Opinion Title: 08/22/2006 PUBLISHED In re Clemens, 06-20124, Judge Thurman.
Body: The Court interpreted the BAPCPA amendments to section 330(a)(3) and 330(a)(7) regarding allowance of chapter 7 trustees' fees. The Court held that under these amendments, the 10th Circuit's opinion of In re Miniscribe, 309 F.3d 1234 (2002) was not overruled but that section 326 must now be a part of the Court's Lodestar analysis, instead of simply acting as a cap against Trustee's fees.In reviewing trustee fee requests, the Court will now consider: 1) the time and labor required; 2) the novelty and difficulty of the issues involved; 3) the skill requisite to perform the service properly; 4) the preclusion of other employment by the trustee due to his or her acceptance of the appointment as trustee in the case; 5) the customary charges by other professionals involved in the case and by the field in general; 6) the contingent nature of the fee; 7) time limitations imposed by acceptance of the appointment; 8) the amount generated by the trustee's efforts for creditors and the results obtained; 9) the experience, reputation, and ability of the trustee; 10) the 'undesireability' of the case; 11) awards in similar cases; 12) computation of any multiplier for extraordinary results obtained by the trustee; 13) the amount resulting from the calculations under section 326(a); 14) whether the trustee has engaged in conduct which might justify denial of compensation under section 326(d); 15) whether notice of the trustee's fee request is appropriate, and whether any party in interest objects to the fees; and 16) whether the fees are to be paid from cash collateral and whether the creditor secured by the collateral consents.In this case, the chapter 7 Trustee's request for fees was not accompanied by any documentation of the hours spent in prosecuting the case. The Court held that without such documentation, it could not undergo the required "Lodestar" analysis discussed above. Accordingly, the Court denied the Trustee's request for fees without prejudice.
File: 502.pdf [1]
Judge: Judge William T. Thurman [2]
Date: Tuesday, August 22, 2006

Source URL: https://www.utb.uscourts.gov/opinions/opinion-502#comment-0

Links
[1] https://www.utb.uscourts.gov/sites/default/files/opinions/502.pdf
[2] https://www.utb.uscourts.gov/content/judge-william-t-thurman