

Remarks of

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Before the

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National Association of Chapter Thirteen Trustees

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Introduction

Thank you for inviting me to address the opening session of the 46th Annual Seminar of the NACTT. Once again, you have chosen a wonderful site for your conference.

It is always nice to have so many of our chapter 13 partners in one place at one time. I hope you will use this occasion to have informal discussions with me and my colleagues from the U.S. Trustee Program (USTP or Program) on whatever issues matter most to you.

Let me begin by thanking Mike Joseph for his leadership of the NACTT over the past year. I have benefitted greatly from his perspectives. I appreciate his hard work and forward-thinking. Of particular note are Mike's efforts to address trustee security issues, his work to strengthen the working relationship of the NACTT with the IRS, and his establishment of a committee to examine trustee transition issues. I believe Mike personifies the kind of integrity and quiet competence to which we all aspire. Thank you, Mike.

Let me also take this opportunity to congratulate Debra Miller on her new role as the NACTT President. I have had the privilege of working with Debra in the past, and I look forward to consulting with her and the NACTT on a number of areas of mutual interest over the next twelve months. Congratulations to Debra on becoming this association's new President.

The NACTT corps as a whole are an impressive group. We were privileged to pull from your ranks this past year Gerard Vetter who joined the USTP as the Assistant U.S. Trustee (AUST) in Greenbelt, Maryland. As many of you may know, I was the AUST in Greenbelt for many years, so the continuing success of that office is near and dear to me. I am happy to report that Gerard is doing a terrific job there.

The chapter 13 trustees are also a very dedicated group. This is evidenced by the longtime service of several trustees who are retiring or have retired this year. Collectively, they served for more than 110 years. Let me recognize:

- Nelson Enmark out of Fresno;
- Lawrence Loheit from Sacramento; and
- two trustees from Boise, Idaho – Bernie Rakozy and John Krommenhoek.

We thank them for their commitment to the bankruptcy community and wish them well in their retirements.

Due to the demands of time, I will report on just on a few of the major items of interest to both the USTP and the NACTT.

Summary Round-Up of Civil and Criminal Activities

Despite the many challenges presented by the increased caseloads we all have faced, the USTP has continued its focus in the civil and criminal enforcement areas. Let me fill you in on some of the pertinent numbers.

Last fiscal year, we took nearly 60,000 actions – including actions in court, formal investigations, and other informal actions – with a monetary impact of \$2.4 billion in debts not discharged, fines, disgorgements, and other relief. Over the past five years, these numbers total more than 320,000 actions with a monetary impact of more than \$6 billion.

Of particular note is that we took more than 9,000 consumer protection actions – formal and informal – in Fiscal Year 2010. This was more than double the number of such actions taken in Fiscal Year 2007. Of the 9,000 actions, more than 1,600 involved mortgage-related creditor abuse.

Thanks in part to the information we receive from chapter 13 trustees and from others in the bankruptcy system, we also have maintained an active criminal referral program. In Fiscal Year 2010, we made more than 1,700 criminal referrals to our law enforcement partners. This represents a nearly seven percent increase over the prior year, and an increase of nearly 50 percent over the past three years. During that same three year period, mortgage/real estate fraud referrals more than doubled.

Mortgage Servicer Violations

Let me move on to what has been a top priority of the Program this past year – investigating mortgage servicer violations of the Bankruptcy Code. Again, thanks in part to your assistance, we have made significant progress in addressing this pervasive problem.

I want to express deep appreciation to the NACTT for its long-standing work in this area and, more broadly, in addressing the impact of the mortgage meltdown on consumer debtors. You have helped us identify numerous foreclosure rescue scams.

In addition, many of you have made a concerted effort to ensure that chapter 13 debtors are aware of legitimate mortgage modification possibilities, including through the Government-approved Home Affordable Modification Program (HAMP). In particular, let me thank your past President Kevin Anderson for producing a HAMP training video with Doreen Solomon of my office which was very helpful in getting the word out about this important program.

Concentrated Enforcement Effort

To address violations by mortgage servicers, we have undertaken a concentrated enforcement effort. I spoke to many of you about this during your mid-year meeting in Washington, DC, this past January. This initiative includes a 100 percent review in selected jurisdictions of mortgage proofs of claim and contested motions for relief from stay filed by selected servicers.

It began in November and was designed in coordination with the President's Financial Fraud Enforcement Task Force. It is a key component of other special efforts made by the Program, including providing assistance to federal banking regulators, state Attorneys General, and other federal agencies who also are reviewing mortgage servicer conduct.

In many ways, this concentrated effort was a natural enhancement to previous work dating as far back as 2006 when we first commenced investigations of mortgage servicer violations of the Bankruptcy Code. For several years, the USTP had either uncovered or were informed by debtors of inaccurate proofs of claim or other accounting inaccuracies. For the most part, we were satisfied if the servicers cured their mistakes in the case at bar. That is how we obtained relief in scores of cases involving servicers and their law firms around the country.

But the servicers continued to make the same mistakes. Over time, we began to see the mistakes were not confined by geographic districts or by servicer. It was clear that we were dealing with a protracted, industry-wide, and national problem. That required a change in strategy.

And that is why we joined the Federal Trade Commission in reaching a national settlement against Countrywide Home Loans in June 2010. I am pleased to tell you that the FTC recently mailed \$108 million in payments to victimized homeowners. A large portion of those payments are going to chapter 13 debtors. The funds would have been paid much sooner, but Countrywide's records proved to be even worse than we thought. It took Bank of America – which purchased Countrywide – about one year before it could submit accurate information to permit the payments to go forward.

Due to continuing problems in the servicer industry, however, we decided to step up our enforcement activity. We also have decided not to accept case-by-case cures. Instead, we want discovery to determine the cause of these continuing violations and the appropriate remedies that should be imposed.

Unfortunately, we have uncovered a large number of discrepancies requiring further investigation. These discrepancies include:

- apparent misaccounting in which the arrearage appears to be inconsistent with the monthly payments;
- excessive default service fees where, for example, fees exceed Fannie Mae and Freddie Mac guidelines;
- double-dipping on escrow shortages such that the creditor sought to recover escrow shortages by claiming the amount on a proof of claim for pre-petition arrearages, as well as through a post-petition increase in payments;
- improper documentation, including situations in which the name on the proof of claim appears nowhere on the attached note and other papers; and
- claiming amounts due without disclosing that the debtor is in a trial mortgage modification program allowing lower payments.

As this initiative progresses, I cannot help but be struck by the large number of creditor actions which merit further review. If debtors are expected to submit accurate financial information – and they should be expected to do that – then certainly we should expect nothing less from creditors. After all, many debtors have a net worth or zero or less. In contrast, the top five mortgage servicers have a market capitalization value of hundreds of billions of dollars. To be frank, I think the incidence of mortgage service inaccuracies or lack of documentation is unacceptable.

In the face of more than 400 requests for discovery, we are receiving a consistent response from all of the major mortgage servicers. They do not wish to provide necessary information, and have filed about 250 motions to quash. In about a dozen districts, United States Attorneys are providing assistance to our offices with these cases.

The servicers have uniformly asserted that the United States Trustee has no authority to investigate creditor abuse of the system, only debtor abuse. And they also assert that we are not entitled to national policies and procedures that might uncover systemic violations.

Let me give you just one excerpt from a brief in opposition to our discovery request. I have left out the name of the servicer. I find the excerpt to be extremely telling on a number of levels:

“In present times, it takes a principled judiciary to follow the law and not partake in judicial activism or legislation. In present times, the fair application of law is the only protection that a mortgage servicer has when it is the subject of unfair legal process. In this case, [the mortgage servicer] has done nothing to deserve the UST’s attention, let alone be subject to a Rule 2004 examination. According to the plain language of the Bankruptcy Code and the Bankruptcy Rules, the UST is not a “party in interest” entitled to conduct a Rule 2004 examination.”

Who would have guessed that the USTP could be seen as such a big bully when confronting mortgage companies?

We have prevailed in almost all of the discovery disputes so far. We have obtained about 80 favorable adjudications to date. When we prevail, though, we then have to defend against motions for reconsideration and are facing about 20 appeals.

We are beginning to receive some witness testimony and document production. This process can be expected to continue for some time.

These efforts have shown once again the importance of the bankruptcy system to broader economic and enforcement policies. Those who have been in the trenches of chapter 13 practice know the kinds of problems created when mortgage companies are unresponsive to legitimate requests for information, are dilatory in working with debtors to achieve feasible mortgage modifications, and fail to provide timely and accurate information to the bankruptcy court.

The information we have uncovered, where appropriately shared, has been of enormous assistance to other agencies. In many ways, we – chapter 13 trustees and the USTP – have amassed a body of knowledge about the mortgage servicing industry that is not exceeded by any others who have an interest in this issue.

This is not the first NACTT meeting at which I have highlighted our mortgage servicer enforcement efforts. But I hope it is the last meeting where I devote so much time to a problem that must be addressed either through voluntary settlement between the servicers and the USTP and other government authorities, or through strong and unequivocal remedies imposed by bankruptcy courts.

The mortgage service industry has assaulted the integrity of the bankruptcy process long enough. It will not be tolerated. And the USTP is determined to do something about it.

We are part of DOJ-led discussions with major mortgage servicers about a comprehensive solution to mortgage servicer violations inside and outside of bankruptcy. A comprehensive settlement would be desirable and advantageous to everyone affected. But, absent agreement, we will not be deterred and we will be relentless on our litigation efforts.

Legislation Introduced in Senate

Of additional interest on the mortgage servicer litigation front, Senate Judiciary Chairman Patrick Leahy recently introduced legislation titled “Fighting Fraud in Bankruptcy Act of 2011.” The bill addresses the major obstacles we have faced in our mortgage servicer litigation. Among other things, the bill clarifies USTP authority to bring actions to remedy creditor abuse and it gives bankruptcy courts express authorities to impose fines and enter nationwide injunctive relief.

In addition, the bill gives the USTP authority to conduct audits of creditor proofs of claim in a manner similar to current statutory provisions governing audits of debtor schedules and statements of financial affairs. We will continue to monitor the progress of this legislation.

Let me move on briefly to two additional matters of critical interest.

New Rule on Chapter 13 Budgets

I hope you already are aware that, on May 31, the Program published its Final Rule titled “Procedures Governing Administrative Review of a United States Trustee’s Decision to Deny a Chapter 12 or Chapter 13 Standing Trustee’s Claim of Actual, Necessary Expenses” which became effective on June 30th. The publication followed an extensive notice and public comment period. We found the expressed views of the NACTT to be particularly helpful during the comment period.

You will receive a more detailed briefing on the Rule at a session later in the conference. Basically, the Rule replaces the informal process we had used in the past and ensures that the reviews will be consistent and fair. It sets reasonable deadlines for the United States Trustee to resolve a dispute or deny the expense, for the trustee to request a review of any denial, and for me to issue a final decision.

Chapter 13 Trustee Compensation

Finally, let me talk to you about chapter 13 trustee compensation.

By statute, chapter 13 trustee compensation is subject to the same ceiling for compensation that is imposed on the federal government’s executive level pay. As you know, the President has frozen executive compensation – indeed he has frozen compensation for all federal employees – for at least two years. That, of course, means that chapter 13 trustee compensation is frozen as well.

We are, however, looking at another important component of trustee compensation – namely, the cash value of employment benefits provided to federal employees at that rate of basic pay.

In 2008, we conducted a review and adjusted chapter 13 trustee compensation based on an increase in the cash value of employee benefits. When we made that compensation adjustment, we said we would review the cash value of benefits every three years. We are now in the third year, and we have conducted that review. Our analysis was enhanced greatly by information and perspectives offered by the NACTT through a special committee chaired by Paul Chael. As part of their analysis, the NACTT committee also hired professionals to evaluate chapter 13 trustee benefits.

Many of you are aware that estimating the cash value of benefits is not an exact science. One can argue higher and lower amounts. Although our desire is to provide the highest allowable amount, the determination of that highest allowable amount must be bound by sound research and analysis.

I can now report to you that – based upon our review and in light of the information provided by NACTT – we will increase the cash value of employee benefits by 4.8% from \$48,810 to \$51,153.

Conclusion

That wraps up my report from the USTP. Thank you again for your courtesy in letting me talk to you.

I am acutely aware of how dependent all of us in the bankruptcy system are on your continued professionalism, diligence, and commitment. You are an essential partner in the Program being able to achieve its mission and in meeting whatever challenges lie ahead.

You have my admiration and appreciation. Enjoy a great and productive conference.

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