

1 11 U.S.C. § 326  
2 11 U.S.C. § 327  
3 11 U.S.C. § 330  
4 11 U.S.C. § 348  
5 11 U.S.C. § 507  
6 11 U.S.C. § 1322  
7 Conversion  
8 Trustee Compensation

6 In re Douglas R. Colburn Case No. 398-  
32210-rld13  
7 In re Alan D. Macklin and Brenda J. Lindsey-Macklin Case No.  
398-33273-rld13

8 3/22/99 RLD Published  
9 Or.) 1999 WL 166508 (Bankr. D.

10  
11 The debtors filed voluntary "no asset" chapter 7 petitions.  
12 After investigation by the chapter 7 trustees revealed that assets  
13 might be available to creditors, the debtors converted their cases  
14 to chapter 13, prior to the collection of any funds by the chapter 7  
15 trustees for the benefit of creditors. The displaced chapter 7  
16 trustees filed claims in the chapter 13 cases seeking compensation.

17 The court found that conversion of a chapter 7 case to chapter  
18 13 before funds are collected and disbursed by the chapter 7 trustee  
19 does not preclude compensation to the chapter 7 trustee. 11 U.S.C.  
20 § 330 authorizes compensation and reimbursement of expenses for  
21 officers of the bankruptcy estate, including trustees. 11 U.S.C. §  
22 326(a) limits chapter 7 trustee compensation, but it does not  
23 preclude chapter 7 trustee compensation in cases that are dismissed  
24 on the debtor's motion or converted to chapter 13 prior to  
25 disbursement or turnover of any funds or assets by the chapter 7  
26 trustee. In addition, because the functions of chapter 7 trustees  
and chapter 13 trustees are fundamentally different, applying 11  
U.S.C. § 326(c) as a limiting factor for trustee compensation would  
be inappropriate. The court held that the chapter 7 trustees in  
these cases were entitled to reasonable compensation based upon the  
facts of the cases. The compensation was to be paid as an  
administrative expense pursuant to 11 U.S.C. §§ 503(b), 507(a)(1),  
and 1322(a)(2).

23 In the Macklin case, the chapter 7 trustee had submitted an  
24 itemization of time he and his paralegals had spent in the case.  
25 The court disallowed fees the chapter 7 trustee had requested for  
26 preparing his fee application because 11 U.S.C. § 348(e) provides  
that the conversion of the case terminated the chapter 7 trustee's  
services. The court then applied a "lodestar" standard and awarded  
compensation to the trustee based upon the time he and his staff  
spent in the chapter 7 case multiplied by the normal billing for  
each person who performed services for the trustee. In addition,  
because the chapter 7 trustee achieved "extraordinary results," the

1 court enhanced the fee award by a factor of two. Because this  
2 matter had proceeded on a claim objection and because the requested  
3 fees had not been noticed to all creditors, the court approved the  
fees subject to notice to all creditors with an opportunity for  
hearing.

4 In the Colburn case, the court scheduled a further hearing to  
5 allow the chapter 7 trustee to present evidence as to reasonable  
compensation.

6 In addition, the chapter 7 trustee in the Colburn case had  
7 hired counsel prior to the conversion of the case. The attorney for  
the chapter 7 trustee also filed a claim in the chapter 13 case. A  
8 creditor in the chapter 13 case objected to the attorney's claim.  
The court found that the attorney, having had his employment  
9 approved pursuant to 11 U.S.C. § 327(a), was entitled to reasonable  
compensation for his services pursuant to § 330, and that the  
10 compensation was to be treated as an administrative expense of the  
chapter 13 case pursuant to §§ 503(b)(2), 507(a)(1) and 1322(a)(2).  
11 A further hearing was scheduled to determine the amount of the  
attorney's reasonable compensation.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	
	)	Bankruptcy Case
DOUGLAS R. COLBURN,	)	No. 398-32210-rld13
	)	
Debtor.	)	
_____	)	
ALAN D. MACKLIN	)	Bankruptcy Case
BRENDA J. LINDSEY-MACKLIN,	)	No. 398-33273-rld13
	)	
	)	
Debtors.	)	MEMORANDUM OPINION
_____	)	

17           These Chapter 13 cases are before me on objections to the  
18 proofs of claims filed by the former Chapter 7 trustees, and  
19 trustee's counsel in the Colburn case. I have consolidated these  
20 cases for purposes of this Memorandum Opinion only, because they  
21 present a common issue for my decision.

22           Following the hearings held in the Colburn case on March 4,  
23 1999, and the Macklin case on March 8, 1999, I have reviewed my  
24 notes, the parties' submissions and relevant legal authority. The  
25 findings that I set forth in this Memorandum Opinion are designated  
26 as the court's findings under Fed. R. Civ. P. 52(a), applicable in

1 this contested matter under Fed. R. Bankr. P. 9014.

2 **Facts**

3 In re Douglas R. Colburn, Case No. 398-32210-rld13. Douglas  
4 R. Colburn ("Colburn") filed a voluntary Chapter 7 "no asset"  
5 petition on March 27, 1998. Michael A. Grassmueck, Inc.  
6 ("Grassmueck") was the duly appointed Chapter 7 trustee. Grassmueck  
7 objected to Colburn's claim for a wage exemption on the basis that  
8 Colburn had testified at the § 341(a)<sup>1</sup> Meeting of Creditors that the  
9 "wages" were actually accounts receivable from Colburn's janitorial  
10 business. Grassmueck also sought a court order requiring that  
11 Colburn turn over to the trustee the sum of \$2,600, which  
12 represented the proceeds of accounts receivable from the business.  
13 Colburn timely requested a hearing on the objection to exemption and  
14 the request for a turnover order. After the parties had fully  
15 briefed the issue of whether the funds Grassmueck sought were exempt  
16 wages as opposed to accounts receivable, but before the hearing  
17 scheduled to resolve the issue, the court entered an order on  
18 Colburn's motion to convert the case to a case under Chapter 13.  
19 Grassmueck asserts a right to compensation for having, through  
20 investigation, "found" an asset of the estate valued at \$2,600.

21 At the same time Grassmueck was challenging Colburn's wage  
22 exemption, Sydney Nilsen ("Nilsen") was prosecuting a non-  
23 dischargeability and quiet title adversary proceeding against  
24 Colburn. Nilsen, Colburn's former mother-in-law, alleged that

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25 <sup>1</sup> Unless otherwise indicated, all statutory references are  
26 to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.

1 Colburn incurred \$15,000 of debt on Nilsen's credit cards and  
2 encouraged Nilsen to transfer an interest in her home so that he  
3 could obtain a loan for their mutual benefit. The loan, in the  
4 amount of \$75,000, was secured by Nilsen's home. The loan proceeds  
5 were used as follows: \$30,000 to pay Colburn's debts, \$15,000 to  
6 pay the credit card obligations Colburn had incurred on Nilsen's  
7 cards, \$20,000 to pay off a vehicle loan for a third party (Colburn  
8 was a co-signor on the loan), and loan origination fees in an  
9 undisclosed amount. Nilsen sought to have Colburn's interest in her  
10 home rescinded based upon allegations of fraud. Colburn had not  
11 listed an interest in Nilsen's home in his schedules. Grassmueck  
12 obtained court approval to hire Thomas Renn ("Renn") to represent  
13 him in seeking to recover approximately \$11,000 for the estate based  
14 upon Colburn's interest in Nilsen's home.

15       Following the conversion to Chapter 13, Grassmueck filed a  
16 Final Report in the Chapter 7 case stating that he had neither  
17 collected nor disbursed funds. The report claims a commission in  
18 the amount of \$3,469.95 and expenses of \$56.66, and Grassmueck filed  
19 an Application for Chapter 7 Professional Compensation (Claim No. 2)  
20 in Colburn's Chapter 13 case, seeking payment of these sums as an  
21 administrative expense. The commission amount is the maximum  
22 commission set forth in 11 U.S.C. § 326(a) based on distributions  
23 totaling \$13,600, the amount Grassmueck asserts would have been  
24 distributed to creditors from the Chapter 7 estate. Both Colburn  
25 and Nilsen objected to Claim No. 2.

26       Renn also filed an Application for Chapter 7 Professional

1 Compensation (Claim No. 9) seeking payment of \$1,225.00  
2 (representing 9.8 hours of services at \$125.00/hr), for professional  
3 services performed, as an administrative expense. Nilsen objected  
4 to Claim No. 9.

5 The parties briefed the issues, and argument on the  
6 objections was heard March 4, 1999.

7 In re Alan D. Macklin and Brenda J. Lindsey-Macklin, Case No.  
8 398-33273-rld13. Alan D. Macklin and Brenda J. Lindsey-Macklin (the  
9 "Macklins") filed a voluntary Chapter 7 "no asset" petition on  
10 May 1, 1998. John Mitchell ("Mitchell") was the duly appointed  
11 Chapter 7 trustee. Mitchell objected to the Macklins' claim for an  
12 exemption in a personal injury annuity. Mitchell obtained court  
13 approval to employ Daniel Vidas and the law firm of Dunn, Carney to  
14 represent him in opposing the Macklins' claim of exemption in the  
15 annuity. After the parties had fully briefed the issue regarding  
16 the Macklins' entitlement to an exemption in the annuity, the  
17 Macklins conceded that the annuity proceeds were not exempt and  
18 moved to convert their case to Chapter 13.

19 Mitchell filed the Final Report in the Chapter 7 case stating  
20 that he had neither collected nor disbursed funds. The report  
21 claims a commission in the amount of \$4,250 and expenses of \$8.55,  
22 and Mitchell filed an Application for Chapter 7 Professional  
23 Compensation (Claim No. 3) seeking payment of these sums as an  
24 administrative expense in the Macklins' Chapter 13 case. The  
25 commission amount is the maximum commission set forth in 11 U.S.C.  
26 § 326(a) based on distributions totaling \$35,000, the amount

1 Mitchell asserts would have been distributed to pay unsecured  
2 creditors in full from the Chapter 7 estate.<sup>2</sup> The Macklins objected  
3 to Claim No. 3.<sup>3</sup>

4 The issue common to these cases is whether a Chapter 7  
5 trustee is entitled to any compensation, beyond the statutory  
6 minimum provided for in § 330(b) of the Bankruptcy Code, when a case  
7 is converted to Chapter 13 prior to the receipt and disbursement of  
8 any funds by the Chapter 7 trustee. The Colburn case presents the  
9 additional issue as to whether counsel for a Chapter 7 trustee,  
10 employed pursuant to § 327(a), is entitled to compensation for  
11 services performed for the benefit of the Chapter 7 estate, where  
12 the case is converted to Chapter 13 before any assets have been  
13 collected and liquidated in Chapter 7. I will deal first with the  
14 issue of Chapter 7 trustee compensation.

15 A. A Chapter 7 trustee may be entitled to compensation if  
16 the case is converted to Chapter 13 before any funds are collected  
17 and disbursed by the trustee.

18 1. Sections 330 and 326(a): Provisions for allowance and  
19 limitation of Chapter 7 trustee compensation.

20  
21 <sup>2</sup> In his proof of claim, Mitchell asserts that the Macklins'  
22 annuity has a present value of \$100,000. The Macklins listed  
23 unsecured nonpriority claims totaling \$34,240 in their original  
24 Chapter 7 Schedules, but in their Summary of Schedules, the Macklins  
included a total of \$35,233 for unsecured nonpriority claims. These  
numbers are unchanged in the Macklins' Chapter 13 Schedules.

25 <sup>3</sup> Vidas and Dunn, Carney have filed an Application for  
26 Chapter 7 Professional Compensation (Claim No. 14). As of the date  
of this Memorandum Opinion, the Macklins have not objected to Claim  
No. 14.

1           The primary provisions of the Bankruptcy Code relating to  
2 trustee compensation are set forth in §§ 326 and 330. Section  
3 330(a) (1) provides in relevant part:

4           After notice to the parties in interest and the United  
5 States Trustee and a hearing, and subject to sections  
6 326, 328, and 329, the court may award to a  
7 trustee... (A) reasonable compensation for actual,  
8 necessary services rendered by the trustee...and by  
9 any paraprofessional person employed by any such  
10 person; and (B) reimbursement for actual, necessary  
11 expenses. (Emphasis added.)

12           Section 330 authorizes compensation and reimbursement of  
13 expenses for officers of the bankruptcy estate, including trustees.  
14 It further prescribes the standards for determining the amount of  
15 reasonable compensation to be approved. See H. Rept. No. 95-595 to  
16 accompany H.R. 8200, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977) at pp. 329-30.  
17 However, § 330 expressly is subject to the provisions of § 326,  
18 which sets limits to trustee compensation.

19           Section 326(a) provides:

20           In a case under chapter 7 or 11, the court may allow  
21 reasonable compensation under section 330 of this  
22 title of the trustee for the trustee's services,  
23 payable after the trustee renders such services, not  
24 to exceed 25 percent on the first \$5,000 or less, 10  
25 percent on any amount in excess of \$5,000 but not in  
26 excess of \$50,000, 5 percent on any amount in excess  
of \$50,000 but not in excess of \$1,000,000, and  
reasonable compensation not to exceed 3 percent of  
such moneys in excess of \$1,000,000, upon all moneys  
disbursed or turned over in the case by the trustee to  
parties in interest, excluding the debtor, but  
including holders of secured claims. (Emphasis  
added.)

27           The legislative history emphasizes that § 326(a) does not prescribe  
28 appropriate compensation for trustees. "This section simply fixes



1 the maximum compensation of a trustee....The limits in this section,  
2 together with limitations found in section 330, are to be applied as  
3 outer limits, and not as grants or entitlements to the maximum fees  
4 specified." H. Rept. No. 95-595 to accompany H.R. 8200, 95<sup>th</sup> Cong.,  
5 1<sup>st</sup> Sess. (1977) at pp. 327, 328.

6 At least one court has interpreted § 326(a) as literally  
7 precluding any compensation to Chapter 7 trustees in converted cases  
8 where no moneys have been disbursed or turned over during the  
9 Chapter 7 proceedings, beyond the minimum provided in § 330(b). See  
10 In re Fischer, 210 B.R. 467 (Bankr. D. Minn. 1997).

11 However, I agree with the majority of courts that have  
12 considered this issue and have determined that § 326(a) does not  
13 preclude Chapter 7 trustee compensation in cases that are dismissed  
14 on the debtor's motion or converted to Chapter 13 prior to  
15 completion of Chapter 7 administration.<sup>4</sup> See, e.g., In re Berry,  
16 166 B.R. 932 (Bankr. D. Or. 1994); In re Tweeten Funeral Home, PC,  
17 78 B.R. 998 (Bankr. D.N.D. 1987); In re Stabler, 75 B.R. 135 (Bankr.  
18 M.D. Fla. 1987); In re Woodworth, 70 B.R. 361 (Bankr. N.D.N.Y.  
19 1987); In re Parameswaran, 64 B.R. 341 (Bankr. S.D.N.Y. 1986); In re  
20 Smith, 51 B.R. 273 (Bankr. D.D.C. 1984); In re Pray, 37 B.R. 27  
21 (Bankr. M.D. Fla. 1983); In re Flying S Land & Cattle Company, Inc.,  
22 23 B.R. 56 (Bankr. C.D. Cal. 1982); and In re Rennison, 13 B.R. 951  
23 (Bankr. W.D. Ky. 1981).

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25 <sup>4</sup> Such compensation and reimbursement of actual and  
26 necessary expenses constitute administrative expenses in the Chapter  
13 case, consistent with the provisions of § 348(d). See, e.g., In  
re Bottone, 226 B.R. 290, 295-96 (D. Mass. 1998).

1 I have come to this conclusion based both upon the language  
2 of § 326(a) and its function in the scheme of the Bankruptcy Code.

3 Reasonable compensation to trustees is determined under the  
4 standards of § 330. See In re Financial Corp. of America, 114 B.R.  
5 221, 223-24 (9<sup>th</sup> Cir. BAP 1990), aff'd, 946 F.2d 689 (9<sup>th</sup> Cir. 1991).  
6 Section 326 acts independently as a limit on trustee compensation.  
7 Id. By its terms, § 326(a) limits trustee compensation to certain  
8 percentages of "all moneys disbursed or turned over in the case by  
9 the trustee to parties in interest, excluding the debtor..." in "a  
10 case under chapter 7 or 11." In other words, it limits compensation  
11 to trustees in Chapter 7 or 11 cases where funds in fact have been  
12 distributed to parties in interest other than the debtor. However,  
13 the terms of § 326(a) do not address the circumstances of Chapter 7  
14 cases where assets have been found, that convert to Chapter 13  
15 before assets are liquidated and disbursed. Such cases often  
16 require the Chapter 7 trustee to render substantial services for the  
17 benefit of the estate prior to conversion, as mandated by § 704<sup>5</sup>--  
18 services for which the Chapter 7 trustee would receive no reasonable  
19 compensation if the terms of § 326(a) were extended to cover such  
20 cases. Such a result cannot have been intended and is unwarranted  
21 in light of the specific language used in § 326(a).

22 The Colburn and Macklin cases no longer are Chapter 7 cases,  
23 as they both have been converted to Chapter 13, and no funds were

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25 <sup>5</sup> Section 704 provides that "[t]he trustee shall--(1)  
26 collect and reduce to money the property of the estate for which  
such trustee serves ... [and] (4) investigate the financial affairs  
of the debtor...." (Emphasis added.)

1 disbursed or turned over to interested parties in either case by the  
2 Chapter 7 trustee prior to conversion. In such cases, by its terms,  
3 read literally, § 326(a) simply does not apply to preclude trustee  
4 compensation.

5 2. Section 326(c) does not limit Chapter 7 trustee  
6 compensation in a case converted to Chapter 13.

7 At the Colburn hearing, counsel for Nilsen argued that if  
8 § 326(a) did not preclude Chapter 7 trustee compensation entirely  
9 following conversion to Chapter 13, § 326(c) would limit the  
10 aggregate compensation of the Chapter 7 and Chapter 13 trustees to  
11 the Chapter 13 trustee compensation limit set forth in § 326(b).  
12 Section 326(c) provides that "[i]f more than one person serves as  
13 trustee in the case, the aggregate compensation of such persons for  
14 such service may not exceed the maximum compensation prescribed for  
15 a single trustee by subsection (a) or (b) of this section, as the  
16 case may be."

17 Section 326(c) was designed to solve a perceived problem in  
18 liquidating cases under the Bankruptcy Act where the receiver and  
19 the succeeding trustee could receive maximum compensation for  
20 performing the same functions, i.e., liquidating the same assets.  
21 Such "double dipping," especially in cases where the receiver and  
22 the trustee were the same individual, was regarded justifiably as  
23 contrary to the interests of creditors and as needlessly inflating  
24 the costs of administration. See, e.g., H. Rept. No. 95-595 to  
25 accompany H.R. 8200, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977) at pp. 327, 328; In  
26 re Yale Mining Corp., 59 B.R. 302, 303-06 (Bankr. W.D. Va. 1986).

1           Section 326(c) addresses potential abuses arising from more  
2 than one trustee serving in the same case and seeking compensation  
3 independently for performing the same functions. What it does not  
4 address is the situation in a converted case where trustees, working  
5 independently, perform different functions.

6           A Chapter 7 trustee's duties encompass investigating,  
7 liquidating, handling and distributing assets of the Chapter 7  
8 estate. See § 704. While a Chapter 13 trustee performs some of the  
9 same or similar investigative and fiduciary functions of a Chapter 7  
10 trustee, the work of the Chapter 13 trustee is focused primarily on  
11 administration of the Chapter 13 debtor's plan, a very different  
12 job. See § 1302.

13           Since the functions of Chapter 7 and Chapter 13 trustees are  
14 fundamentally different, where a Chapter 7 case is converted to  
15 Chapter 13, trustee compensation should be determined independently  
16 under the standards of § 330, and applying § 326(c) as a further  
17 limiting factor would be inappropriate. See In re Yale Mining  
18 Corp., 59 B.R. at 305-07.

19           3. Section 330(b) does not preclude Chapter 7 trustee  
20 compensation under Section 330(a) in a case converted to Chapter 13.

21           Another potential limit on Chapter 7 trustee compensation in  
22 a case converted to Chapter 13 is § 330(b). Section 330(b) provides  
23 for payment to the trustee of a portion of the filing fee, currently  
24 \$60, in each Chapter 7 case. In the Fischer case, the court  
25 determined that the § 330(b) payment was the only authorized  
26 compensation for the Chapter 7 trustee in a case converted to

1 Chapter 13, even though the court found that the reasonable value of  
2 the Chapter 7 trustee's services was \$290. See In re Fischer, 210  
3 B.R. at 469. However, the legislative history indicates that  
4 § 330(b) was designed to provide a minimum compensation for trustees  
5 in no asset cases where the administrative functions of the trustee  
6 would be negligible. See S. Rept. No. 95-989 to accompany S. 2266,  
7 95<sup>th</sup> Cong., 2d Sess. (1978) at pp. 40, 41. It does not provide  
8 reasonable or adequate compensation in a case in which the Chapter 7  
9 trustee has made substantial efforts to recover nonexempt assets,  
10 only to be prevented from completing liquidation and distribution of  
11 the estate by the debtor's conversion to Chapter 13. It was not  
12 designed to provide such compensation.

13 4. Section 326 does not preclude Chapter 7 trustee  
14 compensation in cases converted to Chapter 13.

15 In light of the foregoing analysis, the provisions of § 326  
16 do not prevent this court from approving an award of reasonable  
17 compensation to a Chapter 7 trustee under § 330(a) in a case  
18 converted from Chapter 7 to Chapter 13. The limitations of  
19 §§ 326(a) and (c) do not cover the situation of an asset case  
20 converted to Chapter 13 before nonexempt assets have been liquidated  
21 and disbursed or turned over in Chapter 7. Accordingly, I find that  
22 the "subject to section 326" restriction of § 330(a) is a  
23 restriction without any direct application in such cases.<sup>6</sup>

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25 <sup>6</sup> A situation where consideration of the provisions of  
26 § 326(a) could become relevant in determining reasonable

(continued...)

1 Likewise, I find that the limited compensation provided for in  
2 § 330(b) does not restrict the allowance of compensation to a  
3 Chapter 7 trustee under § 330(a) outside of a "no asset" case.<sup>7</sup>

4 B. What is reasonable compensation to the Chapter 7 trustees  
5 in the Colburn and Macklin cases for purposes of § 330(a)?

6 Having determined that the Chapter 7 trustee is entitled to  
7 reasonable compensation and reimbursement for actual and necessary  
8 expenses under § 330(a), to be treated as an administrative expense,  
9 in both the Colburn and Macklin cases, I further must determine what

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11 <sup>6</sup>(...continued)

12 compensation for the Chapter 7 trustee in this context is where the  
13 Chapter 7 trustee in a case converted to Chapter 13 requests  
14 compensation in excess of the 326(a) percentages applied to amounts  
15 that could have been disbursed in Chapter 7. In light of the strong  
16 policy expressed by Congress in adopting § 326(a) to limit the  
17 compensation of Chapter 7 trustees consistent with actual  
18 disbursements to interested parties in Chapter 7, it would not be  
19 reasonable or appropriate to approve Chapter 7 trustee compensation  
20 in a greater amount in Chapter 13. See H. Rept. No. 95-595 to  
21 accompany H.R. 1200, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977) at pp. 327, 328; S.  
22 Rept. No. 95-989 to accompany S. 2266, 95<sup>th</sup> Cong., 2d Sess. (1978) at  
23 pp. 37, 38.

24 <sup>7</sup> Most courts that have approved compensation to Chapter 7  
25 trustees in cases converted to Chapter 13 have awarded compensation  
26 based upon quantum meruit. Since my analysis of the relevant  
Bankruptcy Code provisions has led me to the conclusion that  
compensation is appropriate pursuant to § 330, I see no reason to  
look beyond the Bankruptcy Code for justification to support  
approval of reasonable compensation.

I also note that in In re Weibel, Inc., 176 B.R. 209, 212 (9<sup>th</sup>  
Cir. BAP 1994), the Ninth Circuit Bankruptcy Appellate Panel  
repudiated quantum meruit as a basis for approving professional  
compensation in bankruptcy. While the Weibel case applied  
specifically to a request for compensation by counsel for a Chapter  
11 debtor-in-possession whose employment application was denied, the  
court expressed its disapproval of using quantum meruit to allow  
professional compensation in general terms. Id.

1 award of compensation and expense reimbursement is appropriate in  
2 each case.

3 1. Reasonable compensation in the Colburn case.

4 In the Colburn case, the parties are agreed that in the event  
5 I determine that Grassmueck is entitled to compensation, the matter  
6 should be set for an evidentiary hearing to determine what  
7 compensation is reasonable. Accordingly, the issue of what  
8 compensation Grassmueck reasonably is entitled to in the Colburn  
9 case will be scheduled for an evidentiary hearing upon 20 days'  
10 notice to all interested parties. The court will prepare and mail  
11 the notice of hearing.

12 2. Reasonable compensation in the Macklin case.

13 In the Macklin case, Mitchell filed a proof of claim in the  
14 Chapter 13 case requesting compensation of \$4,250 and reimbursement  
15 of \$8.55 for copy charges. The case originally was filed under  
16 Chapter 7 as a "no asset" case. However, after Mitchell objected to  
17 the Macklins' claimed annuity exemption, they moved to convert their  
18 case to Chapter 13. The plan confirmed in the Macklins' Chapter 13  
19 case provides that their unsecured creditors will be paid 100% of  
20 their allowed claims plus interest at the rate of 9% per annum.  
21 Mitchell's claim for compensation was based upon applying the  
22 § 326(a) percentage schedule to a projected 100% distribution of  
23 \$35,000 to nonpriority unsecured creditors in the Macklins' Chapter  
24 7 case.

25 Prior to the March 8, 1999 hearing in the Macklin case,  
26 Mitchell filed an itemization of time that reflected that Mitchell

1 spent 2.9 hours, and his paralegal employees spent 8.4 hours on the  
2 Macklin Chapter 7 case. At the hearing, Mitchell stated that his  
3 normal hourly billing rate is \$200, and the normal hourly billing  
4 rate for his paralegal employees is \$70.

5 Mitchell argued that simply applying a "lodestar" standard  
6 would not provide reasonable compensation in this case. First, the  
7 "lodestar" would not take into account the benefits achieved in  
8 transforming the Macklin case from a no asset case in Chapter 7 to a  
9 Chapter 13 providing for payment of a 100% dividend plus 9% interest  
10 to unsecured creditors. Second, Mitchell asserted that he would not  
11 perform the services he performed as Chapter 7 trustee in the  
12 Macklin case outside of the bankruptcy context for the normal hourly  
13 rates specified.

14 In Mitchell's opinion, doubling the hourly rates might  
15 provide reasonable compensation for his services in the Macklin  
16 case. The U.S. Trustee took the position that although Mitchell was  
17 entitled to compensation as an administrative expense in the Macklin  
18 case, it would not be appropriate to compensate Mitchell based upon  
19 application of the § 326(a) percentages to the projected  
20 distribution to creditors. The U.S. Trustee suggested, without  
21 articulating a basis for the amount, that reasonable compensation  
22 should be allowed in the range of \$2,000-\$2,500.

23 Neither counsel for the Macklins nor the Chapter 13 trustee  
24 took a position as to what reasonable compensation would be for  
25 Mitchell. However, they concurred that an award of compensation  
26 much in excess of \$2,000 would potentially jeopardize the



1 feasibility of the Macklins' 100% plus interest Chapter 13 plan.

2 Because, among other reasons, I have determined that the  
3 restrictions of § 326(a) do not apply to the determination of  
4 reasonable compensation under § 330(a) in the context of this  
5 converted case, it would not be appropriate to approve compensation  
6 for Mitchell based upon applying the § 326(a) percentages to a  
7 projected distribution to creditors. I will approve compensation to  
8 Mitchell based upon the itemization of time submitted in advance of  
9 the March 8, 1999 hearing, with the following deductions:

10 John Mitchell  
11 Oct 2 Reviewed debtors Chapter 13 Plan and  
letter from Vidas .1 hour  
12 Oct 6 Reviewed and signed fee application .1 hour  
TOTAL .2 Hours

13 Diana Shibler  
14 Oct 6 Prepare Certificate of Service &  
Envelopes, Copy and Mail Fee App  
15 TOTAL .3 hours

16 Kathy Moody  
17 Oct 6 Prepare Fee App TOTAL .5 hours

18 I am not approving compensation to Mitchell for the foregoing  
19 time entries because under § 348(e), conversion of the Macklins'  
20 case to Chapter 13 terminated Mitchell's services.<sup>8</sup> Upon such  
21 termination, compensation only is appropriate for Mitchell's and his  
22 paralegals' services with respect to preparation and filing of the  
23 Final Report and closing the file. See, e.g., In re Roberts, 80  
24 B.R. 565, 567 (Bankr. N.D. Ga. 1988).

25 <sup>8</sup> Section 348(e) provides that "[c]onversion of a case under  
26 Section 706 ... of this title terminates the service of any trustee  
or examiner that is serving in the case before such conversion."

1 At Mitchell's normal hourly rates, his Chapter 7 trustee  
2 compensation under the "lodestar" standard with respect to the  
3 Macklin case, minus the deductions noted above, would total \$1,072.  
4 However, I find that Mitchell's efforts were instrumental in  
5 transforming this case from a "no asset" Chapter 7 to a 100% plus  
6 interest plan in Chapter 13. I am authorized to consider the  
7 beneficial effects of Mitchell's services in determining reasonable  
8 compensation. 11 U.S.C. § 330(a)(3)(A)(C). Based upon the  
9 extraordinary results achieved in this particular case, I will  
10 approve compensation to Mitchell at double the normal hourly rates  
11 in the amount of \$2,144, plus reasonable expenses of \$8.55, for a  
12 total of \$2,152.55, to be paid as an administrative expense pursuant  
13 to §§ 503(b)(2), 507(a)(1) and 1322(a)(2). Such an enhancement is  
14 consistent with the enhancement for professional compensation  
15 affirmed by the Ninth Circuit in Fadhl v. City and County of San  
16 Francisco, 859 F.2d 649 (9<sup>th</sup> Cir. 1988).

17 The court will prepare and send a Notice and Order consistent  
18 with this Memorandum Opinion notifying all interested parties in the  
19 Macklin case of this Court's intent to approve the foregoing award  
20 and providing that the Order on Mitchell's compensation and  
21 reimbursement of expenses will become final unless an interested  
22 party files an objection and request for hearing within 20 days  
23 following the mailing date of the notice.<sup>9</sup>

24 \_\_\_\_\_  
25 <sup>9</sup> Fed. R. Bankr. P. 2002(a)(6) requires at least 20 days'  
26 notice by mail and an opportunity for a hearing on all applications  
(continued...)

1 C. Counsel for the Chapter 7 trustee may be entitled to  
2 compensation in a case converted to Chapter 13 before any funds are  
3 collected and disbursed by the Chapter 7 trustee.

4 Approving reasonable compensation for the Chapter 7 trustee's  
5 counsel, whose employment has been approved pursuant to § 327(a), in  
6 a case converted to Chapter 13 seems to be a much less controversial  
7 proposition than approving compensation for the Chapter 7 trustee in  
8 like circumstances. I have found no decisions that have declined to  
9 approve reasonable compensation and reimbursement of expenses in  
10 such cases. See, e.g., In re Collins, 210 B.R. 538 (Bankr. N.D.  
11 Ohio 1997); In re Wells, 87 B.R. 732 (Bankr. N.D. Ga. 1988); In re  
12 Roberts, 80 B.R. at 568-70; In re Woodworth, 70 B.R. at 363; and In  
13 re Parameswaran, 64 B.R. at 344. However, I have noted that in such  
14 cases, the court particularly is careful in evaluating whether the  
15 services of the Chapter 7 trustee's counsel were reasonable and  
16 necessary and what benefits resulted to the estate. I find that  
17 Thomas Renn, counsel for Grassmueck in the Colburn case, is entitled  
18 to reasonable compensation for his services under § 330, to be  
19 treated as an administrative expense of the Chapter 13 case pursuant  
20 to the provisions of §§ 503(b)(2), 507(a)(1) and 1322(a)(2).

21 What constitutes reasonable compensation to Renn will be  
22 determined based upon an evidentiary hearing, to be held in  
23 conjunction with the evidentiary hearing to determine reasonable  
24

25 <sup>9</sup>(...continued)  
26 for compensation or reimbursement of expenses totaling more than  
\$500.

1 compensation for Grassmueck in the Colburn case, upon 20 days'  
2 notice to all interested parties. Notice for the hearing will be  
3 incorporated in the notice of hearing with regard to trustee  
4 compensation and will be prepared and mailed by the court.

5  
6 **Conclusion**

7 In summary, I find that the Chapter 7 trustees in the Colburn  
8 and Macklin cases and counsel for the Chapter 7 trustee in the  
9 Colburn case are entitled to reasonable compensation for their  
10 services and reimbursement of actual and necessary expenses, to be  
11 treated as administrative expenses in the pending Chapter 13 cases.

12 In the Macklin case, I find that Mitchell is entitled to an  
13 award of compensation and reimbursement of expenses totaling  
14 \$2,152.55, subject to notice to all interested parties with a  
15 reasonable opportunity to object.

16 In the Colburn case, the Clerk will schedule an evidentiary  
17 hearing to determine reasonable compensation for Grassmueck and Renn  
18 upon 20 days' notice to all interested parties.

19  
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21 \_\_\_\_\_  
22 RANDALL L. DUNN  
23 Bankruptcy Judge  
24  
25

26 cc: M. Caroline Cantrell

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Daniel F. Vidas  
Thomas M. Renn  
David B. Mills  
Michael J. Caro  
Pamela J. Griffith  
Rick A. Yarnall  
John Mitchell  
Michael A. Grassmueck