

REMARKS OF

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Introduction

Thank you again this year for allowing my colleagues from the United States Trustee Program and me to speak with you, and to listen to you, during your annual convention. You have much important business to discuss – ranging from matters of unique interest to chapter 7 trustees to broader issues within the bankruptcy community. I am grateful that you always make time for us.

This past year, I have had the pleasure of working with your outgoing President, Tamara Ogier. I have been thankful for her leadership and for her productive dealings with the USTP. Among many other things, Tamara helped establish two new important working groups – one dealing with computer security and the other addressing unclaimed funds issues. You are well represented on these working groups by Warren Agin, David Allard, Russell Garret, Bob Waldschmidt, and Marc Barmat.

With the end of Tamara's term, I look forward to continuing our fruitful relationship with the NABT by working closely with your incoming President, Kelly Hagen. I have very high regard for Kelly and the NABT Board. Together, we will tackle a broad array of matters during the coming year.

USTP 25th Anniversary

I make my annual report to you on the occasion of the 25th Anniversary of the USTP as a national program. As you know, we were originally established as a pilot program in the 1978 rewrite of the bankruptcy laws. Then, in 1986, Congress extended our jurisdiction throughout the country (excluding North Carolina and Alabama). By October 1988, we had completed our nationwide expansion.

The occasion of our silver anniversary has given us good reason to take a moment to look back on how far we have come. In the early years, our primary challenge was assembling a staff and opening field offices. Now, we play a key enforcement role in vindicating the rights of both debtors and creditors. Along the way, particularly in the early years, I am sure we made our fair share of youthful mistakes. But we always could count on the chapter 7 trustees to point out ways we could improve – and that was a good thing. Through the years, the NABT and USTP have shared perspectives and developed an ability to work together that has allowed each of us to perform our indispensable roles in the bankruptcy system with greater effectiveness.

I am extremely grateful to current USTP staff and to alumni who have done so much to build the USTP into the consequential and effective organization that it has become. I think all of us who have been stewards of the Program are thankful for the building blocks that were laid through the work of our predecessors.

As we look ahead to our next quarter century of public service, we know we will face significant challenges that will require us to muster all of the skill at our disposal. But we are optimistic that we will play an increasingly vital role in ensuring the integrity and efficiency of the bankruptcy system.

The Current Bankruptcy Environment

None of us conducts business in a vacuum, so let me make a few observations about the wider bankruptcy community and the environment in which we are now operating.

Bankruptcy filing trends no longer follow the pattern that we knew prior to 2005. Filings in USTP jurisdictions reached a peak of nearly 1.7 million cases in fiscal year 2005, plummeted for the next two years, and then rose precipitously for three years. We are now in the midst of a three year decline in filings. We expect that about 730,000 chapter 7 cases will be filed in USTP districts this fiscal year, which is 14 percent lower than last year. Similarly, chapter 13 filings are expected to be down about 11 percent to approximately 310,000 cases.

Some commentators predict that this downward trend will change and we will see an increase in filings in 2014. However, identifying trends and predicting future filing numbers in this new environment is perilous. Though we have started to see a slight lessening in the rate of decline in recent months, we believe it is still too early to predict a filing increase.

Despite the drop in filings during the last calendar year, chapter 7 trustees distributed \$2.7 billion to creditors. Even with the exclusion of one case with an unusually high distribution of more than \$1 billion, distributions were still up more than 9 percent compared to 2011. With distribution numbers like these, clearly, your work is critical to the American economy.

You are aware that the no-asset fee for trustees has remained static for 19 years. During that 19 year period, the nation experienced total inflation of more than 55 percent. Fortunately, overall trustee compensation has improved for the past two years. Based on preliminary data, in FY 2012, trustee income from no-asset fees, asset case fees, and professional fees paid to the trustee rose by about 8 percent. This is the second consecutive year we have seen an increase, following three years of diminishing trustee income. Though this increase is good news, I would encourage you to remain cautious. With the lag between the time a case is filed and the time a trustee receives compensation, the recent dip in filings may lead to a decrease in trustee income that could be felt in the near future.

While on the subject of compensation, let me assure you that the USTP will continue to defend the statutory provision allowing trustee fees as a commission in most cases. Our legal position largely has prevailed in litigation and, since your last annual convention, we have intervened on your behalf in cases from Maine to Idaho. And we will continue to press our legal position in appropriate cases in the future.

Chapter 7 trustees are a mainstay of the bankruptcy system and you play an indispensable role in making it work irrespective of whether case filings are rising or falling. And, you perform your jobs with great dedication and skill regardless of whether trustee income is increasing or decreasing. We in the USTP do not take you for granted and we are grateful for your important service.

USTP Budget Environment

I cannot adequately describe the state of the bankruptcy community without informing you about the budget constraints facing the United States Trustee Program. There is a serious budget policy debate going on in Washington, DC, and the Legislative and Executive Branches have serious budget decisions to make. Right now, the USTP is dealing with the challenges of the uncertainty of the situation. I am frequently asked if sequestration applies to the USTP since we are self-funded through fees paid by individual and corporate debtors. The answer is “yes.” We are subject to the same automatic spending cuts under the sequestration as other federal agencies.

With more than 85 percent of the USTP’s budget devoted to what properly is called “uncontrollable spending” – that is, salaries, rent, and the like – this has required us to cut our operations significantly. Absorbing the necessary budget reductions in just the 15 percent of our budget that is “controllable” is becoming increasingly difficult. This year, the Attorney General – with the support of appropriators in Congress – used the maximum amount of his authority to move funds around the Justice Department to avoid furloughing staff. The funds that were used do not replenish and he will not be able to do that again.

So far, the USTP has reduced staff levels by eight percent through attrition over the past three fiscal years, initiated the consolidation of three field offices into nearby offices, moved the Executive Office to reduce rent expenses, virtually eliminated many important maintenance projects, reduced contractor expenses (including for debtor audits), delayed information technology life-cycle replacements, and vastly curtailed travel.

Despite these resource limitations, we remain committed to achieving our mission and we will make the hard decisions necessary to stay within appropriations restrictions while still carrying out our duties to the bankruptcy system, including in the chapter 7 area.

Major Initiatives

Let me bring you up-to-date on two important initiatives of the USTP.

Professional and Management Accountability

The first is taking actions to enhance professional and management accountability in chapter 11 cases. I suggest that this topic is important to all of us, even to chapter 7 trustees and those who do not participate in business reorganization cases. These matters go to core principles of the bankruptcy system. I will mention just one of the projects under this topic.

New Fee Guidelines

As you likely know, the USTP promulgated new attorney fee guidelines for large chapter 11 cases which were announced by the Department on June 11th. The Guidelines will apply to cases filed on or after November 1, 2013, with assets and liabilities that each total at least \$50 million. Though the Guidelines are not law, they are required by law. The Guidelines

inform the bankruptcy community of the criteria we use in the review of fee applications, our expectations of professionals, and the possible bases for USTP objections.

Though these revisions are just the first in a multi-stage updating effort, they were long overdue. There have been significant changes in the legal industry, law office practices, and the complexity of reorganization cases since the Guidelines were initially issued in 1996. The fee review process, particularly in the largest chapter 11 cases, is cumbersome and often yields inadequate information. By setting forth more complete and uniform disclosures, the Guidelines will allow the courts, United States Trustees, and other parties to more thoroughly, more effectively, and more efficiently review fee applications.

Importantly, the update to the Guidelines was issued only after much deliberation over nearly two years, including through publication of two drafts inviting public comment and one public meeting at which numerous leading scholars and practitioners offered statements and answered questions. The process we followed was as open and transparent as possible, and the final product reflects as much of a consensus as we could obtain without sacrificing meaningful reform.

For the sake of brevity, I will describe just two key features of the Guidelines. First, the cornerstone of the Guidelines is the disclosure of billing rates outside of bankruptcy. The Bankruptcy Code allows practitioners to charge rates in bankruptcy cases comparable to those charged in non-bankruptcy cases requiring similar skills. Outside of bankruptcy, we know that businesses and private clients increasingly demand discounts and other legal cost-cutting measures. This doesn't seem to be the case in bankruptcy engagements, though. Professional fees in large chapter 11 bankruptcy cases simply have not been subject to the same market-driven and client-driven rate structures present in other practices of law.

Under the new Guidelines, attorney applicants are requested to disclose the "blended rate" of the fees they charge outside of bankruptcy. This allows for a more direct comparison to the rate charged in the case covered by the fee application. We believe this rate disclosure is necessary to ensure that professionals are charging comparable rates instead of "premium" rates just because the bankruptcy estate is paying the lawyer's bills.

The second most important element of the Guidelines is a call for budgets for all attorney work to be paid by a bankruptcy estate. The budgets generally are disclosed with the fee application after the work has been performed and may be amended as the case progresses. However, fee requests that exceed budget projections by more than ten percent should be specially justified.

The budget provision may have been the most controversial feature of the Guidelines. All of us know, and many large case practitioners acknowledge, that clients outside bankruptcy expect to see budgets. Some practitioners, however, resisted this reform by arguing that bankruptcy is different and too unpredictable. Let's think about that for a minute. Clients in the most sophisticated litigation and transaction cases demand budgets from their lawyers. Chapter 7 debtors must satisfy a means test that is based upon a reasonable budget to meet basic living needs. Chapter 13 debtors have to live by budgets for five years and amend their budgets

when intervening life circumstances create additional economic pressures. But, \$1,000 per hour lawyers handling large corporate reorganizations contend they are not able to provide budgets. That is an argument that we just cannot accept.

As we prepare to implement the Guidelines on November 1, 2013, we are reaching out to the bankruptcy community to explain the Guidelines, and are asking the courts to consider adopting them as part of their local rules or administrative orders. We also are working with our offices to ensure prudent enforcement.

We want these Guidelines to be effective and we want to avoid unnecessary litigation. There should be no mistake that the public and policy-makers will be looking to see if the common sense reforms in the Guidelines are followed. Transparency may be our most effective compliance tool.

I am truly grateful for all the assistance in updating the Guidelines that we received from many leading practitioners and academics, as well as the prestigious National Bankruptcy Conference. If properly followed and enforced, the new Guidelines will make the review of attorney fee applications more efficient and enhance public confidence in the fairness of the bankruptcy fee process.

Executive Bonuses

Beyond restraint by professionals in cases, the public also expects accountability by the management of companies that file for chapter 11 relief. Public confidence is eroded when we read newspaper stories about cases in which management and insiders who have led their multi-million or billion dollar companies into bankruptcy are paid – often over the objections of the United States Trustee – large bonuses at the same time they are laying off employees, slashing pension benefits, and paying creditors pennies on the dollar. The USTP is committed to enforcing the strict limitations on management bonuses that were imposed by Congress in the 2005 amendments.

Those of you who have been counsel in smaller chapter 11 cases know that funds to pay professional fees are limited and management bonuses are rare. Although it does not always seem like it, the rules for professional fees and management bonuses apply just as much to multi-billion dollar conglomerates as they do to small, family-run enterprises. We cannot have a permissive set of rules for those at the proverbial top of the bankruptcy pyramid and a stricter set of standards for everyone else.

Mortgage Servicer and Other Consumer Enforcement

The second major area I want to discuss with you is our mortgage servicer and other consumer enforcement efforts.

Mortgage Servicers

Our signature achievement as a Program was playing an instrumental role in the historic National Mortgage Settlement. Under that Settlement between DOJ, HUD, 49 states, and the five largest banks, homeowners already have benefited from more than \$50 billion in relief, including relief for debtors in bankruptcy. Even more importantly for the bankruptcy system, comprehensive new mortgage servicing standards ensuring fairer, legally compliant, and more efficient conduct have been put into place.

In June, the independent Monitor created under the Settlement issued a report on compliance with the servicing standards. Although he found that significant progress has been made, he also found that Wells Fargo and Citi have failed to comply with standards governing loss mitigation services, and Chase has failed to comply with standards governing forced placed insurance. The deficient servicers are required to compensate harmed homeowners. They also are required to cure systemic deficiencies to the satisfaction of the Monitor. Failure to comply may lead to millions of dollars in additional penalties and other relief.

Beyond the violations verified by the Monitor during the earlier reporting period, three banks have self-reported additional violations in the subsequent reporting period. Bank of America reported failure to comply with standards governing loss mitigation services and foreclosure notice practices. Citi reported failures to comply with standards governing short sales and foreclosure notice practices. Finally, Chase reported failure to comply with standards governing loss mitigation services.

While the failure of the banks to comply with some important provisions of the servicing standards is disappointing, unacceptable, and urgent to remedy, it is important to note that most of the strict standards have been satisfied. Further, the banks' difficulties in satisfying all of their obligations clearly demonstrate that the standards were not just an easy "lay up." Rather, they are a set of stringent requirements imposed by government to redress abusive practices. The USTP takes great pride in having played a major role in crafting the standards.

In the next report from the Monitor due out later this year, we will learn more about compliance by the banks with the bankruptcy specific requirements of the standards. Compliance testing with those standards began in earnest earlier this year, and testing results are now being submitted to the Monitor for his assessment of the servicers' performance.

The USTP has integrated policing mortgage-default servicing practices into its regular civil enforcement work. United States Trustees across the country continue to scrutinize mortgage servicer compliance, and we will continue to provide the Monitor with information to assist him in evaluating compliance under the Settlement.

As I stated at your annual meeting last year, the new mortgage servicing standards should be viewed as a template that all servicers should follow both to ensure fair treatment of homeowners and to show competent and effective internal operations. With that said, let me assure you, too, that our enforcement efforts reach beyond the top five servicers who signed the National Mortgage Settlement. We continue to see violations by other servicers and we take remedial actions as appropriate.

We in the USTP greatly appreciate your continued observations and case referrals of servicer misconduct. You are on the front lines. You talk with debtors and consumer counsel every day. You see the claims and hear the horror stories about lost paperwork and inaccurate claims. Please continue to coordinate with your local UST offices on these matters. Your work is essential and much appreciated.

Policing Unsecured Claims

Even though much work continues to be required to protect vulnerable homeowners from mortgage servicer misconduct, we in the USTP also have forged plans to turn more attention to unsecured claims. The new Federal Rules of Bankruptcy Procedure that became effective on December 1, 2012, set forth additional disclosures required of credit card and other unsecured debt holders. The Rules are designed to assist the debtor in associating the claim with a known account and to provide a basis for assessing the accuracy of the claim. Thus, debtors and trustees are better able to determine if claim objections are warranted.

Over the past several months, the USTP has taken a closer look at the conduct of credit card claimants to ensure compliance with the new Rule. So far we have found that many creditors are complying, but the incidence of non-compliance is troubling. The problem may be concentrated in a small number of claimants, but more scrutiny is required. We are looking at cost-effective ways to attack this problem. I would note that we have already had some success – one large debt buyer conformed its practices after receiving inquiries from our office.

As we continue to review unsecured claimant compliance, we are mindful that the USTP is the only national enforcer of the Bankruptcy Rules. Our interpretations of requirements and actions should be consistent and predictable throughout the country. Consistent government enforcement can be a major benefit to any business, including creditors in bankruptcy.

What's New in Chapter 7

As my final topic today, I wanted to provide you with a quick update on two items of interest to you as chapter 7 trustees.

Consolidation of Trustee Oversight Functions

For all of the budget reasons discussed earlier, and because all of our functions ought to be performed at peak efficiency in any appropriations environment, there is a constant premium on conducting trustee oversight as cost and time effectively as possible. There are certain tasks

that are performed in every USTP office. Identifying these tasks and consolidating them among designated Program staff in the regions is one way we are seeking to maximize efficiencies.

Last year I reported to you that nearly 40 of our field offices had been involved in various consolidation pilots. In the coming months, we will accelerate our efforts to consolidate functions to achieve economies of scale in reviewing trustee interim reports and trustee final reports, performing trustee field exams, and closing trustee audits. We believe these changes will improve the process, but please understand that there may be a period of adjustment as your interactions with USTP staff may change from someone in your local USTP office to someone outside your area.

Banking

Also, as you know, the provision of the Dodd-Frank bill providing unlimited FDIC insurance expired and banks are once again required to post collateral or obtain a surety bond for estate balances above the \$250,000 FDIC insurance amount. Many of you had expressed concern that the expiration might have an impact on the number of banks accepting chapter 7 bankruptcy estate deposits. Fortunately, we have not found that to be the case. At last count, there were still 20 or more banks accepting chapter 7 deposits and capacity does not appear to be an issue at this time. We will continue to keep a close watch.

Conclusion

I appreciate your time and attention this afternoon. Chapter 7 and 13 trustees are a fulcrum supporting the consumer bankruptcy system. Your work in the trenches touches millions of people each year. Indeed, you have a profound impact on the lives of ordinary citizens, and the consequences of your work are felt throughout the economy.

With the greatest appreciation and personal admiration for your skill and dedication, I wish you a very successful Annual Convention.

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