

## **The Civil Enforcement Initiative: A Review of the First Ten Months and a Look at the Next Stage**

By Antonia G. Darling<sup>1/</sup> and Mark A. Redmiles<sup>2/</sup>  
Co-Coordiators of National Civil Enforcement

The United States Trustee Program launched the Civil Enforcement Initiative on October 1, 2001, as part of its continuing effort to improve the effectiveness of bankruptcy administration. The goal of the Initiative is to ensure that the bankruptcy system is fair to all and to bolster public confidence by taking civil actions to remedy abuses. As part of the Initiative, certain national enforcement priorities were established upon which the Program will focus its energies and resources. This article provides an update on the Program's civil enforcement activities 10 months into the Initiative, and a look at future plans.

### Priorities

The priorities of the Civil Enforcement Initiative are:

- Ensuring that Chapter 7 is not abused and that Chapter 7 debtors are held accountable. Chapter 7 debtors who do not comply with the law will have their cases converted or dismissed, or their bankruptcy discharges denied or revoked.
- Protecting 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 (non-attorneys who prepare bankruptcy documents for a fee) must engage in full disclosure, be free of conflicts of interest, and engage in ethical practices.
- Ensuring that Chapter 11 debtors proceed with their cases promptly and are informed of and held to account for their obligations under the Bankruptcy Code.

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 include debtor misconduct and abuse, misconduct by attorneys and other professionals, problems associated with bankruptcy petition preparers, and instances where a debtor's discharge should be challenged.

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<sup>1/</sup> Ms. Darling is the Assistant United States Trustee in the Program's field office located in Sacramento, Calif.

<sup>2/</sup> Mr. Redmiles is a trial attorney in the Executive Office for United States Trustees, Office of the General Counsel, located in Washington, D.C.

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 actions taken or inquiries 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. These issues include debtor identification, serial filers, substantial abuse under 11 U.S.C. §707(b), credit card bustouts, 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. To support the Civil Enforcement Initiative, in January 2002 the Program started implementing a nationwide procedure to require all individual debtors to provide proof of their identity 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.<sup>3</sup>

Closer scrutiny of debtors' identities has resulted, for example, in denial of discharge of some \$79,000 in unsecured debt, where a Chapter 7 trustee discovered at the Section 341 meeting that the debtor had used a false SSN on the petition; dismissal with prejudice of a Chapter 7 case where the debtor used a false SSN that he admitted having used for several years; and sanctions against a law firm that listed incorrect SSNs on at least six different debtors' petitions.

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.

#### *Serial Filers*

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<sup>3</sup>The 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>.

Many Program field offices are now using computer matching programs to identify debtors who have filed bankruptcy numerous times within a short period of time, and 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. In addition, serial filers may have received a discharge in a case filed within the previous six years, making them ineligible for a discharge.

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, the U.S. Trustee's action resulted in dismissal with prejudice of a case filed by a debtor who sought bankruptcy relief four times in the last three years, and eight times in the last 12 years. Most of his prior cases had been dismissed for failure to file schedules. Another action involved 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.

### *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 could test 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 debtors converting their cases to Chapter 13 and 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.

One case involved debtors with a monthly income of \$7,000 who scheduled \$350,000 in unsecured debt, of which \$200,000 was credit card debt and \$150,000 was owed to individuals for personal loans. Banking records showed regular withdrawals from automatic teller machines at local casinos.

In another case the debtor was a commercial airline pilot who earned \$11,500 per month, paid \$3,100 per month on her mortgage, and—just before filing bankruptcy—bought a \$50,000 Mercedes to replace her repossessed \$90,000 Mercedes. Dismissal of her case prevented the discharge of more than \$122,500 in consumer credit card debt.

In yet another case, debtor spouses filed for Chapter 7 relief listing more than \$11,000 in tax debt, \$4,450 in non-priority unsecured debt, and monthly expenses of \$1,000 for recreation,

\$900 for food for a family of five, and \$355 for transportation other than auto loan payments.

### *Credit Card Bustouts*

Bankruptcy filings are being monitored for possible “credit card bustout” schemes. These are cases in which an individual, acting alone or in connection with a group, acquires several credit cards simultaneously. The individual makes substantial use of the credit cards and seeks to establish a good credit record and increased credit limits in a short period of time. The bustout occurs when the individual “maxes out” on all the credit cards, getting cash advances or purchasing readily resalable merchandise. When the credit cards exceed their limit and are no longer accepted, the individual often files for bankruptcy protection. When a bustout is identified, the Program takes action to dismiss the case or deny the debtor’s discharge.

In a recent case the bankruptcy court denied discharge, based on the U.S. Trustee’s investigation and ensuing complaint, of more than \$617,000 of credit card debt listed by the debtor. Credit card records for just one major credit card company revealed that in a one-month period the debtor shopped at a different Costco Wholesale Store almost every day, incurring more than \$62,000 in debt. Additional investigation indicated that the debtor had purchased consumer goods for resale. The U.S. Trustee’s complaint to deny the debtor’s discharge was based on the debtor’s false oaths, inability to explain the disposition of estate property, and failure to keep records.

### *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.

For example, the U.S. Trustee assisted in State Bar proceedings resulting in the resignation of an attorney who violated a series of bankruptcy court judgments and orders totaling more than \$190,000 in sanctions and disgorgements. The prior actions against the attorney included nine sanctions orders, two judgments of disgorgement, a judgment of contempt, a disgorgement order, two disqualification orders, an order obtained by the U.S. Trustee conditionally disbarring the attorney from bankruptcy court and, finally, an order barring the attorney from bankruptcy court.

In another case, the U.S. Trustee’s actions led to an order, limited to the cases before the judge, which required disgorgement of fees and realty net sale proceeds as well as payment of a \$20,000 sanction by an attorney who took undisclosed liens in the real and personal property of more than 90 debtors in order to secure his fees. The U.S. Trustee discovered that the attorney had actually acquired the residences of five of his debtor clients by redeeming his liens after

foreclosure sales.

With respect to bankruptcy petition preparers, the Program continues to pursue Section 110 cases against preparers who operate in a specific locality, while it grapples with new enforcement issues caused by the emergence of Internet bankruptcy petition preparers. Historically, in many areas of the country there were either no bankruptcy petition preparers practicing or the conduct of local petition preparers was controlled through local guidelines regulating fees and practices. The ability to market such services anywhere in the country and the anonymity provided by the Internet, however, makes it difficult to impose local restrictions and seek remedies. Internet providers can hide behind a web of false identities and mail drops to prevent a victim from obtaining a return of an excessive fee or from suing if the petition preparer causes the debtor harm. With its national presence, the Program can better identify, investigate, and pursue violations of the bankruptcy laws.

#### A Look at the Next Phase

To ensure that the success of the Initiative is sustained over the long term, Lawrence Friedman, Director of the Executive Office for United States Trustees, recently selected the authors as co-coordinators to direct the next stage of the Program's national civil enforcement efforts. The co-coordinators will be working to focus the Program's efforts, provide assistance, and build on successful practices.

The goal of the Civil Enforcement Initiative is to improve the bankruptcy system at large, and therefore all members of the bankruptcy community have a vested interest in the Program's success. Attorneys, trustees, creditors, and others affected by the bankruptcy system often have the opportunity to see an emerging problem in a specific case before the problem is revealed on a larger scale. Raising these issues or concerns with the local office of the U.S. Trustee helps ensure that they are identified and addressed systematically. A fairer and more efficient bankruptcy system is a worthy and achievable goal we all can support.