

The Civil Enforcement Initiative: A Chapter 13 Perspective

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The United States Trustee Program launched the Civil Enforcement Initiative on October 1, 2001, to bolster public confidence and ensure that the bankruptcy system operates fairly by remedying abuse through civil actions. Our new Director, Lawrence Friedman, has strongly endorsed this approach as a leap forward in the integrity of the bankruptcy system. Consequently, the Program continues to focus its energies and resources on certain national enforcement priorities. This article provides a look at the Program's civil enforcement activities in the Chapter 13 area and encourages your participation and support.

Program-Wide Priorities

The priorities of the Civil Enforcement Initiative in Chapter 13 are to:

- Ensure that the bankruptcy system is not abused and that debtors are held accountable. Debtors who do not comply with the law will have their cases converted or dismissed, or their bankruptcy discharges denied or revoked.
- Protect consumer debtors, creditors, and others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process. Attorneys and bankruptcy petition preparers must engage in full disclosure, be free of conflicts of interest, perform the agreed upon services, and engage in ethical practices.

While increased civil enforcement of the bankruptcy laws is a national initiative, the specific issues of greatest concern to each of the Program's 95 field offices and the corresponding strategies have varied by location. The U.S. Trustees have worked to identify problems or abuses of concern for each field office, as well as possible civil enforcement solutions to those problems and abuses. Areas of civil enforcement that were consistently identified in Chapter 13 cases include: misconduct and abuse by debtors, attorneys, and other professionals; problems associated with bankruptcy petition preparers; and instances where a debtor's right to refile a dismissed case or right to discharge should be challenged.

Reports for the first six months following the launch of the Initiative on October 1, 2001, revealed that the Program has hit the ground running, with more than 15,000 civil enforcement

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actions taken or inquiries made leading to compliance. Moreover, activities associated with the non-discharge of debts (including denial of discharge actions and dismissals prior to discharge) and reductions in professional fee requests accounted for more than \$47 million during this six-month period.

Emerging Issues

Thus far, several issues have emerged that present new or particularly significant challenges for civil enforcement in Chapter 13. These issues include debtor identification, serial filers, substantial abuse under 11 U.S.C. §707(b) leading to conversion to Chapter 13, and consumer protection.

Debtor Identification

From October 1, 2001, to March 30, 2002, more than 2,100 cases were identified in which the debtor had listed an incorrect Social Security number (SSN) on the bankruptcy petition. In January 2002 the Program started implementing a nationwide procedure to require all individual debtors to provide proof of their identities and proof of SSN at the first meeting of creditors. This requirement is based on procedures the Program tested in its Debtor Identification Pilot Program, which ran in 18 districts from January 1, 2001, through June 30, 2001.²

The Program also takes steps to protect innocent third parties from having a bankruptcy erroneously attributed to them. Debtors who use an incorrect SSN are required to amend their petition to reflect the correct number, notify all their creditors of the amendment, and notify all three major credit reporting agencies of the error. If this is not done in a reasonable time period, action is taken to compel the debtor to make the correction and notify all the parties, or face other sanctions.

The Program has found that use of false identification occurs in Chapter 13 as well as Chapter 7 cases. In addition, false identification may be used for other purposes during the course of a Chapter 13 case. For example, a court approved an agreement between the U.S. Trustee and a Chapter 13 debtor for the dismissal of the case with prejudice to future discharge of almost \$376,000 in debt, where the debtor tried to commit credit fraud while in Chapter 13. The U.S. Trustee determined that the debtor had applied for new credit under a false Social Security number and name.

Serial Filers

Many Program staff are now using computer matching programs to identify debtors who

²The Executive Office for U.S. Trustees' report on the Debtor Identification Pilot Program is posted on the Program's web site at <http://www.usdoj.gov/ust/otherinitiatives/debtorid/report.html> .

have filed numerous bankruptcy petitions within a short period of time. They also are working to improve coordination with the bankruptcy clerks' offices. Some serial filers fail to list all their previous bankruptcy cases, or file in neighboring districts and/or use variations on their name or different names to avoid detection.

Once a serial filer is identified, the filer's previous cases may be analyzed. If it is determined that the current case is an abusive filing, action may be taken to either dismiss the case with prejudice, deny the debtor's discharge, or seek an injunction against filing another bankruptcy case without prior court approval.

For example, a U.S. Trustee took action against a debtor who had filed Chapter 13 bankruptcy five times since January 2001. The court granted the U.S. Trustee's motion to dismiss with a two-year bar to refiling and with prejudice to future discharge of debts that could have been scheduled in the most recent case.

Another Chapter 13 debtor failed to disclose at least three prior bankruptcy cases filed under different Social Security numbers in different divisions of the same judicial district. The U.S. Trustee filed a motion to dismiss with prejudice under 11 U.S.C. §§ 1307(c) and 349 (a). The debtor failed to file a response or appear at a hearing, and the court dismissed his case with prejudice.

In yet another case, the Chapter 13 trustee filed a motion to dismiss citing the debtor's failure to disclose two prior bankruptcy filings. In response, the debtor moved to convert to Chapter 7. The U.S. Trustee's investigation revealed that the debtor had filed five previous bankruptcy cases in the past eight years. The U.S. Trustee filed an objection to the debtor's motion to convert coupled with a request that the case be dismissed with prejudice. The court dismissed the case with prejudice for two years.

Substantial Abuse

The pending bankruptcy reform legislation reflects the concerns of Congress and the public regarding debtors who are capable of repaying at least a substantial portion of their debts, but are not doing so. In the past, most Program offices tested only a sample of the Chapter 7 cases filed. However, an increasing number of offices are now reviewing all Chapter 7 petitions for substantial abuse and other indicia of problems.

This has resulted in more dismissals of Chapter 7 cases, either by the court or by debtors who voluntarily dismiss their cases when the U.S. Trustee scrutinizes their income and expenses. Of most significance to Chapter 13 trustees, however, is that it has also resulted in more case conversions from Chapter 7 to Chapter 13, either voluntarily or by the court.

Cases converted to Chapter 13 due to substantial abuse may be tracked by the U.S. Trustee and the Chapter 13 trustee to determine whether payments are being made and to ensure

that the case is not reconverted to Chapter 7.

Consumer Protection

Consumer protection is another area of increasing civil enforcement activity. The Program takes action against attorneys who charge excessive or undisclosed fees, engage in sloppy lawyering, or attempt to restrict their liability to the debtor; bankruptcy petition preparers who violate 11 U.S.C. § 110 and/or engage in the unauthorized practice of law; and creditors who file false proofs of claim.

One attorney was sanctioned in a series of four consumer bankruptcy cases. On motion of the Chapter 13 trustee, the court ordered disgorgement of fees in two cases, noting the poor quality of legal services provided. When the attorney failed to comply with the disgorgement order in one case, the court imposed an additional sanction to deter future abuse. Undeterred, the attorney filed another debtor's Chapter 7 case listing two automobiles as real property, failing to list the vehicle lien holders, claiming an exemption in the two automobiles under the statute relating to exemptions for wrongful death claims, and listing no other personal property. The court imposed a \$1,000 sanction upon the attorney for his failings in that case.

In another situation, the court granted the U.S. Trustee's motion to require debtors' counsel to disgorge all fees he received from the debtors in both a Chapter 13 case and a Chapter 7 case, because his services failed to meet the minimum standards expected of counsel in bankruptcy cases. The attorney's actions included: filing a Chapter 7 case for his clients while they had a Chapter 13 case pending, rather than converting the Chapter 13 case as he had promised; causing five continuances of Section 341(a) meetings due to his failure to properly arrange a telephonic meeting; placing the wrong case number on a motion to dismiss the Chapter 13 case, causing the Chapter 7 case to be dismissed instead; and, after dismissal of the Chapter 7 case, advising the debtors to continue in the original Chapter 13 case, which remained pending.

As part of the Civil Enforcement Initiative, at least one Program region has put systems in place with all Chapter 13 trustees to regularly sanction attorneys who fail to represent their clients adequately. The U.S. Trustee tracks these matters and seeks greater sanctions or takes a matter to the bar disciplinary authorities where the sanctions in individual cases have failed to remedy the poor representation.

With respect to bankruptcy petition preparers, in one case the U.S. Trustee obtained sanctions and fee disgorgement orders against two bankruptcy petition preparers who violated the judicial district's Guidelines Pertaining to Petition Preparers. The petition preparers advised the debtors on which chapter to file, prepared their Chapter 13 petition, and negotiated the return of their repossessed car.

In another case, the U.S. Trustee obtained a preliminary injunction against bankruptcy petition preparers who allegedly engaged in a fraudulent home sale scheme, whereby debtors

were directed to quit claim and vacate their homes that were in foreclosure. The petition preparers allegedly directed the home purchasers to make the debtors' mortgage payments on the purchased homes through the debtors' Chapter 13 plans, taking advantage of the debtors' automatic stay and their right to cure mortgage arrearages over time.

A Look at the Next Phase

Many of you have targeted specific civil enforcement problems in your areas, and have had great results. After all, Chapter 13 trustees have probably "seen it all."

As the U.S. Trustee Program steps up its attention to civil enforcement priorities, we recognize that Chapter 13 trustees often see problems emerge in individual cases. Please bring possible enforcement opportunities to the attention of your U.S. Trustee or local Assistant U.S. Trustee. If you notice a pattern or if you repeatedly observe a situation that could be a systemic problem, share your suspicions with our staff. The Assistant U.S. Trustees and our two national Civil Enforcement Coordinators are eager to investigate and take necessary action. Thank you, and we look forward to an ever-improving bankruptcy system.