

REMARKS OF

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Introduction

Good morning. Thank you again this year for allowing my colleagues from the United States Trustee Program (USTP) and me to speak with you, and to listen to you, during your annual seminar. You have much important business to discuss – ranging from matters of unique interest to chapter 13 standing trustees to broader issues within the bankruptcy community. So, I am grateful that you always make time for us. I am especially glad to be back with you since last year, for the first time during my more than eight years as Director, I missed the NACTT annual seminar.

Let me begin by extending my appreciation to your outgoing President Bob Drummond for his leadership and for his productive dealings with the USTP over the past year. And let me also extend hearty congratulations to your new President, Marge Burks. Marge is well regarded by those of us in the Program who know her, and I look forward to working with her and the NACTT liaison committee on a broad array of matters in the year ahead.

I also want to acknowledge and welcome two trustees we recently appointed – Pam Bassel out of Fort Worth, Texas, and Mark Haring from Madison, Wisconsin. We are pleased to have you join the team. Finally, let me extend my best wishes to Jasmine Keller on the occasion of her retirement after 15 years of service to the Minneapolis bankruptcy community.

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 13 trustees to point out ways we could improve – and that was a good thing. Through the years, the NACTT 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 start with 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 chapter 13 filings, and expect that chapter 13 filings in USTP districts will be down about 11 percent to approximately 310,000 cases this fiscal year. Similarly, chapter 7 cases are expected to be down by 14 percent to approximately 730,000 filings.

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 decreased filings last year, 2012 still managed to be a record breaking year in the chapter 13 world. First, chapter 13 trustees distributed \$7.15 billion, the highest distribution amount since we began keeping this statistic in 1992 and nearly \$650 million higher than last year's all time high of \$6.5 billion. Second, with an average percentage fee of 5.7 percent, the cost of administering cases was the lowest on record. Finally, it is clear that chapter 13 trustees are busier than ever. Collectively, you managed an all-time high of more than 980,000 open cases in FY 2012.

These numbers clearly demonstrate how important your work is to the American economy. Chapter 13 trustees are a mainstay of the bankruptcy system and you play an indispensable role in making it work. 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, delayed information technology life-cycle replacements, and vastly curtailed travel.

Despite these resource constraints, 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 13 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 13 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 our 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 13 debtors have to live by budgets for five years and amend their budgets when intervening life circumstances create additional economic pressures. Chapter 7 debtors must satisfy a means test that is based upon a reasonable budget to meet basic living needs. But, \$1,000 per hour lawyers handling large corporate reorganizations contend they are not able to provide budgets. This 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.

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.

The Justice Department and all of us involved in the Settlement negotiations are extremely fortunate that Joe Smith, the distinguished former North Carolina Commissioner of Banks, agreed to assume the position of Settlement Monitor. As Joe will describe to you in just a few minutes, his office is charged with verifying the compliance of the banks with the Settlement.

The USTP team and I have worked closely with Joe for more than a year now. Joe and his team are accessible and diligent in testing and reporting on the bank's progress in helping homeowners. They are hard at work to make sure that the five settling servicers meet their obligations. So let me take this occasion to recognize Joe and the fine job that the Office of Mortgage Settlement Oversight is doing for the benefit of all of us here this morning.

Though Joe will provide you with a much more comprehensive report, I did want to talk with you briefly about compliance by the banks with the general servicing standards. In his report issued in June, the Monitor found that significant progress has been made. He also found, however, material failures to comply with some of the standards. The deficient servicers are required to compensate harmed homeowners, and 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.

The failure of the banks to comply with some important provisions of the servicing standards is disappointing, unacceptable, and urgent to remedy. I think the banks' difficulties in satisfying all of their obligations demonstrate that the standards are not just an easy "lay up."

Rather, they are a set of stringent requirements imposed by government to redress abusive practices.

As everyone at this meeting is well aware, the USTP has integrated policing mortgage-default servicing practices into our regular civil enforcement work. Enforcement efforts reach beyond the top five servicers who signed the National Mortgage Settlement. We continue to see violations by other servicers and take remedial actions as appropriate.

As we have discussed at many previous national, regional, and district meetings, chapter 13 trustees are the second line of defense – after debtor’s counsel – in identifying and remedying mortgage servicer violations. You often will be the first party to notice a change in payment, illegitimate post-petition fees, or other errors that can compromise the viability of a debtor’s chapter 13 plan to save the family home. In many cases, it is satisfactory to obtain relief by addressing the problem with the bank’s lawyer in the case. Under the National Mortgage Settlement, though, chapter 13 trustees also have access to a dedicated Hotline number.

We in the USTP greatly appreciate your continued observations and case referrals of servicer misconduct. 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. Finally, and very importantly, you also should contact the Monitor through the reporting tool for professionals he has established on the Monitor’s Web site (www.mortgageoversight.com).

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 to creditors in bankruptcy.

Update on Section 586

As a final matter, I want to bring you up to date on the Program's efforts to support your right to a percentage fee in cases that are dismissed or converted prior to plan confirmation. The Program's legal position is that 28 U.S.C. § 586 does not limit a standing trustee's fees just to cases in which a chapter 13 plan is confirmed.

This past year, we participated in two cases in New Mexico in which this issue was raised. The USTP filed briefs and an attorney from the Executive Office provided oral argument at an en banc hearing held in late June. We are awaiting a decision from the court.

Conclusion

I appreciate your time and attention this morning. 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 another very successful Annual Seminar.

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