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IT IS SO ORDERED.

Dated: March 10, 2025




Guy R. Humphrey
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: :
 :
DONNA J. STAKER, : Case No. 24-30527
 : Chapter 13
 : Judge Humphrey
Debtor. :
 :

**MEMORANDUM ORDER DENYING COMPENSATION TO THE FORMER
CHAPTER 7 TRUSTEE PURSUANT TO 11 U.S.C. § 326, AND GRANTING COOLIDGE
WALL’S APPLICATION FOR ATTORNEY FEES TO COUNSEL FOR THE TRUSTEE
AS AN ALLOWED ADMINISTRATIVE CLAIM (DOCS. 57, 58, 73, 74)**

I. Factual and Procedural Background

On March 22, 2024 Donna J. Staker (the “Debtor”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Doc. 1. Patricia J. Friesinger was appointed as the Chapter 7 Trustee on March 25, 2024 (the “Trustee”).¹ Doc. 10. The meeting of creditors occurred on May 1, 2024. *Id.*; Docket Entry Dated May 16, 2024.

¹ The Chapter 7 Trustee’s appointment terminated upon the conversion of the case pursuant to 11 U.S.C. § 348(e), but for simplicity and unless stated otherwise, the court will refer to the Chapter 7 Trustee as the “Trustee” for the post-conversion period as well.

On May 28, 2024 the Trustee determined that the bankruptcy estate had administrable assets and sought to retain herself, as well as the law firm for which she is a shareholder, Coolidge Wall Co., L.P.A. (collectively, “Coolidge Wall”), as counsel for the Trustee. Doc. 18. The court approved that application on May 30, 2024. Doc. 20. On May 31, 2024 the Trustee sought an extension of time to object to the Debtor’s claim of exemptions. Doc. 21. Specifically, the Trustee sought time to object to any claim of exemption in the Debtor’s interest in a certain trust, the Irrevocable Trust Agreement of Richard J. Balk and Karen A. Balk (the “Trust”). *Id.* In that filing, the Trustee indicated that she needed to determine whether the Debtor’s beneficial interest in the Trust was property of the estate, or subject to the exclusion of 11 U.S.C. § 541(c)(2).² *Id.* The issue concerned the spendthrift provisions of the Trust for which the Debtor’s parents were the settlors and for which the Debtor had a one-half beneficial interest upon the passing of her parents.

On June 7, 2024 the Debtor moved to convert this case to Chapter 13. Doc. 24. As the reason for the conversion, the Debtor stated that she “had been promoted to a supervisor position and is realizing increased net income” and could fund a Chapter 13 plan. *Id.* at 1. The Trustee objected to the conversion, asserting that she had reviewed the Trust and concluded that the Debtor’s beneficial interest in the Trust was property of the bankruptcy estate. Doc. 28. The Trustee also raised issues about “potential bad faith.” *Id.* at 4. The Trustee alleged that any Chapter 13 plan could not meet the best interest of creditors test which would require a 100% dividend to all non-priority unsecured creditors (possibly with interest) and that, based on the Debtor’s Schedule I and J, the Debtor could not make such payments. *Id.* at 3-4.

² This section provides that “[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.” 11 U.S.C. § 541(c)(2).

On June 7, 2024 the Trustee also objected to any exemption the Debtor claimed in her beneficial interest in the Trust, asserting that any interest she had in the Trust was property of the bankruptcy estate. Doc. 27. Specifically, the Trustee argued that the Debtor had discretionary powers to distribute trust assets to herself (and to her brother who holds the other one-half beneficial interest) even before the settlors' passing. The Debtor argued that the Trust had valid spendthrift provisions and that its assets were not estate property. Doc. 33.

The motion to convert was scheduled for a September 16, 2024 evidentiary hearing. Doc. 37. However, in an order entered on September 20, 2024, the parties agreed that the case could be converted to Chapter 13, with the reservation that the Trustee could pursue the assets of the Trust for the benefit of the bankruptcy estate if the case re-converted to Chapter 7. Doc. 50.

On October 4, 2024 the Trustee applied for compensation pursuant to § 326(a) in the amount of \$4,778.50 and costs of \$11.53, and also for an administrative claim in the amount of \$4,457 for pre-conversion attorney fees provided by counsel for the Trustee (the "Applications"). Docs. 57, 58. The Debtor filed objections to the Applications and the Trustee filed a collective reply. Docs. 60-62.³

On October 2, 2024 the Debtor proposed a 100% dividend to all unsecured creditors in her Chapter 13 plan. Doc. 55. John Jansing, the Chapter 13 Trustee, objected on two grounds. Doc. 69. First, the feasibility of the plan was contingent upon a resolution of the pending attorney fees of the Trustee. Second, the Chapter 13 Trustee concluded that he could not determine if the proposed plan met the best interest of creditors test because the Debtor did not assign a value to the Trust. Therefore, the Chapter 13 Trustee took the position that the dividend could not be

³ The Trustee and Coolidge Wall also filed proofs of claim consistent with the Applications. Cl. No. 8-1, 9-1. The Debtor objected to these claims pending the resolution of the Applications. Docs. 73, 74.

modified post-confirmation to a lower dividend. On December 5, 2024 the court entered an agreed order between the Debtor and the Chapter 13 Trustee that the Chapter 13 Plan cannot be modified below a 100% dividend, confirmation is subject to the Debtor contesting the fees sought by the Chapter 7 Trustee and Coolidge Wall (and also objecting to a student loan claim), and requiring the Debtor to modify the plan as necessary within 30 days of the resolution of these issues, or alternatively to file a statement that no plan modification is necessary. Doc. 80. The Debtor's Chapter 13 Plan was then confirmed on January 27, 2025. Doc. 89.

The court provided the parties with the opportunity to adjudicate the Applications through an evidentiary hearing; however, both parties filed reports waiving their right to produce evidence through an evidentiary hearing. Virtual Order, ECF No. 72 (Nov. 20, 2024); Docs. 75, 76. The court permitted supplemental filings [Docs. 77, 84, 85, 88] and then took the matter under advisement.

II. Analysis

A. The Chapter 7 Trustee is Not Entitled to a Statutory Commission Under 11 U.S.C. § 326

The court will first address whether the Chapter 7 Trustee is entitled to the statutory fee provided by 11 U.S.C. § 326 or any other compensation when no assets were collected during the pendency of the Chapter 7 case. Congress has provided that Chapter 7 trustees are entitled to be paid a percentage of estate assets they collect and codified these percentages as follows:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in 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.**

11 U.S.C. § 326(a) (emphasis added). In addition, under the Bankruptcy Abuse Prevention and Consumer Protection of Act of 2005 (“BAPCPA”), section 330 of the Bankruptcy Code was amended. *Lejeune v. JFK Capital Holdings, L.L.C. (In re JFK Holdings, L.L.C.)*, 880 F.3d 747, 752 (5th Cir. 2018). Section 330 now provides that “[i]n determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.” 11 U.S.C. § 330(a)(7). Also, in the BAPCPA amendments, “Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors.”⁴ *Lejeune*, 880 F.3d at 752. In reading these sections together, the Fifth Circuit concluded that absent a “rare event” or “exceptional circumstances”, a Chapter 7 trustee should receive their full commission under § 326(a). *Id.* at 755-56. See also *In re Rowe*, 750 F.3d 392, 398-99 (4th Cir. 2014) (statutory commission under § 326 is the “starting point”, that figure is presumptively reasonable absent “extraordinary circumstances”). Bankruptcy courts cannot apply the loadstar test in determining an appropriate commission as would be appropriate for other professional fees. *Id.* at 399 (quoting *Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 921

⁴ Section 330(a)(3) provides that:

- (3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
- (A) the time spent on such services;
 - (B) the rates charged for such services;
 - (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
 - (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
 - (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
 - (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

(B.A.P. 9th Cir. 2012) (determining that “bankruptcy courts still must keep in mind that tallying trustee time expended in performing services and multiplying that time by a reasonable hourly rate ordinarily is beyond the scope of reasonableness inquiry involving commissions.”)).

Against this statutory framework, the question is whether the Trustee is entitled to a statutory fee when no assets were “disbursed or turned over” during the Chapter 7 case. 11 U.S.C. § 326(a). This question has led to a variety of legal theories, but this court believes that ultimately the question turns on the relevant and plain language of §§ 326(a) and 330(a)(7). As explained, Section 326(a) provides a straightforward formula for compensation for a Chapter 7 trustee based “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.” 11 U.S.C. § 326(a). Multiple decisions have found that a Chapter 7 trustee that has not collected any assets cannot be compensated for a commission under § 326(a). *In re Giger*, 504 B.R. 286, 288-89 (Bankr. D. Me. 2014) (compensation may not be awarded under § 326(a) until funds are distributed to creditors); *In re Brayan*, 602 B.R. 350, 351 (Bankr. E.D. Mich. 2019) (similar); *In re Silvus*, 329 B.R. 193, 215 (Bankr. E.D. Va. 2005) (without a distribution by the Chapter 7 trustee, there is no basis to calculate a commission under § 326); *In re Celano*, CIV. A. No. 01-1310, 2001 WL 1586778, at *4, 2001 U.S. Dist. LEXIS 21218, at *12 (E.D. La. Dec. 7, 2001) (“The plain language of section 326(a) indicates that only money the trustee distributes can be included in calculating the compensation base.”); *In re Murphy*, 272 B.R. 483, 485 (Bankr. D. Colo. 2002) (even in conversion to Chapter 13, compensation under § 326(a) is limited to the percentage of funds that a trustee disburses). See also *In re Fischer*, 210 B.R. 467, 469 (Bankr. D. Minn. 1997) (stating that “[o]ne of the risks that trustees take is that even if there are nonexempt assets in the case, that the debtor will convert the case to chapter 13 or obtain dismissal of the case short of final

administration.”); *In re Meadows*, No. 7-97-02526, 2003 WL 477428, at *2-3, 2003 Bankr. LEXIS 21, at *4-10 (Bankr. W.D. Va. Jan. 6, 2003) (based on the plain meaning of § 326(a), the Chapter 7 trustee was not entitled to a § 326 commission when no funds were distributed to creditors).

The Trustee’s request demonstrates the obvious problem with providing for a commission under § 326 without a specific distribution to calculate the appropriate amount. The Trustee has defaulted to a loadstar approach for trustee work (a reasonable hourly rate multiplied by hours worked) to determine her commission. See generally *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991) (explaining the loadstar analysis of professional fees). But, as discussed, particularly after the BAPCPA amendments, the loadstar approach is not an appropriate method to determine a § 326 commission.

Still, the court acknowledges some courts, largely considering pre-BAPCPA law, have allowed § 326 fees to Chapter 7 trustees in this type of situation under various theories and this court considered them. Particularly, some of these courts allowed fees to Chapter 7 trustees when cases were converted to Chapter 13 after a Chapter 7 trustee did substantial work related to pursuing assets for the bankruptcy estate. Some courts have applied a quantum meruit theory of recovery. See e.g. *In re Pivinski*, 366 B.R. 285, 289-90 (Bankr. D. De. 2007) (adopting line of cases allowing bankruptcy courts to use quantum meruit to allow a chapter 7 trustee to award compensation in cases converted to Chapter 13). See also *In re Main Realty & Mgmt., LLC*, 277 B.R. 1, 5 (Bankr. D. Conn. 2002) (finding quantum meruit was not appropriate in the circumstances, but the court noted it “has approved *quantum meruit* compensation” in other Chapter 7 cases); *In re Horton*, No. 03-16537, 2004 Bankr. LEXIS 1408, at *8 (Bankr. S.D. Ohio July 16, 2004) (allowing a recovery under § 326(a) “despite the fact that no disbursements or turnovers were made in the Chapter 7 case.”); *In re Hages*, 252 B.R. 789, 794 (Bankr. N.D. Cal.

2000) (allowing fees under § 326(a) for a former Chapter 7 trustee to be based on funds that “will be distributed by the chapter 13 trustee.”).

Another decision followed what is known as the “composite trustee” theory of recovery under § 326. *In re Rodriguez*, 240 B.R. 912, 914-16 (Bankr. D. Colo. 1999). Under this theory, the court could award a commission under § 326(a) because the formula is not necessarily based on funds distributed by the Chapter 7 trustee. Instead, the total compensation available is limited by § 326(c). Section 326(c) provides that when there is more than one trustee in a case, “the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee[.]” 11 U.S.C. § 326(c). Under this theory, a former Chapter 7 trustee could be compensated up to the statutory maximum under § 326(a) after deducting the administrative fee for the Chapter 13 Trustee. Other decisions following this theory treat the post-conversion Chapter 13 as a separate case and do not require the total commission for both trustees to be within the statutory maximum. *Tiffany v. Gill (In re Fin. Corp. of Am.)*, 946 F.2d 689, 689-90 (9th Cir. 1991); *In re Yale Mining Corp.*, 59 B.R. 302, 306-07 (Bankr. W.D. Va. 1986).

Other decisions have applied the loadstar method to determining compensation to a chapter 7 trustee when funds were not distributed. *See In re Cummings*, 659 B.R. 895 (Bankr. D.N.M. 2024). That decision recognized that § 330(a)(7) required the court to determine reasonable compensation under § 326, but found that § 330(a)(1) allows a reasonable compensation award.⁵ *Id.* at 905. The court respectfully disagrees because: 1) the specific statutory exception and directive of § 330(a)(7) prevails over the language in § 330(a)(1); and 2) § 330(a)(3) specifically

⁵ “After notice to a party in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee . . .

(A) Reasonable compensation for actual, necessary services rendered by the trustee . . . and
(B) Reimbursement of actual, necessary expenses.”

11U.S.C. § 330(a)(1).

applies to Chapter 11 trustees, and does not reference a Chapter 7 trustee. To allow compensation based on § 330(a)(1), the court has to ignore the addition of § 330(a)(7) through BAPCPA that requires “reasonable compensation” to be analyzed under § 326 for a Chapter 7 trustee. The court finds that § 330(a)(7) is quite straightforward and offers no exception or alternative method to calculating “reasonable compensation” for a Chapter 7 trustee.

In short, the court does not find any of the alternative theories allowing a Chapter 7 trustee fees without the recovery of assets persuasive. While there may have been a basis to award such compensation prior to the enactment of BAPCPA, with the addition of § 330(a)(7) the court concludes that it has no authority to award such fees. The Chapter 7 Trustee did not distribute any funds to creditors or turnover such funds to parties in interest and, therefore, is not entitled to a § 326 commission under the plain meaning of the relevant statutes. The policy implications of the language Congress chose may not be ideal because Chapter 7 trustees often do significant work in cases that ultimately leads to a conversion to Chapter 13. Regardless, this court cannot improve upon the language of the Code nor can it supplement it with common law theories of recovery. The compensation scheme in the Bankruptcy Code exhaustively addresses the compensation of professionals in multiple sections. *See* 11 U.S.C. § 326 – 331. Of course, the court’s limited role is to interpret the Bankruptcy Code as it is written, and not how it could be written. *Giger*, 504 B.R. at 289 (“Dissentient policy concerns should not matter when the language of a statute is plain.”); *Meadows*, 2003 WL 477428, at *3 (following the plain meaning of § 326(a), despite “this court’s conviction that neither equity nor the best interests of the administration of the Bankruptcy Code are served by denying [the Chapter 7 trustee] compensation.”).

For all these reasons, the court denies the Chapter 7 Trustee any compensation under § 326(a) or otherwise for her services as the Trustee.⁶

B. Coolidge Wall’s Attorney Fees for Legal Services Provided to the Trustee are Allowed as an Administrative Expense

While the court cannot award the Chapter 7 Trustee fees under §§ 326, 330(a) or under any theory, the court can, if appropriate, award the Chapter 7 Trustee’s attorney fees as an administrative expense under §§ 503(b)(2), 507(a)(2), and 330(a) of the Code.

Section 503(b)(2) authorizes administrative expenses to be paid for “compensation and reimbursement awarded under section 330(a)” 11 U.S.C. § 503(b)(2). Section 330(a) allows the court to award “a trustee . . . or a professional person employed under section 327 . . . reasonable compensation for actual, necessary services rendered by the trustee, . . . or attorney and by any paraprofessional person employed by any such person” 11 U.S.C. § 330(a)(1)(A). Finally, § 507(a)(2) provides second priority in the distribution of assets of the bankruptcy estate to “administrative expenses allowed under section 503(b)” 11 U.S.C. § 507(a)(2). Professional fees maintain this priority as an administrative expense in a Chapter 13 case despite those fees having been incurred in a Chapter 7 case prior to the conversion of the case to Chapter 13. *In re Norwood*, 663 B.R. 548, 552 (Bankr. W.D. Ark. 2024); *In re Kuhn*, 337 B.R. 668, 671-72 (Bankr. N.D. Ind. 2006); *In re Collins*, 210 B.R. 538, 540 (Bankr. N.D. Ohio 1997).

Further, the fact that a Chapter 7 trustee is denied trustee compensation under §§ 326(a) and 330(a)(7) because distributions were not made or funds turned over to the Trustee does not mean that Coolidge Wall’s attorney fees cannot be allowed. Section 326(a) provides

⁶ The court declines to address the Debtor’s other objections to the Trustee fee application. Most of the Debtor’s concern was that the Trustee was billing for trustee work rather than counsel work. The Trustee was not arguing that point but rather seeking to be paid under an alternative theory that this court has declined to adopt.

qualifications on trustee compensation, but that section does not apply to counsel to the trustee. *In re Spence*, 497 B.R. 99, 110 (Bankr. D. Colo. 2013) (“Several other courts have also recognized the distinct nature of an administrative claim of counsel of a Chapter 7 trustee pursuant to section 328 as separate from the trustee's claim for statutory fees under section 326.”). *See also Kuhn*, 337 B.R. at 673 (allowing a Chapter 7 trustee an administrative expense to be paid in the Chapter 13 plan); *In re Kelley-Gershon*, No. 23-74643-ast, 2024 Bankr. LEXIS 1961, at *11, 2024 WL 3912192, at *4 (Bankr. E.D.N.Y. Aug. 22, 2024) (“[W]hile section 330(a)(1) limits compensation of a trustee’s professionals to what is ‘reasonable,’ the statute on its face does not require that distributions be made by the trustee in order for her professionals to be compensated, whether the case is dismissed or converted to another chapter.”).

The Debtor argues that the Chapter 7 Trustee’s legal counsel should not be awarded attorney fees because the reason the Debtor filed the motion to convert her case to Chapter 13 was that she received the post-petition raise at work, allowing her to fund a Chapter 13 plan. In essence, the Debtor argues that the Trustee’s investigation into the Trust and the potential for the Trustee to administer assets from the Trust was not necessary to the administration of her bankruptcy estate because she converted the case due to the pay raise and the existence of the Trust had no bearing on her motivation for or need to convert her case to Chapter 13. The Chapter 7 Trustee disputes that the Debtor’s post-petition raise was the reason for converting her case, stating that: “If the Trustee had taken the schedules at face value and not investigated further, the Trustee would not have identified the [the Trust] as a target for administration and the Debtor would not have sought to convert her case to Chapter 13.” Doc. 62 at 4.

The relevant questions as to whether the attorney fees should be allowed are: 1) were the services for which compensation is sought actually rendered; 2) were the services necessary to the

Trustee's performance of the Trustee's duties, and 3) are the fees reasonable in amount. 11 U.S.C. § 330(a)(1); *Baker Botts L.L.P. v. Asarco*, 576 U.S. 121, 124 (2015). Section 330(a)(3) provides guidelines for determining whether the fees are reasonable. 11 U.S.C. § 330(a)(3); *In re Henson*, 637 B.R. 13, 15 (Bankr. S.D. Ohio 2022). The Debtor does not dispute that the services were actually rendered or the hourly rates charged by the legal professionals. After the motion to convert was filed, the Debtor asserts that the services were unnecessary and also unreasonable in amount.

First, the court finds that the Trustee's discovery of the Trust and assertion of the issues with respect to the Trust did have a bearing on the Debtor's decision to convert the case to Chapter 13. Although the Debtor strenuously argues otherwise, the court determines that the Debtor's decision to convert this case was to some extent and perhaps completely based upon the work of the Chapter 7 Trustee and her counsel's decision to investigate the Trust. Although the Debtor indicated that she had received a significant raise and could fund a Chapter 13 plan; it appears this case may have remained in Chapter 7, but for the issue of the Trust. As both parties determined to waive an evidentiary hearing, the court is faced with a limited record to evaluate the parties' decision-making process.

The Debtor states plainly that all of the Chapter 7 Trustee's work was unneeded and the Debtor intended and was required to convert based upon her post-petition increase in income. At a minimum, the Debtor believes that, upon the filing of the motion to convert to Chapter 13, the Chapter 7 Trustee should have allowed the conversion motion to be granted without objection, and that any work of Coolidge Wall subsequent to the filing of the conversion motion had no benefit to the bankruptcy estate. The court is unconvinced.

The analysis of the Trustee's actions in this case requires a consideration of what is an appropriate basis to oppose a conversion to Chapter 13. The Bankruptcy Code provides that a

Chapter 7 debtor “may convert a case . . . to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.” 11 U.S.C. § 706(a). Section 706(d) provides that “[n]otwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be eligible under such chapter.” In order to be eligible for Chapter 13, the debtor must be an “individual with regular income” and meet the debt limits for Chapter 13. 11 U.S.C. § 109(e). However, the Supreme Court, citing § 105 of the Bankruptcy Code, has also ruled that an abuse of process would be a valid basis to deny conversion. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 375-76 (2007). *See also In re Thornton*, 203 B.R. 648, 651-53 (Bankr. S.D. Ohio 1996) (explaining that bad faith constitutes a basis to oppose a conversion of a Chapter 7 debtor to Chapter 13).

The Chapter 7 Trustee analyzed the Debtor’s amended Schedules I and J and noted that, over 36 months, the debtor could contribute \$66,351.96 which was less than the aggregate amount of the scheduled debt. Doc. 28 at 3-4. The Chapter 7 Trustee based this total over 36 months because, as a below median debtor, the minimum applicable commitment period for a Chapter 13 plan is 36 months. *See* 11 U.S.C. § 1322(d)(2). The Chapter 7 Trustee also raised the need for discovery to determine if the Debtor acted in bad faith as to the Trust’s holdings. *Id.* at 4. The Trustee further noted that the Debtor had not timely responded to discovery requests. *Id.* at 2.

The Debtor insists that that her post-petition raise required a conversion to Chapter 13 and afforded her the ability to pay a 100% dividend to unsecured creditors regardless of the status of the Trust. The Debtor also pointed out that any Plan would be paid over 60 months, and that the Chapter 7 Trustee’s calculation of disposable income did not include “tax refund contributions, anticipated increases in income, possible set-plan provisions, possible windfalls, and that the

Chapter 13 liquidation analysis will determine the percentage [the Debtor] will be required to pay.”
Doc. 29 at 3.

With respect to the Debtor’s post-petition raise, the court presumes that the Debtor, having decided to pursue Chapter 7 relief, would not convert to Chapter 13 without the issue being raised formally or informally by a party in interest. The most likely way that would occur would be the United States Trustee (“UST”) filing a motion to dismiss pursuant to § 707(b) of the Code, or an informal inquiry from the UST. Essentially, the Debtor is arguing that the United States Trustee would have pursued a § 707(b) motion in this case, that would have ultimately led to a conversion to Chapter 13 as an alternative remedy. The reality is far less certain than the Debtor suggests. The Debtor’s Official Form 122A-1 indicated that the Debtor’s current monthly income was below median. Doc. 1 at 38-40. Accordingly, the UST lacked standing to raise whether the case should be dismissed pursuant to § 707(b)(2). 11 U.S.C. § 707(b)(7). Alternatively, the UST perhaps could have decided to raise whether the case could have been dismissed pursuant to § 707(b)(3) based upon bad faith or the totality of the circumstances and focused on the Debtor’s post-petition raise. *In re Haar*, 373 B.R. 493, 502-03 (Bankr. N.D. Ohio 2007) (unlike the means test of § 707(b)(2), the totality of the circumstances test under § 707(b)(3) may consider post-petition income). Under this hypothetical, the case could have been converted as an alternative remedy, if the Debtor consented. But in this instance, the Chapter 7 Trustee was pursuing assets that, if successful, would have led to a 100% dividend to all unsecured creditors, and possibly on a faster track than such funds would be paid in a Chapter 13. In such circumstances, the UST has the discretion to decline to pursue a motion under § 707(b)(3) when it appeared the creditors were likely to be paid in full.

The Debtor alternatively argues that once the motion to convert was filed, the Chapter 7 Trustee’s actions had no value to the estate. But the agreed order preserved all rights of the Chapter

7 Trustee (or any successor Chapter 7 trustee) to pursue the Trust assets if this case re-converts regardless of “any change in circumstances or period of time prior to such conversion.” Doc. 50 at 2. In addition, apparently because the Debtor did not wish to engage in discovery about the Trust with the Chapter 13 Trustee either, the Debtor agreed that the Plan could never be modified below 100%. Moreover, there is no guarantee this Chapter 13 Plan will succeed. The agreed order preserves all rights in the Trust if this case is re-converted to Chapter 7 at some later date.

Additionally, the Debtor’s explanation that her only motivation to convert the case was based on her post-petition raise is not consistent with the record. By her own admission, she was concerned with her parents becoming embroiled in litigation surrounding the Trust. Doc. 29 at 3 (“[T]he Trust Settlers are elderly, and the Debtor seeks to protect them from undue hardship.”).⁷ In conclusion, this court does not agree that none of the services of Coolidge Wall were reasonable or necessary, whether considering the work of Coolidge Wall before or after the Debtor moved to convert the case to Chapter 13.

In summary, the court finds that the Trustee’s investigation of the Trust and its assets, including as to the impact they may have on the Debtor’s ability to propose a feasible Chapter 13 plan that met the best interests of the Debtor’s creditors was warranted in relation to the *Marrama* good faith analysis and the potential for the case to be reconverted to Chapter 7. *See* 11 U.S.C. §§ 1325(a)(3), (4), and (6). The Trustee was charged with administering the assets of the Debtor’s bankruptcy estate for the benefit of the Debtor’s creditors and courts grant Chapter 7 trustees considerable deference in carrying out that responsibility. *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 212 F.3d 632, 635 (1st Cir. 2000); *Stein v. Stubbs (In re Stubbs)*, 565 B.R.

⁷ Debtor counsel raised a similar concern during the October 28, 2024 status conference. *See* Doc. 63 (3:08 – 3:27 of the recording).

115, 128 (B.A.P. 6th Cir. 2017); *In re Spence*, 497 B.R. 99, 108 (Bankr. D. Colo. 2013). The court finds that responsibility did not end with the Debtor's filing of her motion to convert. While the Chapter 13 Trustee had responsibility for ensuring that the Debtor's Chapter 13 plan complied with the Bankruptcy Code, the Chapter 7 Trustee was sufficiently within her responsibilities to conduct an analysis of the merits of the Debtor's motion to convert. The Trustee, with the appropriate assistance of legal counsel, conducted limited due diligence into the issues pertaining to the Trust, including the enforceability of the spendthrift provision of the Trust, and the Debtor's ability to proceed in good faith with a Chapter 13 case, with the ultimate result the Debtor's confirmed plan with a 100% dividend for unsecured creditors. After the Trustee reached agreement with the Debtor on the parameters of the conversion to Chapter 13, the Trustee ceased work on the matter. *See* Appendix A (last entry dated Sept. 17, 2024); *Agreed Order Converting Chapter 7 Proceeding to a Chapter 13* (Doc. 50) (entered Sept. 20, 2024). And, as noted, the Trustee retained the ability to further pursue the Trust issues in the event the Chapter 13 case did not succeed and reconverted to Chapter 7.

However, the court's inquiry is not done. The Debtor also argues that almost all the attorney fees sought by Coolidge Wall are not reasonable and necessary because the itemized entries are not appropriate work to be billed as counsel fees, but instead constitute statutory responsibilities of the Chapter 7 Trustee.

A Chapter 7 trustee has defined statutory duties which, relevant for this decision, are as follows:

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

* * *

(4) investigate the financial affairs of the debtor;

* * *

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee[.]

11 U.S.C. § 704(a). Services that fall within the categories of § 704 are not compensable under § 330. *In re Craig*, 651 B.R. 612, 617 (Bankr. S.D. Ala. 2023). *See also Handbook for Chapter 7 Trustees*, Effective Oct. 1, 2012 at 4-22, <https://www.justice.gov/ust/page/file/762521/download> (last visited Mar. 6, 2025) (explaining that attorneys and accountants “shall not be compensated” for performing a trustee’s statutory duties). The distinction between statutorily required trustee work and work appropriate for counsel to the trustee was well-explained by the Fourth Circuit:

In *In re Whitney*, 27 B.R. 352 (Bankr.D.Me.1983), the court said that, in fixing compensation, the court must distinguish trustees' services from attorneys' services and “[w]hether an act is that of a ‘trustee enlightened by legal understanding’ or that of a ‘lawyer made knowledgeable of bankruptcy by his trustee appointment.’ ” *Id.* at 354. *See also In re McAuley Textile Corp.*, 11 B.R. 646 (Bankr.D.Me.1981); *In re Best Pack Seafood, Inc.*, 21 B.R. 852 (Bankr.D.Me.1982). We agree with the principle stated in these decisions to the effect that courts may not compensate an attorney for services statutorily required by the trustee. Only when unique difficulties arise may compensation be provided for services which coincide or overlap with the trustee's duties, and only to the extent of matters requiring legal expertise. In the case *sub judice*, the large number of creditors required more administrative work, but did not pose unique or complex legal issues.

United States Trustee v. Porter, Wright, Morris & Arthur (In re J.W. Knapp Co.), 930 F.2d 386, 388 (4th Cir. 1991). See also *In re Lexington Hearth Lamp and Leisure LLC*, 402 B.R. 135, 143 (Bankr. M.D.N.C. 2009) (“It is the duty of the bankruptcy court to determine whether services by an attorney-trustee are legal services or whether they are ministerial duties of the trustee.”).

The court has independently reviewed the Coolidge Wall fee application. The work done, with one line item exception discussed below, was all related to the unusual litigation to determine the value, if any, of the Trust; whether the Trust was estate property; and any possible applicable exemptions which the Debtor may hold relating to the Trust. See attached Appendix A. Those issues ultimately interfaced with the Debtor’s motion to convert. The court finds that Coolidge Wall’s itemization is appropriate and typical work that the court routinely observes completed by trustee counsel in the course of litigation. The court also finds that in comparing the fee applications of the Trustee and Coolidge Wall, the Trustee has appropriately and diligently separated counsel work from Trustee work.

The one final issue concerns a single line item describing the Chapter 7 Trustee’s review the Chapter 13 plan. The Debtor argues that the Chapter 7 Trustee’s review of the Debtor’s proposed Chapter 13 plan was the responsibility of the Chapter 13 Trustee. Again while undoubtedly the Chapter 13 Trustee has the responsibility to review all Chapter 13 plans to ensure their compliance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, in this case the Chapter 7 Trustee had reason to review the plan. The court finds that the .4 hours that the Chapter 7 Trustee spent reviewing the plan on August 13, 2024 was reasonable because it concerned the previously discussed objection of the Chapter 7 Trustee to the Debtor’s motion to convert. See Doc. 58 (Item 24).

Therefore, the court overrules the Debtor's objection and allows the Coolidge Wall fee application in the total amount of \$4,457 as reasonable compensation for actual and necessary legal services. 11 U.S.C. § 330(a)(1)(A). Specifically, the services benefitted the bankruptcy estate by resulting in a Chapter 13 plan providing the unsecured creditors with a 100% dividend.

III. Conclusion

For the reasons stated, the application for compensation of the Chapter 7 Trustee for trustee fees is denied. Doc. 57. The objection of the Debtor to proof of claim 9-1 is sustained and proof of claim 9-1 is disallowed. Doc. 73. The application for attorney fees of Coolidge Wall is granted. Doc. 58. The objection of the Debtor to proof of claim 8-1 is overruled. Doc. 74. Coolidge Wall is entitled to an administrative claim in the total amount of \$4,457. The administrative claim shall be paid pursuant to the relevant provisions of the Debtor's confirmed Chapter 13 plan.

IT IS SO ORDERED.

Copies to: Default List

APPENDIX A

Ref.	Date	Name	Time	Fees	Rate	Description
1	5/31/2024	Friesinger, Patricia J.	0.4	\$152.00	\$380.00	Email T. Fesenmyer (counsel for Debtor) re spendthrift issue and with recommendation for next steps to resolve same and review other available exemptions, including request for additional information
2	5/31/2024	Friesinger, Patricia J.	0.50	\$190.00	\$380.00	Review outline of position on trust matters and draft email to T. Fesenmyer (Debtor's counsel) re same in order to permit review of information and discussion re same (0.4); review draft and finalize motion to extend deadline to object to potential claim of exemption in trust document (0.1)
3	6/7/2024	Friesinger, Patricia J.	0.2	\$76.00	\$380.00	Receipt and review of motion to convert case to Chapter 13 and email T. Fesenmyer (counsel for Debtor) re same, including request for amended schedules I and J to permit review and response re same
4	6/8/2024	Friesinger, Patricia J.	0.1	\$38.00	\$380.00	Receipt and review of response from T. Fesenmyer (counsel for Debtor) with hourly rate increase for Debtor and direct M. Farris re preparation of discovery requests
5	6/14/2024	Friesinger, Patricia J.	0.10	\$38.00	\$380.00	Receipt and review of amended Schedules I and J
6	6/17/2024	Farris, Mandy M.	0.40	\$70.00	\$175.00	Draft combined objection to motion to convert and claim of objection and forward same to P. Friesinger for review/revision
7	6/17/2024	Farris, Mandy M.	0.40	\$70.00	\$175.00	Begin draft discovery requests and forward same to P. Friesinger for completion (0.4)
8	6/27/2024	Friesinger, Patricia J.	0.1	\$38.00	\$380.00	Direct M. Farris re review of process for filing to determine whether an objection to conversion can be combined with an objection to exemption
9	6/28/2024	Farris, Mandy M.	0.40	\$70.00	\$175.00	Finalize objection to motion to convert with certificate of service, file and direct service of same (0.2); finalize objection to exemption with certificate of service, file and direct service of same (0.2);
10	6/28/2024	Friesinger, Patricia J.	2.40	\$912.00	\$380.00	Revise/draft objection to Debtor's claim of exemption, including research re assets and review of background facts for inclusion in same (1.7); draft objection to motion to convert, including review of backgroun facts re timing matters (0.7)
11	6/28/2024	Friesinger, Patricia J.	0.70	\$266.00	\$380.00	Review and revise draft discovery responses (0.6) and forward same to counsel for debtor with request to discuss potential resolution of matters (0.1)
12	7/2/2024	Friesinger, Patricia J.	0.40	\$152.00	\$380.00	Receipt and review of Debtor's response to objection to exemption

13	7/8/2024	Farris, Mandy M.	0.10	\$17.50	\$175.00	Draft notice of service for discovery requests and forward same to P. Friesinger for approval or update
14	7/11/2024	Farris, Mandy M.	0.10	\$17.50	\$175.00	Obtain approval from P. Friesinger to file notice of service of discovery and finalize and file same
15	7/11/2024	Friesinger, Patricia J.	0.10	\$38.00	\$380.00	Review and approve draft notice of service of discovery and direct filing of same
16	7/16/2024	Farris, Mandy M.	0.20	\$35.00	\$175.00	Receipt and review of scheduling order and correspond back and forth with J. Behnken (Courtroom Deputy) re apparent conflict on calendar with scheduled status conference and other available dates/times
17	7/19/2024	Friesinger, Patricia J.	0.20	\$76.00	\$380.00	Receipt and review of response to Debtor's claim of exemptions
18	7/22/2024	Farris, Mandy M.	0.10	\$17.50	\$175.00	Receipt and review of order adjusting status conference and update docket re same
19	7/29/2024	Friesinger, Patricia J.	0.60	\$228.00	\$380.00	Receipt and review of discovery responses and follow up email for remaining documents and information not included in same (0.5); obtain and review additional documents and send follow up inquiry re same (0.1)
20	7/30/2024	Friesinger, Patricia J.	0.30	\$114.00	\$380.00	Receipt and review of additional documents produced by Debtor and follow up production
21	8/1/2024	Friesinger, Patricia J.	1.30	\$494.00	\$380.00	Prepare for and attend status conference re pending contested matters relating to conversion and exemption
22	8/2/2024	Friesinger, Patricia J.	0.10	\$38.00	\$380.00	Correspond back and forth with J. Behnken (Courtroom Deputy) re scheduling matters
23	8/3/2024	Farris, Mandy M.	0.10	\$17.50	\$175.00	Receipt and review of order scheduling hearing and docket dates relating to same
24	8/13/2024	Friesinger, Patricia J.	0.40	\$152.00	\$380.00	Receipt and review of draft Chapter 13 plan received from Debtor's counsel
25	8/28/2024	Friesinger, Patricia J.	0.10	\$38.00	\$380.00	Correspond back and forth with T. Fesenmyer (counsel for Debtor) re status of review and anticipated timing matters
26	9/4/2024	Friesinger, Patricia J.	0.40	\$152.00	\$380.00	Update research re fees matters and consideration of protections for creditors and email T. Fesenmyer (counsel for Debtor) re same with settlement/resolution discussion matters
27	9/6/2024	Friesinger, Patricia J.	0.4	\$152.00	\$380.00	Review and calculate fees for trustee and attorney, including amounts proposed to be no charged, and forward same to T. Fesenmyer (counsel for Debtor) with proposal for agreement re same and identification of additional expenses incurred and to be incurred in resolving matters

28	9/10/2024	Friesinger, Patricia J.	0.6	\$228.00	\$380.00	Phone call/message to J. Jansing (Chapter 13 Trustee) and email follow up (0.1) correspond back and forth with T. Fesenmyer (attorney for Debtor) re settlement matters (0.1); phone conference with S. Stout (attorney for Chapter 13 Trustee) re considerations for settlement and discussion re concerns of preserving assets/value for the benefit of creditors in the case (0.2); follow up discussion with J. Jansing re same (0.2);
29	9/11/2024	Friesinger, Patricia J.	0.8	\$304.00	\$380.00	Review of claims filed in the case and feasibility considerations and draft witness and exhibit lists for filing (0.8)
30	9/12/2024	Friesinger, Patricia J.	0.2	\$76.00	\$380.00	Review email from T. Fesenmyer (counsel for Debtor) and phone conference re methods for preserving/protecting the bankruptcy estate and creditors and discussion re language to be included in an agreed order as to same
31	9/13/2024	Friesinger, Patricia J.	0.3	\$114.00	\$380.00	Receipt and review of draft language for agreement and update same and circulate revised language to counsel for review and comment (0.2); correspond back and forth with J. Behnken (courtroom deputy) re resolution reached and arrangements to vacate hearing pending final signatures on the agreed order (0.1)

Ref.	Date	Name	Time	Fees	Rate	Description
32	9/17/2024	Friesinger, Patricia J.	0.2	\$76.00	\$380.00	Review and revise draft agreed order and circulate revised draft of same for approval to T. Fesenmyer (0.2)
		Total	12.7	\$4,457.00		
		Blended Hourly Rate		\$350.94		