

REMARKS OF
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INTRODUCTION

Thank you for allowing me to join you at your national conference. This is a wonderful chance for my colleagues and me to meet with the NABT leadership and see so many chapter 7 trustees with whom we work throughout the year.

As always, I have enjoyed talking with NABT President Rick Nelson this week. I know firsthand how hard he has worked to advance the interests of chapter 7 trustees and the bankruptcy system as a whole. He is a trusted leader and I want to thank him for all he has done over the past year as your President.

Through the NABT Liaison Committee, I also have had the opportunity to work with your incoming President, Dwayne Murray. We in the United States Trustee Program (USTP) look forward to our meetings with your leadership because the agenda always is designed to solve problems and improve the bankruptcy system. I know that Dwayne will be an effective advocate for the chapter 7 trustee perspective and an energetic partner in getting things done.

I also want to recognize my USTP colleagues who are here with me today. I think you know all of them: Assistant Director Doreen Solomon; Deputy Assistant Director Suzanne Hazard; United States Trustee and former NABT President, Sam Crocker; and the Acting United States Trustee from right here in San Diego, Tiffany Carroll. Each of them reminds me often of how much we need trustee input because our policies, practices, and Handbook provisions mean nothing unless they are carried out with diligence and expertise by you, the chapter 7 trustees.

Before turning to some issues that matter to those of us who are stewards of the bankruptcy system, I want to acknowledge a loss suffered by the entire bankruptcy system. Former long-time chapter 7 trustee, former NABT President, and former United States Trustee Saul Eisen passed away yesterday. Saul was a bankruptcy leader for decades, and we remember that he always had a ready smile. He will be missed. The condolences of the USTP and the entire bankruptcy community are with the Eisen family.

BANKRUPTCY FILINGS

As we survey the bankruptcy landscape, we see some new trends that could have a significant impact on our practice in the near future. All of us know that bankruptcy filings have rapidly decreased in recent years, dropping by nearly 50 percent over the past five years after they had doubled from 2007 to 2010.

We are, however, beginning to see a change. The downward slope line of overall filings is flattening. Though fiscal year 2016 filings likely will be down again by about 7 percent, the trend line in the past year is flatter than it has been in earlier years. In fact, chapter 11 filings are up 8 percent. Chapter 13 filings are essentially holding steady, with many districts even seeing an uptick. And, although chapter 7 filings are on pace to decline by about 11 percent in FY 2016, it is possible that the downward trajectory may end, or at least remain very modest, next year.

Just as the bankruptcy system had to adjust to the decrease in filings, I am confident that the system has the capacity to administer whatever filing volume is likely to come our way.

CHAPTER 7 TRUSTEE ECONOMICS

I am fully aware that the economics of a chapter 7 trustee practice have not been easy in recent years. Among other things, the no-asset fee has not increased in more than 20 years. Unlike fees in large chapter 11 cases, which seem to go up and up with no end in sight, trustee income does not.

The USTP tracks total trustee compensation, including both trustee and professional fees. In FY 2015, total chapter 7 trustee compensation went down by 5.9 percent (excludes one anomalous case). This is the third consecutive year of declining income. One might expect total compensation to increase if the number of cases increases, but we also might expect a lag between any increase in filing numbers and realization of compensation from the trustee percentage fee.

Over the past year, the USTP continued to advocate for trustee compensation as a commission, except in extraordinary circumstances. We realize that not all courts have done so. But, rest assured, we will continue to work to vindicate section 330(a)(7) so that trustee compensation is treated as a commission.

The USTP knows that it is important that the economics of chapter 7 practice allow us to recruit and retain the very best trustees.

SECURITY AT SECTION 341 MEETINGS

On another vital topic, we have made progress in enhancing security at section 341 meetings. I am extremely grateful to the National Conference of Bankruptcy Judges (NCBJ) for their assistance on this project. Judge Laura Taylor here in San Diego serves as Chair of the NCBJ-USTP Liaison Committee. Judge Taylor and the Committee have been incredibly helpful. Judge Alan Stout in the Western District of Kentucky – another former NABT President from whom you will hear today and Saturday – has been the Committee's point person on security. I have consulted Judge Stout regularly and he has been quite effective at navigating the bureaucratic complexities that are presented.

I have reported to you before that we maintain about 400 section 341 meeting sites, including in remote locations far from United States Trustee offices. We do this for the benefit of debtors, creditors, and professionals who otherwise would have to drive many more miles to participate in these mandatory meetings. Maintaining so many section 341 meeting sites is costly and so is providing security. We do not wish to close any locations and yet it is not realistic to provide the optimum level of security at all 400 sites.

Last year, I devoted \$1 million from the Program's base budget to expand security. In 16 of our less secure locations, we now provide Federal Protective Service armed guards. The comments I have received from trustees, practitioners, and parties have been overwhelmingly

positive. Not only has the additional security been welcome, but the overall professional atmosphere of the meetings has been enhanced. Today, I can report to you on four additional steps.

First, in the President's budget request for FY 2017, Congress has been asked to appropriate \$2.2 million so that we can expand our security footprint to additional locations. Congress has not yet enacted appropriations for FY 2017, which begins on October 1st, but we continue to advocate that this funding be provided.

Second, we have given the Administrative Office of the U.S. Courts a list of sites where we would like to enhance security by moving our section 341 meeting rooms into federal courthouses. With the recent downsizing of the federal courts, there is excess space. If we can match our security needs with that space, it will be a win-win situation – not only will we have more section 341 meeting rooms in fully secured locations but the courts will have less unoccupied space.

Third, the United States Marshals Service will notify all of its district operations that they have the authority to provide security in emergency situations at section 341 meetings. From time to time, you or the United States Trustee has advance notice of a potential security threat. If the meeting room is not in the courthouse, there may be some confusion as to who can provide security. That confusion now has been eliminated. While the Marshals may not always have personnel available at the time needed, they will provide security if resources are available. We generally make only a handful of such requests a year and should not now take undue advantage of the Marshals' policy to provide emergency assistance.

When a situation arises that you believe warrants security, you should work through your United States Trustee to determine the best course of action. The first and best option when a volatile situation is anticipated is to attempt to move the proceeding to a federal courthouse. When that is not possible, the United States Trustee can request a presence by the Marshals Service at the originally planned 341 meeting site.

Fourth, the United States Marshals Service will provide the telephone number of its Threat Management Center to United States Trustees and chapter 7, 12, and 13 trustees. Calls to the Threat Management Center should be made only in extreme circumstances and should be done in close coordination with your United States Trustee. This is a security feature never before provided to us, and I am extremely grateful to the Marshals for their favorable consideration of this request.

UNDERPERFORMING CONSUMER ATTORNEYS

On another matter of importance to private trustees, the USTP has turned more attention over the past year to addressing problems caused by underperforming consumer attorneys. Based upon information provided by judges, practitioners, our own staff, and chapters 7 and 13 trustees, we have focused on national consumer providers who operate in multiple districts and who may present a more widespread challenge for the bankruptcy system.

This attention to national providers complements our long-standing and effective efforts to address professional misbehavior on a case-by-case basis. By filing motions to disgorge fees under section 329 and taking other enforcement actions, we have protected consumers, as well as enhanced the efficiency and effectiveness of the bankruptcy system. But with more and more national consumer practices these days, and an increase in advertising through the Internet, new and unconventional models of law firm operations merit review.

In particular, the USTP is looking at patterns of allegations that large consumer firms that do business across district lines are not operating in accordance with bankruptcy requirements. Among other issues, we have looked into allegations of improper or improperly disclosed fee sharing, tie-ins with non-legal entities, sham partnership agreements, the unauthorized practice of law, substandard services, and lawyers who act solely as appearance counsel and meet their clients for the first time at the section 341 meeting.

In one recent case, we investigated and took action against a multi-state consumer law firm. The bankruptcy court imposed relief against the law firm and some of its lawyers for, among other things, the unauthorized practice of law, failure to disclose fees, fee sharing, and substandard legal services. Although the terms of the relief in that case did not extend nationwide, the court's legal and factual findings were compelling and the law firm subsequently ceased operations.

We have filed numerous complaints and taken other actions in other cases. I expect to discuss this topic further at your next meeting.

I ask all of you here today, who observe the impact of poorly performing consumer lawyers, to communicate with your local Assistant U.S. Trustee about problems you are seeing. The evidence you amass from your day-to-day administration of cases is essential to our ability to mount an effective enforcement campaign to protect consumers, trustees, the courts, and the entire bankruptcy system.

MORTGAGE SERVICER ENFORCEMENT

Staying on the topic of enforcement, let me also update you on our ongoing mortgage servicer oversight efforts.

We continue to engage banks and boutique mortgage servicers to ensure compliance with the Bankruptcy Code, Rules, and Official Forms. I am gratified by the reaction we have received from many in the mortgage and financial community who are now self-reporting to us on operational flaws they have detected, either through their own internal compliance reviews or after localized USTP inquiries or actions have led them to discover broader problems. This trend is a welcome outgrowth of the success of our enforcement efforts and may augur well for the future consensual and efficient resolution of violations.

Last year, we entered into settlements totaling more than \$130 million that were confined solely to bankruptcy violations. And this year, we played a key role with our federal and state

partners in reaching a \$470 million agreement with HSBC Bank to resolve a panoply of mortgage origination and servicing issues.

About two weeks ago, Wells Fargo agreed to pay \$3.5 million to approximately 8,000 borrowers in bankruptcy because Wells provided inadequate notice of payment changes. The work of the independent monitor installed under an earlier settlement between the USTP and Wells Fargo led to discovery of systemic problems with certificates of service that were mailed after the date of filing. As a result, some borrowers were billed for mortgage increases without receiving the period of advance notice mandated under the Rules. Wells Fargo now has changed its practices and soon will remediate the affected debtors.

We have numerous ongoing investigations and negotiations. The violations range from the same kinds of inaccuracies and inflated claims we addressed with the largest banks in the National Mortgage Settlement of 2012 to more narrow, but still critically important, issues of proper noticing and other billing practices that we believe require monetary remediation to debtors, changes to policies and procedures, and independent monitoring.

COMBATTING UNSECURED CREDITOR ABUSE

Let me also bring you up to date on another important enforcement priority I mentioned at last year's convention – that is, investigating and taking actions to police compliance by unsecured creditors. Among the issues of concern to us are possible robo-signing and the intentional filing of a high-volume of stale debt claims. In the view of the USTP, such conduct is not merely technical non-compliance, but rather a serious affront to the integrity of the bankruptcy process.

As we have argued in the mortgage context, the failure to properly certify a proof of claim – which is, after all, entitled to *prima facie* validity – is not a minor technicality. It is a violation of rules that were put in place by the Judicial Conference of the United States to ensure that creditors perform due diligence, file accurate information, and identify a responsible official who can be held accountable when requirements are not met.

In the view of the U.S. Trustees, at the very least, robo-signing is a blatant abuse of process. It is not good enough to say that robo-signing is okay unless the U.S. Trustee or another party can prove the underlying claim was inaccurate. Although we have shown in some cases that creditor claims have been inaccurate, incomplete, or not adequately documented, the act of robo-signing in and of itself is an outrageous abuse. It is a flouting of judicial rules that, if detected by the USTP, will result in action seeking robust remediation. The fact is, after literally years of public attention, there is simply no good excuse to robo-sign proofs of claim and other documents that are filed in bankruptcy court.

Similarly, the intentional filing of a large number of claims on debts that are beyond the applicable statute of limitations for collection in state court is unacceptable. In bankruptcy, such claims are uncollectible only if the debtor, trustee, or other party raises an objection. Any stale debt claimants who manipulate the system – such as by trustee shopping or forum shopping, and

strategically filing in those courts where they are most likely to be undetected – are abusing the process.

My concern over stale debt claims is not about a stray debt slipping through within a large claims portfolio. Rather, it is the business model to manipulate the bankruptcy process to collect stale debts that would be troubling.

There are multiple victims of a scheme to file a high volume of stale debt claims. The foremost victim is the integrity of the bankruptcy process. Debtors whose estates should not have to pay the debt, or whose chapter 13 plan feasibility is compromised by the claim, are additional victims. And creditors who will collect less money than they would if the stale claims were disallowed – maybe millions of dollars less in thousands of cases – also are victims.

Much of the discussion thus far on stale debts in bankruptcy has pertained to the Fair Debt Collection Practices Act (FDCPA) which is beyond the traditional jurisdiction of the United States Trustee Program. For my purposes today, I espouse no position on the legal dispute over the application of the FDCPA in bankruptcy. But the USTP does have a duty to investigate allegations that the bankruptcy courts are being abused by the intentional filing of a volume of clearly objectionable claims.

Trustees have an important role in policing filed proofs of claim and identifying those that seek to recover stale debt. However, when faced with the high volumes of stale debt claims, the task of identifying and objecting to them is daunting. It has been suggested that, nevertheless, it should be permissible to file a large volume of stale debt claims, and that trustees simply ought to have to object to each and every one of them.

In response, let me say that we commend those many trustees who routinely do object to stale debt claims. And if there is not also a direct and broader enforcement remedy against the filers, then the USTP at least will have to consider imposing stricter requirements on all trustees to object to stale debt claims. The consequence of such a strict policy, however, would be to drive up costs for the bankruptcy system. In chapter 13 cases, we could increase chapter 13 trustee budgets so trustees could hire additional claims reviewers and lawyers. The additional costs would be recovered by an increase in the percentage fee that would lower dividends for creditors. In chapter 7, creditors would receive less money in asset cases because trustee expenses and attorneys' fees would increase.

We simply think it is abusive and unfair for a small number of claims filers to shift their cost of doing business onto trustees, debtors, the courts, and legitimate creditors.

BANKRUPTCY ADMINISTRATION

Before closing, let me cover several trustee administration and related matters. Some of these were covered in a session this morning.

Trustee Discipline

Overwhelmingly, chapter 7 and chapter 13 trustees do an outstanding job serving the bankruptcy system and meeting the highest ideals of a fiduciary. On rare occasion, however, we have to take actions against trustees who poorly manage their cases or engage in improper behavior. Inefficient administration of estate assets, failure to safeguard estate funds and assets, and lack of professionalism in dealing with debtors and others have been the cause of the most recent disciplinary actions.

Although bankruptcy requires transparency, there are privacy concerns that cause us not to make public all actions taken to address performance and conduct issues. We post on our Web site only final agency actions that are appealed to the Director under our regulations. I urge you to read those decisions when they are posted. Over the past year, we have posted two final agency decisions that were appealed to me. Among other things, I hope these and past decisions give you a sense of the scope of problems we sometimes deal with in overseeing struggling trustees, as well as our view of the seriousness of certain types of performance or conduct deficiencies.

Best Practices

On another matter of trustee administration, I am grateful to your association for joining with the chapter 13 trustees and consumer bar to provide a free webinar on the USTP's "Best Practices for Document Production Requests by Trustees in Consumer Cases." The USTP also will incorporate the "Best Practices" into our regular trustee training. The guidelines not only set forth some basic scenarios showing how trustees can reduce paperwork demands, but they also make clear that debtors' counsel are expected to satisfy reasonable requests for documents without undue delay.

Trustee Succession

I also would like to update you on another matter where members of your organization have collaborated with the Program. I am pleased to announce that today we sent to our field offices updated guidance regarding trustee succession issues which will be incorporated into both our USTP Manual and the Handbook for Chapter 7 Panel Trustees. Among other things, it will make clear that the departure of a trustee for non-disciplinary reasons should not automatically lead to replacement of the trustee's professionals. In fact, the burden is on the successor trustee to show the benefit to the estate of changing professionals. This should not only ease the economic transition for the former trustee's operations, but also better ensure that the estate is administered as efficiently as possible.

We have incorporated step-by-step guidance to ensure that the Program's protocols are more precise and followed consistently throughout the country. These protocols also will guide successor trustees in carrying out their responsibilities and minimize unnecessary disruptions that may occur as a result of a trustee's incapacity or death.

I want to thank Dwayne Murray and Rick Nelson for their hard work in bringing these ideas on succession planning to our attention.

Criminal Referrals

While both the USTP and the private trustees have a responsibility to identify and refer potential fraud or criminal activity in a case, trustees often are in the best position to do so. Through your daily case administration, you often are the first to identify instances of potential improper conduct. Your work is essential to the USTP in ferreting out fraud and abuse in the bankruptcy system.

Our offices cover criminal referrals in their annual trustee training programs and our Handbook also provides additional guidance. But we in the Program want to do more to raise awareness and provide practical advice to assist you in making criminal referrals. Doreen Solomon, in partnership with the USTP's Office of Criminal Enforcement, is developing a series of one-page primers for trustees on criminal enforcement topics. The first one-pager is nearing completion and will provide tips for writing an effective referral. Providing the right information right from the start is very helpful to our law enforcement partners and can save significant time and resources for all of us.

We hope you will find the first one-pager helpful. We have a number of additional topics in mind for future primers, and we welcome your thoughts as well. Feel free to reach out to Doreen or your United States Trustee if you have thoughts on areas that would be helpful to you and your staff in fulfilling this important responsibility of making quality criminal referrals.

Electronic Bank Statements

As I final matter, I am delighted that all three software vendors have created platforms that will allow their banking partners to deliver bank statements to trustees electronically. This has been a three year project with the NABT that will achieve important cost savings. Many thanks to the NABT team and, in particular, Bill Rameker, as well as the software vendors and banks, for bringing this important innovation to fruition.

CONCLUSION

I appreciate your time this morning. I also appreciate your continuing to provide an NABT leadership that works constructively with the USTP on a wide range of issues, year after year.

I have a deep admiration for your skills and commitment. The USTP needs your day-to-day feedback on changes in bankruptcy practice, suggestions on areas where the Program can

add maximum benefit to the system, and ideas on how we can perform trustee oversight in the most effective manner possible.

I appreciate your hard work and look forward to our continuing partnership in the year ahead. Many thanks for listening to me this morning.

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