THE STANDING CHAPTER 13 TRUSTEE’S PERCENTAGE FEE: SOLVING AN ALGEBRAIC EQUATION

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One of the frequently misunderstood topics of Chapter 13 bankruptcy is how to calculate the Standing Chapter 13 Trustee’s percentage fee. Few reported cases exist on this subject, although there is no shortage of controversy and it is certainly a topic on the minds of Trustees and other participants in the bankruptcy process.¹

Prior to 1986, 28 U.S.C. § 586(e)(2) had stated in pertinent part:
Such individual [a Standing Chapter 13 Trustee] shall collect such percentage fee from all payments under plans in the cases under Chapter 13 of title 11 for which such individual serves as standing trustee.²

Such individual [a Standing Chapter 12 or 13 Trustee] shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee.³

It is a tenet of statutory construction that one looks first to the language in the statute itself.⁴ The legislative history of the 1986 Act does not explain this amendment to section 586(e)(2), however, the wording of the Act plainly suggests that a Standing Chapter 13 Trustee’s percentage fee as determined by the Attorney General/United States Trustee should be deducted from all payments received by the trustee under plans.

Sometimes debtor’s attorneys misread the statute and apply the trustee’s percentage only to payments made to creditors. Section 586(e)(2) speaks of “all payments received by such individual under

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It does not state "only payments made to creditors."

Specifically, payments received by the Trustee under Chapter 13 plans include amounts paid to secured creditors, priority creditors, unsecured creditors, debtor's attorney, clerk's fees, administrative expense, and trustee's percentage fees. Administrative expense claims are a payment under plans. The Trustee's percentage fee is an administrative expense claim. Therefore, the Trustee's percentage fee is properly includable as one of the components of the base upon which the Trustee's percentage is applied. Analogously, Chapter 7 Trustees are paid as a percentage of disbursements to all parties (including the Trustee) except payments to the debtor.

Essentially, calculating the Trustee's fee involves solving an algebraic equation. The equation has three variables: receipts, payments to all claimants and administrative claims, and the Trustee's percentage fee. When two of the variables are known, the other can be solved.

Example: Debtor A proposes payments to all claimants and administrative claims (excluding Trustee fees) of $5230. The formula would be:

\[
\begin{align*}
X + .1y &= y^+ \\
5230 + .1y &= y \\
-.1y + 5230 + .1y &= y - .1y \\
5230 &= y - .1y \\
5230 &= .9y \\
1/.9(5230) &= (.9y)1/.9 \\
5230/.9 &= y \\
5811.11 &= y \\
.1y &= .1(5811.11) \text{ or } 581.11 \\
\text{therefore}, \\
5230 + 581.11 &= 5811.11
\end{align*}
\]

\[^+\text{Variables:} \]
\[X = \text{payments to all claimants & administrative claims} \]
\[y = \text{total payments received} \]
\[.1y = \text{Trustee's percentage fee} \]

Necessarily, one must know which variable is to be considered. When the "amount of the receipts" is known, it is multiplied by 10% (assuming that is the Trustee's established fee) to determine the

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Trustee's fees. When the total "amounts to be paid" are known, that amount is divided by 9 to determine the Trustee's fees. When the "total amount to be paid to the trustee" (including Trustee's fees) must be determined, one can ascertain the amount to be paid by dividing by .9.8

Problems occur when the debtor's attorney proposes specific per month payments to specific creditors in a Chapter 13 plan and multiplies the specific amount by 10% instead of dividing by 9 or .9 and, in effect, reduces the Trustee's percentage fee. Debtor's attorney's calculations would be wrong because the debtor would be using X (payments to all claimants and administrative claims) as Y (total payments received), and X lacks the necessary variables.

In addition, problems arise when a debtor's attorney proposes a ceiling on the term of the plan, i.e., thirty-six months. Given the fact that the Trustee's fees are fixed, when the debtor's attorney determines that a certain amount of money can be paid per month, and specifies that such amount will be paid to each creditor, then the debtor cannot fix the term of the plan. Extension of the plan may be required.

When the debtor determines the total dollar amount to be paid and distributed to creditors, as well as attorney's fees, clerk's fees, and other administrative expenses (excluding trustee percentage fees), the debtor's attorney must then calculate the dollar amount to be paid for the Trustee's fee. Payments by the debtor under the Chapter 13 plan, excluding the Trustee's fees, only constitute 90% of the payments received under the plan. Consequently, the Trustee's fee cannot be taken out of the payments meant for creditors and other non-Trustee administrative expenses. After the payments under a plan, excluding Trustee's fees, have been determined, the additional sum to be paid by the debtor for the Trustee's fee can be determined by dividing the total sum of payments, excluding the Trustee's fees, by 9. The resulting figure must then be added to the other amounts to be distributed, to arrive at the total payments required by the debtor under the plan.

8. This article and the example assumes that the Standing Chapter 13 Trustee's percentage fee is fixed at 10%. The same computation can be made to account for a different percentage fee fixed for the Standing Trustee. For example, assuming that the Trustee's fee is set at 9%, 8%, and 7%, the remaining percentages required to pay all other claims would be 91%, 92%, and 93% respectively. The denominators would thus be .91, .92, and .93.
Example:

Proposed payments by the debtor include:

- Tax claims: $8,872
- SBA (secured): $4,306
- FDIC (secured): $45,000
- Bank (secured): $21,167
- Debtor's attorney fees: $1,300
- Court costs: $85
- Unsecured (pro rata): $4,500

Total Payment for All Claimants & Administrative Costs: $85,230

Trustee's Fee to be Paid ($85,230 divided by 9): $9,470

Total Payments Required by Debtor under Proposed Plan: $94,700

The figure of $94,700 constitutes total receipts by the Trustee under the plan. Pursuant to 28 U.S.C. § 586(e)(1) and (2) the Trustee shall collect the percentage fee (currently set at 10%) from the total receipts which result in a Trustee's fee of $9470; and the other 90% of the receipts are distributed to creditors and to the payment of non-trustee administrative expenses concerning the plan.

Summary of Example:

$85,230 = 90% of receipts under the plan
$9,470 = 10% of receipts under the plan
$94,700 = 100% of plan payments

For further guidance, In re Savage\(^9\) illustrates the statutory construction of 28 U.S.C. § 586(e)(2) and its mandatory nature. The debtor had attempted to reduce the Trustee's statutorily-mandated fee in a Chapter 13 bankruptcy. The issue presented to the United States District Court for the District of Rhode Island had been whether a bankruptcy court possesses authority to review the percentage fees of a Standing Chapter 13 Trustee. In light of the express language of section 586(e)(2), the court determined such review inappropriate.\(^10\)

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10. Id. at 701, 708.