

In the United States Bankruptcy Court

for the Northern District of Iowa

AL WILLIAMS CORPORATION

Debtor.

Bankruptcy No. X90-00112S

Chapter 7

ORDER RE: APPLICATION FOR APPROVAL OF EMPLOYMENT OF EXPERT

Wil L. Forker, trustee, has applied to the court for its approval of his employment of an economist to testify in a pending state court case. The United States Trustee recommends that the application be approved.

Forker wants to hire Ralph Brown to provide expert testimony in economics in the case of Wil L. Forker, Trustee v. Maryland Casualty Co. et al, pending in the Iowa District Court for Woodbury County. The trustee presumably seeks the court's approval under 11 U.S.C. 327(a). This Code section provides that "the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons . . . to represent or assist the trustee in carrying out the trustee's duties under this title."

The court concludes that it is not necessary for the trustee to obtain court approval under 327 in order to retain a professional to be an expert witness in a pending state or federal court proceeding. The retention of an expert witness in pending litigation is part of a trial attorney's tactics or strategy. To require court approval in advance of the attorney's engagement of an expert with attendant notice to parties- in-interest and opportunity to object, would, in this court's view, improperly inhibit the attorney's management of his case. The retention of the expert is a litigation decision, not an administrative decision. The reasons for retaining a particular expert and the nature of his testimony are matters about which the trial attorney should initially retain some liberty. The allowance of the expert's fee and to which party the fee might be taxed should be left, in the first instance, to the trial court under its statutes, rules and procedures.

To the extent that the estate must compensate the expert, the court still maintains the authority to examine the fees as either an independent administrative expense of the estate, or as an aspect of the application for compensation filed by the attorney who hired the expert. Therefore, neither the trustee nor the attorney for the trustee has unfettered discretion to compensate the expert. Thus, although the court maintains the final authority to award compensation to the expert, it is not necessary for the trustee to seek the court's approval of the expert's retention. Support for this result is found in *In re Babcock Dairy Co. of Ohio, Inc.*, 70 B.R. 691 (Bankr. D. Ohio 1987).

IT IS ORDERED that the trustee's application for appointment of an expert witness is denied as unnecessary.

SO ORDERED ON THIS 13th DAY OF JANUARY, 1993.

William L. Edmonds
Chief Bankruptcy Judge