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[Home](#) > Memorandum of Decision Re: Chapter 7 Trustee Compensation in Case Converted to Chapter 13

Sunday, June 11, 2000

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

In re

JAMES and LINDA FERRIS,

No. 99-13328

[Debtor](#)(s).

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**Memorandum of Decision**

Section 706(a) of the [Bankruptcy Code](#) gives a [Chapter 7](#) debtor the right to convert a Chapter 7 case to a [Chapter 13](#) case at any time. Debtors James and Linda Ferris commenced this case as a Chapter 7 case on November 1, 1999. Raymond Carey was appointed [trustee](#). Diligently pursuing his duties as trustee, and with considerable effort, Carey determined that the debtors had significant assets which could be liquidated for the benefit of creditors. The debtors had not expected the trustee to pursue his duties so aggressively. When they saw that the trustee was intent on liquidating their assets, they converted the case to Chapter 13. They obtained [confirmation](#) of a [plan](#) which pays to creditors \$53,000.00. All parties agreed that this was the amount Carey would have recovered for creditors if the case had remained in Chapter 7. The issue now before the court is Carey's compensation. The debtors agreed, as part of the Chapter 13 confirmation process, that Carey could have an allowed administrative [claim](#) of \$6,066.76, subject to

objection by other parties. The [United States Trustee](#)<sup>i</sup> has objected. She acknowledges that Carey did an excellent job, and deserves to be compensated. She agrees that it would be unfair not to compensate him. However, she concludes that the statutory framework of the Bankruptcy Code does not permit him to be compensated. The court is not prepared to abandon fairness so quickly. In a Chapter 7 case, the trustee's compensation is limited by the amount of money he or she distributes to creditors. The [U.S. Trustee](#)<sup>i</sup> argues that since the debtors converted the case before Carey could actually liquidate and distribute anything, he can have no compensation even though there is \$53,000.00 being distributed to creditors as a direct result of his efforts. The U.S. Trustee concedes that there are no appellate cases on the issue. She acknowledges that there are numerous reported bankruptcy court cases which, on various theories, have allowed compensation to the Chapter 7 trustee in cases like this. She argues: "It may well be that the Congress overlooked the necessity to compensate trustees [in cases converted to Chapter 13] , however, the strict or literal reading of the statute cannot be obviated based on equitable concerns." There are two flaws in the U.S. Trustee's argument. Firstly, a literal reading of the Bankruptcy Code does not forbid compensation in this situation; it is merely silent on the subject. Secondly, the Ninth Circuit has made it clear in at least two cases that equitable concerns do come into play in compensation issues. There is no provision in the Bankruptcy Code for the payment of fees to a debtor's counsel in a Chapter 7 case, even where that counsel provides valuable services to the estate. Nonetheless, in In re Century Cleaning Services, Inc., 195 F.3d 1053, 1060 (9<sup>th</sup> Cir. 1999), the court allowed such fees, determining that omission of a provision for such fees was a "mistake" and that policy considerations dictate that such compensation be allowed. Likewise, in In re Hines, 147 F.3d 1185, 1190-91 (9<sup>th</sup> Cir. 1998), the court ruled that Congress' failure to correct a compensation issue "in express terms" justified the allowance of compensation seemingly at odds with the Bankruptcy Code. The policies at issue here are even stronger than those considered by the courts in Century Cleaning and Hines. Those cases dealt with compensation of attorneys who are free to accept or reject cases and who have no statutory duties to the estate. This case involves a panel trustee assigned to a case and charged with statutory responsibilities to maximize return to creditors. There is no justice in denying him compensation for a job done diligently and effectively. Moreover, the Bankruptcy Code does not contain the prohibitions the U.S. Trustee says it does. It is certainly true that § 326(a) provides that in a Chapter 7 case the court may not award a trustee more than specified percentages of moneys disbursed. However, *this is not a Chapter 7 case*. The Bankruptcy Code places no restriction on the compensation which may be paid to a Chapter 7 trustee *when the case is no longer in Chapter 7*. When the Bankruptcy Code does not specifically forbid compensation, Century Cleaning makes it clear that the court should do what is right, just, and consistent with the intent of Congress and the policies underlying the Bankruptcy Code. Statutory justification lies in § 105(a), if nowhere else. Even the U.S. Trustee admits there is no justice in denying compensation to Carey. Injustice is not, as the U.S. Trustee argues, mandated in this situation. Accordingly, the objection of the U.S. Trustee to Carey's compensation will be overruled. Counsel for Carey shall submit an appropriate form of order.

Dated: June 11, 2000

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

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