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Bankruptcy -- Attorney's Fees for Representing Conflicting Interests

vehicles,[11] storage rooms,[12] lodging rooms,[13] offices,[14] and public bowling alley lockers.[15]

The holding in the instant case is consistent with decisions rendered in all the cases where it has been found that the alleged bailee only had mutual but non-exclusive access to, or power of physical control over, premises and personal property of the alleged bailor. The principal case, one of only three appellate cases concerning coin operated lockers,[16] is in accord with an earlier decision, rendered by another court, against the defendant company withholding relief for loss of goods on bailment principles.[17]

BANKRUPTCY — ATTORNEY'S FEES FOR REPRESENTING CONFLICTING INTERESTS

An attorney was awarded fees for services rendered in connection with a corporate reorganization proceeding begun under § 77 B[1] of the Bankruptcy Act. His capacity was that of counsel for two sets of bondholders, one of which held "deficit series" bonds, while the other possessed bonds of the "surplus series". Since the latter was to be paid first, any successful argument by the attorney on behalf of the former would reduce the amount available to the "surplus series" bondholders. Judge Learned Hand *held*, that although fees are usually denied to attorneys who represent conflicting interests in corporate reorganization proceedings, an allowance should be granted but should be reduced by, at least, one-third. *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir. 1950).

Section 241[2] of the Bankruptcy Act gives to the Bankruptcy Court[3] the power to award reasonable compensation for services rendered by at-

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11. Ex Parte Mobile Light & Ry. Co., 211 Ala. 525, 101 So. 177 (1924); Suits v. Electric Park Amusement Co., *supra* note 5; Lord v. Oklahoma State Fair Ass'n, *supra* note 1 (in the preceding cases no car keys were left with parking lot personnel); *The Parking Lot Cases*, 27 GEO. L.J. 162.

12. Slaughter v. Levy, 214 Mo. App. 95, 257 S.W. 1063 (1924) (both landlord and tenant had keys to rented storage rooms).

13. Wills v. West, *supra* note 4 (tenant used lodging rooms for storage of personal property; landlord retained key thereto for purposes of maid service).

14. Broaddus v. Commercial Nat. Bank of Muskogee, *supra* note 5 (landlord had pass key and rendered janitor service).

15. Cornelious v. Berinstein, 183 N.Y. Misc. 685, 50 N.Y.S.2d 186 (Sup. Ct. 1944) (locker accessible to alley operator and person who rented locker).

16. Marsh v. American Locker Co., 72 A.2d 343 (Super. Ct. N.J. 1950); Dyer v. American Locker Co., 72 N.Y.S.2d 451 (1st Dep't. 1947) (per curiam); Keleman v. American Locker Co., 182 N.Y. Misc. 1058, 47 N.Y.S. 2d 411 (City Ct. 1944) (latter case decided on question of neligence, not bailment).

17. Dyer v. American Locker Co., *supra* note 16.

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1. 30 STAT. 544 (1898), as amended 11 U.S.C. 1 *et seq.* (1946).

2. 52 STAT. 900 (1938), 11 U.S.C. 641 (1946).

3. Leiman v. Guttman, 336 U.S. 1 (1949); Brown v. Gerdes, 321 U.S. 178 (1944).

torneys.[4] This authorization grants to the court a wide latitude in the allowance of fees,[5] which will not be reversed unless it is clearly abused.[6] Such discretion is only modified by the doctrine that the services rendered must be of benefit to the final reorganization plan.[7] The guideposts, that have been established to determine what the reasonable compensation is, are: the extent and nature of the services;[8] the time and labor involved;[9] the character and importance of the matter in hand;[10] the value of property or the amount of money involved;[11] the learning, skill and experience exercised;[12] the results accomplished[13] with particular relation to losses sustained by security holders and their creditors;[14] the ability to pay;[15] and the absoluteness or contingency of the fees.[16] What a comparable fee in private employment would be is no criterion[17] since attorneys in reorganization proceedings are held to act in a quasi-public capacity.[18] Nor is the fact that no debtor, bondholder, debenture-holder, or creditor resisted the application for allowances of influence upon the court.[19]

The general policy of the court is to be economical in these proceed-

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4. Woods v. City Bank & Trust Co. of Chicago, 312 U.S. 262 (1941); Newman & Bisco v. Realty Associates Securities Corp., 173 F.2d 609 (2d Cir. 1949); *In re* Universal Lubricating Systems, Inc., 165 F.2d 664 (3d Cir. 1947); Eddy v. Kelby, 163 F.2d 56 (2d Cir. 1947); *In re* Detroit International Bridge Co., 111 F.2d 235 (6th Cir. 1940); *In re* Consolidated Motor Parts, Inc., 85 F.2d 579 (2d Cir. 1936).

5. Gochenour v. Cleveland Terminals Bldg. Co., 142 F.2d 991 (6th Cir. 1944); Shnader v. Reading Hotel Corp., 105 F.2d 572 (3d Cir. 1939); Silver v. Senllin Steel Co., 98 F.2d 503 (8th Cir. 1938); *In re* A. Herz, Inc., 81 F.2d 511 (7th Cir. 1936).

6. *In re* 32-36 North State St. Bldg. Corp., 164 F.2d 205 (7th Cir. 1947); *In re* Seville Court Apartments Bldg. Corp., 134 F.2d 232 (7th Cir. 1943); Silver v. Scullin Steel Co., *supra* note 5.

7. 52 STAT. 900 (1938); 11 U.S.C. 643 (1946); Warren v. Palmer, 132 F.2d 665 (2d Cir. 1942); Cooke v. Bowersock, 122 F.2d 977 (8th Cir. 1941) (beneficial services can be objecting to plans proposed by others); Greensfelder v. St. Louis Public Service Co., 114 F.2d 536 (8th Cir. 1940) (compensation for services rendered in matters collateral to or indirectly affecting the proceedings should not be allowed); Sullivan & Cromwell v. Colorado Fuel & Iron Co., 96 F.2d 219 (10th Cir. 1938); *In re* Star Electric Motor Co., 67 F. Supp. 58 (D. N.J. 1946).

8. Oklahoma Ry. v. Johnston, 155 F.2d 500 (10th Cir. 1946); *In re* Hydraulic Machinery, 87 F. Supp. 666 (E.D. Mich. 1949); *In re* Star Electric Motor Co., *supra* note 7; *In re* Mortgage Guarantee Co., 40 F. Supp. 226 (D. Md. 1941).

9. Oklahoma Ry. v. Johnston, *supra* note 8; Teasdale v. Sefton Nat. Fibre Can Co., 85 F.2d 379 (8th Cir. 1936); *In re* Hydraulic Machinery, *supra* note 8.

10. Oklahoma Ry. v. Johnston, *supra* note 8; *In re* Hydraulic Machinery, *supra* note 8; *In re* Star Electric Motor Co., *supra* note 7.

11. *In re* Hydraulic Machinery, *supra* note 8; *In re* Star Electric Motor Co., *supra* note 7; *In re* Mortgage Guarantee Co., *supra* note 8.

12. Oklahoma Ry. v. Johnston, *supra* note 8; *In re* Hydraulic Machinery, *supra* note 8.

13. Oklahoma Ry. v. Johnston, *supra* note 8; Teasdale v. Sefton Nat. Fibre Can Co., *supra* note 9; *In re* Star Electric Motor Co., *supra* note 7; *In re* Mortgage Guarantee Co., *supra* note 8.

14. *In re* Star Electric Motor Co., *supra* note 7; *In re* Mortgage Guarantee Co., *supra* note 8.

15. Oklahoma Ry. v. Johnston, *supra* note 8; *In re* Hydraulic Machinery, *supra* note 8.

16. *In re* Hydraulic Machinery, *supra* note 8.

17. London v. Snyder, 163 F.2d 621 (8th Cir. 1947); Stark v. Woods Bros. Corp., *supra* note 7.

18. Stark v. Woods Bros. Corp., *supra* note 7.

19. *In re* Detroit International Bridge Co., *supra* note 4.

ings,[20] therefore its primary duty is to ascertain the maximum amount allowable for the administration of an estate before it gives any consideration to the fees.[21] Although § 243,[22] which requires that the services be beneficial to the plan to be compensable,[23] is to be construed liberally,[24] the courts have refused compensation in several instances where the services were of benefit but where circumstances justified its denial.[25] Such circumstances arise—when the attorney originally expected payment of his fees by a private party;[26] when he has bought or sold stocks of the debtor corporation while working on the reorganization plan;[27] when he has duplicated work done by another attorney;[28] or when he has represented conflicting interests.[29]

In furthering the economy doctrine, the pattern has been so set that where any of the preceding circumstances exist the fees have been denied completely.[30] Good faith, lack of fraud, and benefit to clients have been held to be unavailable defenses to the attorney representing conflicting interests,[31] since it was well settled, prior to the noted case, that where conflict exists no more need be shown to support a denial of compensation.[32]

The instant decision is an extreme departure from the doctrine that fees are to be denied completely where the attorney is representing conflicting interests. This is evidenced by the allowance of partial fees, in the present case, although the attorney was acting to the detriment of both parties, as compared to a prior decision, which denied any compensation in spite of the fact that the attorney's actions were of benefit to the interested parties.[33]

Section 241, which allows reasonable compensation, does not require that fees be denied entirely where an attorney is representing conflicting

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20. Brown v. Gerdes, *supra* note 3; London v. Snyder, *supra* note 17; Gochenour v. Cleveland Terminals Bldg. Co., *supra* note 5; *In re* Standard Gas & Electric Co., 106 F.2d 215 (3d Cir. 1939).

21. Application of Pinetree Associates, Inc., 77 F. Supp. 270 (E.D. N.Y. 1948).

22. 52 STAT. 900 (1938); 11 U.S.C. 643 (1946).

23. See note 5 *supra*.

24. *In re* Mortgage Guarantee Co., *supra* note 8.

25. Woods v. City Bank & Trust Co. of Chicago, *supra* note 4; *In re* 32-36 North State St. Bldg Corp., *supra* note 6; London v. Snyder, *supra* note 17; *In re* Sheridan View Bldg. Corp., 154 F.2d 1008 (7th Cir. 1946); Greensfelder v. St. Louis Public Service Co., *supra* note 7; *In re* Standard Gas & Electric Co., *supra* note 20; *In re* Forty-One Thirty-Six Wilcox Bldg. Corp., 100 F.2d 588 (7th Cir. 1938); *In re* A. Herz, Inc., *supra* note 5; United States v. Apple, 292 Fed. 935 (8th Cir. 1923); *In re* Star *Electric* Motor Co., *supra* note 7; *In re* Midland United Co., 64 F. Supp. 399 (D. Del. 1946).

26. Greensfelder v. St. Louis Public Service Co., *supra* note 7.

27. 52 STAT. 901 (1938), 11 U.S.C. 649 (1946); Berner v. Equitable Office Bldg. Corp., 175 F.2d 218 (2d Cir. 1949).

28. Stein v. Hemker, 157 F.2d 740 (8th Cir. 1946); *In re* Standard Gas & Electric Co., *supra* note 20.

29. Woods v. City Bank & Trust Co. of Chicago, *supra* note 4; *In re* 32-36 North State St. Bldg. Corp., *supra* note 6; London v. Snyder, *supra* note 17; United States v. Apple, *supra* note 25; *In re* Midland United Co., *supra* note 25.

30. See note 24 *supra*.

31. Woods v. City Bank & Trust Co. of Chicago, *supra* note 4.

32. See note 28 *supra*.

33. Loew v. Gillespie, 90 Misc. 616, 153 N.Y. Supp. 830 (1915), *aff'd*, 173 App. *Div.* 889, 157 N.Y. Supp. 1133 (1st Dep't 1915).

interests. This writer suggests that *reasonable compensation* should be considered as *reasonable under the surrounding circumstances*, and that instead of perfunctorily denying compensation where the attorney has represented conflicting interests, the court should consider the merits of the case and allow partial fees where warranted.

CONFLICT OF LAWS—DOING BUSINESS—NOTICE BY REGISTERED MAIL TO FOREIGN CORPORATIONS

Appellant, a mutual insurance corporation, conducted all business by mail with citizens of another state, using existing members to solicit applicants. Appellant failed to comply with a state statute, where the insurance was solicited which required those selling certificates of insurance to register with the State Corporation Commission.[1] Acting under the statute, the State Corporation Commission issued a cease and desist order, based on service by registered mail, restraining further violation of the act. *Held*, that under the Fourteenth Amendment,[2] service by registered mail satisfied due process since the activities of the non-resident corporation constituted continuing relationships and obligations with citizens of the state, thereby subjecting it to the authority of the state. *Travelers Health Ass'n v. Virginia*, 70 Sup. Ct. 927 (1950).

It is established that an in personam judgment cannot be based on service by registered mail on an individual or corporation, neither of whom are present in the state issuing such judgment.[3] In determining whether a corporation, which is domiciled elsewhere, is present within a state, the courts have held that if a corporation is doing business within a state it is subject to the jurisdiction of the forum.[4] Whether a foreign corporation may be held to be doing business within a state is a question of fact, the determination of which depends on the effect of all actions in the state involved.[5] Generally the presence of corporate property and agents, conducting corporate activities, is requisite to doing business within another state.[6] However, in *International Shoe Company v. Washington*,[7] the Court re-

1. VA. CODE § 3848(47) et seq. (1942).
2. U.S. CONST. AMEND. XIV.
3. Old Wayne Mutual Life Ass'n v. McDonough, 204 U.S. 8 (1907); Pennoyer v. Neff, 95 U.S. 714 (1877).
4. Louisville & N. R.R. v. Chatters, 279 U.S. 320 (1929); England Mutual Life Ins. Co. v. Woodworth, 111 U.S. 138 (1884); Union Mutual Life Ins. Co. of Iowa v. Bailey, 99 Colo. 570, 64 P.2d 1267 (1937).
5. Frene v. Louisville Cement Co., 134 F.2d 511 (1943); Bootes Hatcheries & Packing Co. v. Superior Court, 91 Cal.2d 526, 205 P.2d 31 (1949) (presence of single agent within state); Union Mutual Life Ins. Co. of Iowa v. Bailey, *supra* note 4; Minnesota Tribune Co. v. Comm't, 228 Minn. 452, 37 N.W.2d 737 (1949); Hastings v. Piper Aircraft Corp., 84 N.Y.S.2d 580, 274 App. Div. 435 (1948).
6. Philadelphia & Reading Ry. v. McKibbin, 243 U.S. 264 (1917); Allgeyer v. Louisiana, 165 U.S. 578 (1897); State v. Winstead, 66 Idaho 504, 162 P.2d 894 (1945); *accord*, Minnesota Commercial Men's Ass'n v. Benn, 261 U.S. 140 (1923).
7. 326 U.S. 310, 324 (1945).