whether liquidation in the chapter 11 case  
offers any advantages over liquidation in the chapter 7  
context, and whether the added cost of the chapter 11 process  
is justified.

13 7 Alan N. Resnick & Henry J. Sommer, COLLIER ON BANKRUPTCY  
14 ¶ 1112.04[5][b][ii] (15th ed. Rev. 2000). See also In re Jartran,  
15 Inc., 886 F.2d 859, 870 n.12 (7th Cir. 1989).

16 The bankruptcy court did not err in converting debtors' case to  
17 chapter 7 because there is no indication that debtors' plan to  
18 liquidate the Travertine claim in chapter 11 offers any advantage  
19 over the trustee's plan to liquidate the claim via the proposed  
20 settlement in chapter 7, particularly in light of the additional  
21 administrative expenses associated with a chapter 11 case.

22 As we discuss in detail below, debtors have unrealistic  
23 expectations of recovery and they underestimate the associated risks  
24 and expense. Chapter 11 is not intended as a vehicle to allow  
25 debtors to "explore visionary options that are premised on little  
26 more than 'terminal euphoria.'" 7 Resnick & Sommer, COLLIER ON

1 BANKRUPTCY ¶ 1112.04[5][b][ii] (quoting In re Little Creek Dev. Co.,  
2 779 F.2d 1068, 1073 (5th Cir. 1986)).

3 Debtors repeatedly expressed their intent to litigate the  
4 Travertine claim to secure excess funds for their own benefit. This  
5 suggests that they would reject reasonable settlement offers at the  
6 expense of their creditors. A debtor in possession stands in a  
7 fiduciary relationship to creditors. In re Woodson, 839 F.2d 610,  
8 620 (9th Cir. 1988). Debtors' inflexible intent to  
9 arbitrate/litigate the claim, combined with their unrealistic  
10 expectations for recovery, indicates an inability to fulfill the  
11 duties of a debtor in possession. This is a factor supporting the  
12 bankruptcy court's decision to reconvert the case to chapter 7. See  
13 In re Bowman, 181 B.R. 836, 845 (Bankr. Md. 1995).

14 In addition, there is cause for conversion under § 1112(b)(2)  
15 if the debtor has no reasonable prospect of satisfying a plan  
16 confirmation requirement set forth in § 1129. In re Windsor on the  
17 River Assocs., Ltd., 7 F.3d 127, 133 (8th Cir. 1993); 7 Resnick &  
18 Sommer, COLLIER ON BANKRUPTCY ¶ 1112.05[5][b][iii]. Debtors concede  
19 that there are at least \$50,000 in unsecured priority tax claims  
20 that would have to be paid at confirmation pursuant to  
21 § 1129(a)(9)(C). See Transcript of November 3, 2004 Hearing, 16:23-  
22 17:2. Debtors have no resources to pay even run-of-the-mill chapter  
23 11 administrative expenses, much less these unsecured, priority tax  
24 claims. While debtors argue that their children were willing to  
25 provide debtor in possession financing for such expenses, they  
26 provided no independent evidence corroborating their children's

1 ability or willingness to do so. "A reorganization plan under  
2 chapter 11 must be more than a nebulous speculative venture . . .  
3 and if outside financing is needed, it must be *clearly* in sight."  
4 In re Great Am. Pyramid Joint Venture, 144 B.R. 780, 792 (Bankr.  
5 W.D. Tenn. 1992) (original emphasis).

6 Debtors argue that the bankruptcy court erred in converting  
7 their case because they were not given adequate time to propose a  
8 plan. We reject this argument.

9 In order to avoid the costs of chapter 11 in cases in which  
10 they are not justified, section 1112(b) was designed to provide  
11 the court with a powerful tool to weed out inappropriate  
chapter 11 cases at the earliest possible stage.

12 7 Resnick & Sommer, COLLIER ON BANKRUPTCY ¶ 1112.04[2]. Where, as  
13 here, "there is no reasonable possibility of an effective  
14 reorganization, the bankruptcy court is not compelled to wait a  
15 certain period of time, to the detriment of creditors, before  
16 ordering conversion of the case." In re Johnston, 149 B.R. 158, 162  
17 (9th Cir. BAP 1992).

## 18 II. Compromise

### 19 A. Debtors' Standing

20 Bankruptcy appellate standing is limited to those persons who  
21 can demonstrate that they are directly and adversely affected  
22 pecuniarily by an order of the bankruptcy court. In re Fondiller,  
23 707 F.2d 441, 442-43 (9th Cir. 1983). A party asserting standing  
24 must demonstrate that the bankruptcy court's order either diminishes  
25 its property, increases its burdens, or detrimentally affects its  
26 rights. Id. at 442. It is a well established rule that a Chapter 7

1 debtor ordinarily does not have standing to challenge orders  
2 affecting the size of the estate because the debtor has no pecuniary  
3 interest in the property of the estate. See, e.g., In re Mark Bell  
4 Furniture Warehouse, Inc., 992 F.2d 7, 10 (1st Cir. 1993). There is  
5 an exception to the general rule where a debtor can show that the  
6 estate is solvent and that the debtor is entitled to a distribution  
7 of surplus assets under § 726(a)(6). Id.

8 Appellees argue that debtors lack standing to appeal the order  
9 approving compromise of the claim against Travertine because the  
10 estate is insolvent. Debtors argue that the estate is solvent if  
11 the claim against Travertine is fairly valued. The \$900,000  
12 settlement proposed by the trustee will not result in a surplus for  
13 debtors, but if the claim against Travertine is worth the \$15  
14 million debtors claim it is worth, there would be a surplus.

15 We decline to treat the estate as insolvent given the dispute  
16 regarding the true value of the claim. As we discuss below,  
17 debtors' valuation of the claim is questionable, but their theory is  
18 not so implausible as to justify denying them standing.

19 Debtors have standing for another reason. Debtors scheduled  
20 approximately \$2.8 million of priority tax claims on their Schedule  
21 E (Creditors Holding Unsecured Priority Claims). As the bankruptcy  
22 court noted, debtors have a "big stake" in the size of the  
23 settlement because the tax claims are nondischargeable. Transcript  
24 of November 3, 2004 Hearing, 14:8.

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1           B. Merits

2           Rule 9019(a) provides that a bankruptcy court may approve a  
3 compromise or settlement. Settlements are favored in bankruptcy,  
4 see 10 Alan N. Resnick & Henry J. Sommer, COLLIER ON BANKRUPTCY  
5 ¶ 9019.01 (15th ed. Rev. 2003), and a bankruptcy court may approve a  
6 proposed compromise if it is fair and equitable. In re Arden, 176  
7 F.3d 1226, 1228 (9th Cir. 1999); In re A & C Properties, 784 F.2d  
8 1377, 1381 (9th Cir. 1986). At its base, the question is whether  
9 the compromise is in the best interest of the estate. In re  
10 Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986).

11           A bankruptcy court is not required to conduct a mini-trial on  
12 the merits of a claim sought to be compromised. See, e.g., In re  
13 Schmitt, 215 B.R. 417, 423 (9th Cir. BAP 1997). "When assessing a  
14 compromise, courts need not rule upon disputed facts and questions  
15 of law, but rather only canvass the issues." Id. In determining  
16 whether a settlement is fair and equitable, a court should consider  
17 the following four factors:

- 18           (a) the probability of success in the litigation; (b) the  
19 difficulties, if any, to be encountered in the matter of  
20 collection; (c) the complexity of the litigation involved, and  
21 the expense, inconvenience and delay necessarily attending it;  
22 (d) the paramount interest of the creditors and a proper  
23 deference to their reasonable views in the premises.

24 A & C Properties, 784 F.2d at 1381. A review of these factors  
25 establishes that the bankruptcy court did not abuse its discretion  
26 in approving the settlement.

1 (1) Probability of Success

2 Debtors have an overly optimistic view of the probability of  
3 the success of their position. Travertine argues that Lennon is not  
4 entitled to any compensation under the Management Agreement because  
5 he failed to perform under the contract and because he breached the  
6 Management Agreement by engaging in certain acts of self-dealing.  
7 Travertine also argues that Lennon is judicially estopped from  
8 asserting a claim against Travertine because debtors did not  
9 disclose the claim in their bankruptcy case.

10 Assuming Lennon is entitled to some compensation, the parties  
11 disagree over how to measure the compensation to which he is  
12 entitled. The Management Agreement provides that Lennon is entitled  
13 to a certain percentage of Travertine's net profits as compensation  
14 for his services. The percentage to which he is entitled is  
15 calculated based, in part, on the value of the property on the date  
16 on which it is sold. The Management Agreement states that

17 [t]he date of sale shall be the date Travertine shall execute  
18 an Agreement of Sale of the assembled parcel. Such Sale  
19 Agreement must have non-refundable earnest money, but may be  
subject to contingencies.

20 February 6, 1990 Amendment to Management Agreement, § II.

21 However, the Management Agreement makes a separate provision  
22 for compensation in the event of what is described as "early  
23 termination," stating as follows:

24 Notwithstanding any other provision herein to the contrary, in  
25 the event that persons owning seventy-five percent (75%) or  
26 more of the capital stock of Travertine shall notify [Lennon]  
in writing of their decision to terminate this Agreement, this  
Agreement shall terminate in accordance with such notice. In  
the event of such termination, [Lennon] shall be entitled to

1 reasonable compensation for [his] services to date of  
2 termination based upon the compensation provided for hereunder  
3 and the proportion or percentage of completion of the land  
4 acquisition, assembly and sale project referred to in  
5 [Travertine's business plan].

6 Management Agreement, § V.B.

7 The biggest dispute between the parties centers on the date  
8 upon which the compensation should be valued.<sup>10</sup> Debtors argue that  
9 Lennon's compensation should be measured based on the current value  
10 of Travertine's property. Travertine argues that Lennon should not  
11 receive the benefit of any appreciation in the value of the property  
12 after cessation of his involvement with the company. The trustee  
13 agreed with Travertine's position, and valued the claim accordingly.

14 While the Management Agreement is not a model of clarity, we  
15 find Travertine's position on this point to be more persuasive. As  
16 a general rule,

17 [d]amages for a breach of contract are to be determined as of  
18 the time of the occurrence of the breach . . . . Under this  
19 rule, later events such as fluctuations in value after the  
20 breach do not affect the measure of damages.

21 22 AM.JUR.2D DAMAGES § 78 (2004).

22 In any event, none of Travertine's arguments is specious. To  
23 be sure, debtors vigorously dispute Travertine's arguments, but the  
24 likelihood of a long, expensive legal battle only reinforces the  
25 propriety of the bankruptcy court's decision.

26 A compromise agreement allows the trustee and the creditor to  
avoid the expenses and burdens associated with litigating

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<sup>10</sup> Travertine also argues that, to the extent Lennon is  
entitled to any compensation, he must wait until such time as the  
property sells to collect.

1 sharply contested and dubious claims. The bankruptcy court  
2 need not conduct an exhaustive investigation into the validity  
3 of the asserted claim. It is sufficient that, after apprising  
4 itself of all facts necessary for an intelligent and objective  
5 opinion concerning the claim's validity, the court determines  
6 that . . . the outcome of the claim's litigation is doubtful.

7 In re Walsh Constr. Inc., 669 F.2d 1325, 1328 (9th Cir. 1982) (Act  
8 case) (citations and internal quotations omitted). The probability  
9 that debtors will succeed on the merits is, at the very least,  
10 questionable.<sup>11</sup> This factor weighs in favor of approval of the  
11 settlement.

12 (2) Collection Difficulties

13 There is no argument that there would be any difficulty  
14 collecting from Travertine.

15 (3) Risks and Expense

16 Debtors entirely ignore the potential risks, delays and costs  
17 associated with litigating the claim. The risks appear to be  
18 substantial because Travertine has repeatedly expressed its intent  
19 to litigate numerous procedural and substantive issues. In addition  
20 to the substantive issues discussed in section (1) above, Travertine  
21 argues that the claim dispute is not subject to arbitration and that  
22 it will move to have the arbitration dismissed. This factor weighs  
23 in favor of approval of the settlement because there is a

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24 <sup>11</sup> Debtors' failure to schedule the claim for compensation at  
25 any point in their original chapter 7 case, while under a continuing  
26 duty to disclose all assets, undermines their position that Lennon  
is entitled to compensation of \$15 million. Debtors filed their  
chapter 7 petition on July 16, 2001. Over three years later, on  
February 22, 2005, debtors filed their Notice to Amend Chapter 7  
Schedule disclosing the asset. It defies credulity to believe that  
debtors would overlook a \$15 million asset.



1 substantial likelihood of delay and expense absent a negotiated  
2 settlement.

3 (4) Wishes of Creditors

4 This factor supports approval of the settlement because the  
5 IRS, which is debtors' largest single creditor, supported the  
6 trustee's proposed settlement. The bankruptcy court properly relied  
7 on that fact in approving the settlement.

8 Lexington voiced its opposition to the settlement in its  
9 joinder to debtors' motion to convert to chapter 11. Debtors argue  
10 that the court erred because it did not consider Lexington's  
11 opposition to the settlement. We do not find this argument  
12 persuasive.

13 Just because the bankruptcy court approved the settlement does  
14 not mean that it failed to consider Lexington's opposition or the  
15 interests of the estate as a whole. No other creditor opposed the  
16 settlement. In addition, to the extent the bankruptcy court did  
17 give more weight to the position of the IRS, it was justified in  
18 doing so. Given the amount of priority tax claims, there was no  
19 reasonable prospect for recovery by general unsecured creditors in  
20 this case. A creditor's opposition to a proposed settlement while  
21 relevant, is not controlling. Such opposition should not prevent  
22 approval of the compromise where, as here, there is every indication  
23 that litigating the disputed claim "would be unsuccessful and  
24 costly." In re The General Store of Beverly Hills, 11 B.R. 539, 541  
25 (9th Cir. BAP 1981). See also A&C Properties, 784 F.2d at 1382.

1 In considering a proposed settlement, a court generally should  
2 give deference to a trustee's exercise of business judgment. In re  
3 Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 420 (9th  
4 Cir. BAP 2003). Debtors argue in their opening brief that the  
5 trustee's moving papers did not supply adequate evidence that the  
6 trustee properly exercised his business judgment in proposing the  
7 settlement. The problem with this argument is that it completely  
8 ignores the fact that the trustee gave extensive testimony at the  
9 hearing.

10 The trustee testified that he reviewed all aspects of the claim  
11 against Travertine and directed his attorneys to perform legal  
12 research. The trustee testified that he was influenced, in part, by  
13 legal advice he received that the Management Agreement was an  
14 executory contract that had been rejected pursuant to § 365(d) in  
15 debtors' chapter 7 case. The trustee also met with debtors and  
16 listened to their position. The trustee testified that the costs of  
17 litigation and the risks presented by Travertine's potential  
18 defenses factored into his decision.

19 Debtors have not established that the bankruptcy court abused  
20 its discretion in determining that the proposed settlement was fair  
21 and equitable and in the best interests of the estate. The  
22 bankruptcy court was well apprised of the facts surrounding the  
23 dispute in this case. In deciding to approve the compromise, the  
24 bankruptcy court canvassed the pertinent issues and gave due regard  
25 to the trustee's exercise of business judgment.

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CONCLUSION

The bankruptcy court did not abuse its discretion in reconverting debtors' case to chapter 7 and approving the settlement. We therefore AFFIRM.