

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

HOLMAN G. O'CONNOR

Case No. 81-13488 K

Debtor

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ORDER RE COMPENSATION OF  
MARY O'CONNOR

The facts are sui generis. A chapter 11 D-I-P was killed in a car accident. His non-debtor spouse stepped in to "become" the D-I-P, managing a far-flung farming enterprise through a period of transition, until an orderly conversion to Chapter 7.

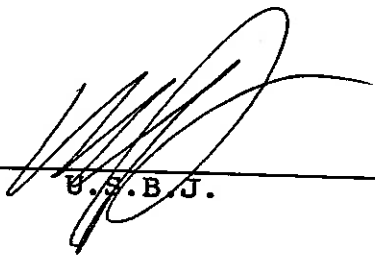
She thought she was getting a modest wage (\$5,000 per year) for those efforts on behalf of the estate that went beyond the scope of her personal interests, as she understood them. But there was no real D-I-P to make application for her employment. Furthermore, the attorney for the D-I-P, who she relied upon as to matters concerning the Chapter 11 estate, failed to get her appointed and eventually emigrated to a foreign land.

After her husband's death, there was no real effort toward reorganization, and it can thus be said that she was only a manager, and possibly not subject to 11 U.S.C. § 327(a). But on the other hand she was the individual most central to the administration of the estate. She was not unlike a trustee, and it is clear that the Court approved (off the record) her performance as such.

It is only the matter of compensation that is at issue. Under the unique facts of this case, I find that Mary O'Connor is entitled to compensation at the rate of \$5,000 per year from the date of her husband' death to the date of conversion to Chapter 7, such compensation to be paid as a Chapter 11 expense. I find that this Court would have approved an application to that effect had it been timely made, even if certain unsecured creditors had opposed. As a matter of law, had such application been made and approved, questions of "benefit" to the estate that arise only with benefit of hindsight would not require disallowance of compensation; duly appointed persons are not "guarantors" of beneficial results, and the result should be no different when formal appointment was overlooked through no fault of the applicant. The balance of Mrs. O'Connor's application is denied, as it is clear that the Trustee superseded her upon his appointment, and that he did not "employ" her under any circumstances that would entitle her to compensation.

SO ORDERED.

Dated: Buffalo, New York  
May 28, 1993

  
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U.S.B.J.