

APPENDIX “G”
CHAPTER 12 STANDING TRUSTEE FEES

In the administration of cases under Chapter 12 of the Bankruptcy Code, a Chapter 12 standing trustee is appointed to participate in the administration of the case and to monitor plan performance post-confirmation.

Among the duties the Chapter 12 standing trustee is to perform are an accounting of property, examination of claims, provide information to creditors, and to file a final accounting. In addition, the Chapter 12 standing trustee is to examine the financial affairs of the debtor and to report on any mismanagement. The Chapter 12 standing trustee appears at confirmation hearings and monitors the payments required under the confirmed plan.

The Chapter 12 standing trustee is to be paid a fee of up to 10% of payments made under the confirmed plan. Such fee is to be paid from payments received by the Chapter 12 standing trustee. Since Chapter 12 was modeled on Chapter 13, there was a reasonable expectation that most, if not all, plan payments would be received by the Chapter 12 standing trustee for distribution.

However, because of the decision in *In re Wagner*, 36 F.3d 723 (8th Cir. 1994), plan payments can be made directly to creditors. Thus, although the Chapter 12 standing trustee would be entitled to a fee, there would be no funds available to pay it. This result threatens the integrity of the Chapter 12 process and creates an inequitable burden upon the Chapter 12 standing trustee who has statutory duties to perform but would not be paid. The Court is aware that Chapter 12 standing trustees in other jurisdictions have resigned because of this problem.

The Court finds that the Chapter 12 standing trustee performs a valuable service to the Court and to the parties in the Chapter 12 process and should be retained. The Court also finds that requiring a Chapter 12 debtor to pay a fee is not inequitable in view of the benefits derived from the debtor’s reorganization and from the services of the Chapter 12 standing trustee.

The Court is empowered under the provisions of § 105 of the Bankruptcy Code to issue orders necessary or appropriate to carry out the provisions of this title. Such an order is necessary and appropriate in the District of Nebraska in order to assure that the Chapter 12 bankruptcy cases proceed in an orderly fashion and that the integrity of the Chapter 12 cases be maintained.

Whether a Chapter 12 plan provides for payments to be made to creditors directly or through the Chapter 12 standing trustee, the debtor shall pay to the Chapter 12 standing trustee a fee, for each year of the plan, which shall be the lesser of 10% of all payments under the plan (or such other percentage as is set by the Attorney General or its delegate from time to time pursuant to the requirements of 28 U.S.C. § 586(e)), or \$4,000.00.