

**REMARKS BY**

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## **Introduction**

Thank you for the invitation to speak with you again this year at the start of your always informative and valuable annual conference. During my five years as Director of the United States Trustee Program, I have been fortunate to work with such great leadership of the NACTT. Your outgoing President, Kevin Anderson, is a consummate professional and a man of great personal integrity. He has served you and the bankruptcy system with distinction and effectiveness. Kevin, I thank you sincerely for all your outstanding work.

Fortunately, once again the NACTT has selected a worthy successor. I have great professional respect for your new President, Mike Joseph. I look forward to working closely with Mike and others in the NACTT leadership during the upcoming year.

The NACTT is also lucky to have so many in its membership who have made significant contributions to the bankruptcy system. Let me recognize just two of your colleagues. First, congratulations to Brian Lynch, who contributed so much as a member of the NACTT. In particular, Brian made a major contribution to efforts to address the mortgage crisis. As you probably know, on June 1<sup>st</sup>, Brian was deservedly appointed by the Ninth Circuit to the bankruptcy bench in Tacoma, Washington. Though I understand that Judge Lynch is not here with us today, I extend my congratulations and best wishes to him.

Next, let me recognize a pioneer of debtor education and a man who contributed so much to bankruptcy practice during his 21 years as a chapter 13 trustee. I extend every good wish to Al Olson, who is now enjoying retirement with his family.

There is so much I would like to talk to you about and so many activities of the United States Trustee Program I want to share with you. Before I get to the three topics I will devote some time to, let me note just a couple quick items. First, as you well know, the number of filings is continuing to rise. Let me express to you again how much I appreciate your ongoing efforts to address the many challenges that come with that growth.

Second, this has been an active year for bankruptcy in the Supreme Court. As you know, four important bankruptcy decisions were handed down. The Program's General Counsel appeared as one of the Government's counsel of record in three of the four major bankruptcy cases decided during the high Court's past term. Included in those decisions was the Lanning case in which the Government successfully argued that courts have some discretion in determining "projected disposable income." In the next term, the Supreme Court will review the Ransom case. The Court will consider whether a debtor may deduct an ownership cost for a vehicle that is free of loan or lease payments.

Now, let me highlight three topics of special importance to the United States Trustees: first, enforcement actions to protect consumers; second, promotion of the Home Affordable Modification Program; and, third, controlling the costs of bankruptcy.

## **Consumer Protection**

I have reported in the past on the United States Trustee Program's (USTP) efforts to enhance its protection of consumer debtors, especially by combating mortgage fraud and abuse. Over the past three years, we have markedly increased our work in this area. Last year, for example, we took about 9,000 consumer protection actions, such as filing enforcement motions or conducting informal discovery against petition preparers, bad attorneys, and creditors.

It is noteworthy that we have used many new weapons in our arsenal to confront those who violate Bankruptcy Code provisions at the expense of consumers or their bankruptcy estates. Of most significance, we have coordinated litigation and investigations in multiple districts in a way never previously attempted by the Program. And, for the first time, we reached nationwide settlements with three major financial institutions.

First, we reached a settlement with Capital One Bank to redress their collections on discharged debt. Then we settled with First Tennessee Bank to rectify violations of customers' privacy rights. And, most recently, we participated in a settlement with Countrywide Home Loans, Inc.

On June 7<sup>th</sup>, I joined the Chairman of Federal Trade Commission (FTC) at a news conference announcing a comprehensive settlement of an FTC complaint and USTP litigation nationwide against Countrywide. Due to unprecedented cooperation between the FTC and USTP, we reached an agreement with Countrywide to redress and prevent future violations of homeowners' rights.

A significant portion of the covered homeowners had sought relief in chapter 13 bankruptcy. We alleged that Countrywide inflated claims, charged impermissible fees, and sometimes hid those fees until the homeowners emerged from bankruptcy court protection. As I commented when announcing our settlement, others have criticized mortgage lenders for making so-called "no doc" loans. We found that, at least in Countrywide's case, the mortgage servicer then turned around and imposed "no doc" charges on homeowners by imposing fees for phantom services never performed or never documented.

Countrywide's improper accounting and billing practices could be catastrophic to debtors, who may emerge from bankruptcy only to be required to pay previously undisclosed charges or risk foreclosure. These practices also may be unfair to other creditors, who may receive less than their fair share from the bankruptcy estate because the mortgage company claimed more than it was entitled to receive.

To correct these widespread and improper business practices that victimized homeowners in dire financial straits, the agreement contains three major provisions pertaining to chapter 13 debtors. First, Countrywide paid \$108 million into a fund to be administered by the FTC to compensate homeowners who were harmed by the company's violations. Chapter 13 debtors will share in a significant portion of this fund. This relief ranks as one of the largest monetary

remedies in the history of the FTC and clearly is the largest in the history of the United States Trustee Program.

Second, Countrywide will establish internal procedures to ensure that the charges it imposes and the claims it files in bankruptcy court are accurate and permissible. In addition, Countrywide will pay for an independent third party to verify compliance with the prescribed internal controls. And, third, Countrywide now will provide adequate notice of its charges and monthly payment amounts. This will help ensure that trustees, debtors, and bankruptcy courts can evaluate the legitimacy of the claims and also help ensure that debtors do not emerge from bankruptcy only to be required to pay previously undisclosed charges or risk foreclosure.

Homeowners who file for bankruptcy protection and obey the rules are entitled to a fresh start. This agreement with Countrywide helps to ensure that they will receive that relief.

The last point I will make about our consumer protection efforts is that we are an extremely active member of the President's Financial Fraud Enforcement Task Force. As such, we made a major contribution to the recent Operation Stolen Dreams – a nationwide sweep of mortgage fraud cases brought or concluded over a three and one-half month period. Announced by the Attorney General on June 17<sup>th</sup>, the Operation highlighted the combined actions of federal, state, and local law enforcement authorities. On the criminal side, more than 1,500 defendants were named in the Sweep. On the civil side, nearly 200 enforcement actions were taken. The United States Trustee Program contributed about 20 percent of those civil cases. Our actions addressed a wide range of violations, including actions taken against mortgage servicers, foreclosure rescue operators, loan origination and loan modification scammers, and real estate Ponzi scheme operators.

### **Home Affordable Modification Program**

Enforcement actions to protect homeowners are important. But there are other steps we also can take to keep families in their homes when that is financially viable for the homeowner. I know that many of you and the NACTT have been firm advocates for the Home Affordable Modification Program, which is better known as HAMP.

I understand that a later panel will address HAMP, so I will not go into the details of that Government-approved initiative to help families in distress save their homes. But I want to be sure that all of you are aware of a Treasury Directive that became effective on June 1<sup>st</sup> which makes HAMP available for chapter 13 debtors. I have had recent conversations with officials in the Department of Treasury, as well as with your leadership, to discuss ways in which the USTP and chapter 13 trustees can facilitate HAMP participation.

Given the enormous disparities in chapter 13 practice in districts around the country, and even among judges within the same district, it does not seem possible to develop uniform protocols for reflecting mortgage modifications in chapter 13 plans. But there are steps we can take. For example, chapter 13 trustees can make sure that debtors and their counsel are aware of the basics of HAMP. And it is vital that chapter 13 trustees assist pro se debtors who may be

eligible for home loan modifications. Trustees can contact mortgage servicers in appropriate circumstances. These steps, and others, are perfectly in keeping with a trustee's responsibility to make the chapter 13 process work for the benefit of all stakeholders.

The Program is interested in hearing from you on how we can help make HAMP work in the chapter 13 system. Among other things, we plan to make handouts available in section 341 meeting rooms so that debtors – especially pro se debtors – are aware of their eligibility for HAMP. We also would like to engage in joint training efforts to ensure the debtor bar and each of you are fully aware of HAMP, its requirements, how it applies to chapter 13 debtors, and how we can make it work. Finally, we will post Frequently Asked Questions on the consumer page of our Web site.

### **Controlling the Costs of Bankruptcy**

The final matter I will cover is the cost of bankruptcy. Everyone knows that the cost of filing for bankruptcy has risen dramatically in the past five years. Filing fees increased by about 40 percent as a result of BAPCPA and consumer debtor attorneys' charges have increased at least that much if not more. In fact, the Government Accountability Office estimated that the chapter 13 "no look" fee had increased by at least 55 percent in many districts. In some districts, we know the fee has doubled.

Beyond filing fees and professional fees, another factor that potentially can increase the cost of bankruptcy is unnecessary document production requirements. About one year after the effective date of BAPCPA, the USTP reviewed its typical document production requirements and evaluated what kinds of documents were essential for us to do our jobs. We decided that we would not routinely request from debtors any documentation that was not otherwise required by the Code or Rules. Obviously, to do our jobs, we sometimes need additional information. But United States Trustee document production requests are required by national policy to be particularized to the case.

In consultation with the NACTT – as well as with the National Association of Bankruptcy Trustees (NABT) and the National Association of Consumer Bankruptcy Attorneys (NACBA) – we have decided to examine chapter 7 and chapter 13 trustee document request practices. Let me be clear, though. We in the Program do not believe it is practical to prescribe a lengthy and detailed list of uniform and mandatory rules governing trustee document requests. That would not work because, among other things, chapter 7 and chapter 13 practices are vastly different, local rules vary widely, and United States Trustees should not substitute their judgment for trustees who have their own fiduciary responsibilities. We do believe, however, that it is appropriate that we help identify the most cost-efficient document production practices. This will help ensure that the time and resources of trustees and counsel alike are expended on presenting or reviewing only the paperwork that is most likely to advance the proper administration of the bankruptcy case.

Accordingly, I am pleased to report to you that the USTP will work with the NACTT, NABT, and NACBA to identify "best practices" that can be disseminated to trustees nationwide.

It is the Program's hope that these practices will enhance the cost-effectiveness of case administration for the benefit of trustees, debtors, and the bankruptcy system. An ad hoc group of representatives from the trustee associations, NACBA, and the Program will meet later today here in Grapevine to launch this project. I am very optimistic that this collaborative effort will pay huge dividends for the entire bankruptcy system. Not only might we achieve more streamlined standard practices, but, in so doing, I hope we also forge even closer working relationships among the major components of the bankruptcy system. I commend the NACTT, NABT, and NACBA for their enthusiasm and input in tackling this worthwhile project.

Stay tuned. I am sure that NACTT and I will be reporting back to you on our progress.

### **Conclusion**

That concludes my abbreviated annual report to the NACTT on the activities of the United States Trustee Program. Many of my colleagues in the USTP are with me at this conference to participate on panels, to meet with your leadership, and to answer any questions you may want to pose to us during break times. We look forward to talking more with you and hearing from you.

The members of the NACTT play a special role in the bankruptcy system. The integrity and efficiency of the chapter 13 process requires your continued diligence and professionalism. I am grateful for your outstanding service. I respect the work you do and the way in which you do it.

I wish you a most productive and enjoyable meeting.

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