Remarks of

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INTRODUCTION

Thank you so much for allowing me once again to join you at the outset of your annual seminar to discuss both the work of the United States Trustee Program ("USTP" or "Program") and issues of mutual interest to both chapter 13 trustees and the USTP.

My gratitude is extended to Marge Burks for her successful term as the NACTT President. Marge has been a voice of calm and reason in the bankruptcy community, and a thoughtful and respectful advocate for each of you. We in the USTP have enjoyed working closely with Marge on a number of issues during her term, including trustee budgets and compensation.

Let me also extend my congratulations and best wishes to Robert Wilson as he assumes his new role as President of the NACTT. Robert is a consummate professional. I remember when I first met Robert some years ago, the person introducing him to me made a point of saying that he had a "small" trustee operation. Well, I recently heard that Robert is now officially a "large" trustee operation. I am confident that his broad range of experience gives him a special perspective that covers all trustees and will serve the NACTT membership well. I look forward to working with him in the coming year.

I am pleased to have here with me today Pat Layng, United States Trustee for Regions 11 and 19, along with my extremely capable colleagues in the Executive Office, Doreen Solomon and Marty Hallowell. Though I will return to Washington later today, Pat, Doreen, and Marty will be here throughout the conference. I hope you will take the opportunity over the next few days to speak with them and share your thoughts and ideas on chapter 13 issues.

CONSUMER PROTECTION

Mortgage Servicer Violations

Let me talk for a few minutes about some consumer protection issues of concern to both of us. Chapter 13 trustees have been at the forefront of identifying and correcting mortgage servicer violations that harm homeowners in bankruptcy. Similarly, the USTP has been at the forefront of the Government's efforts to do the same.

There is nothing I want more for the bankruptcy system than to declare victory in our war against mortgage servicer abuse. The USTP brought thousands of actions over the past five years to address servicer abuse, we joined with other federal and state agencies in reaching the historic National Mortgage Settlement (NMS), and the Judicial Conference approved sensible new Bankruptcy Rules that mandate disclosures and notices to help prevent future violations.

There is both good news and bad news to report. The good news is that we are seeing fewer horror stories about distressed homeowners being mistreated by their lenders. But, overall, I am deeply disappointed at the inability, or the unwillingness, of the mortgage servicing industry to comply with the law. Maybe the servicers think they can outlast the enforcement agencies. Maybe they think that inaccurate statements by debtors deserve harsh treatment, but inaccurate

filings by mortgage servicers are mere technicalities and should be ignored. Or maybe they think that satisfying the Consumer Financial Protection Bureau's standards that don't cover bankruptcy-specific conduct will suffice. Regardless of the reasons, all of us in the USTP and the chapter 13 community should find it unacceptable that, in too many instances, mortgage servicers are showing disrespect for the bankruptcy system and for their customers as well.

Let me describe the current status of what has become a three-prong approach by the USTP to the mortgage servicing problem. First, we continue to monitor compliance with the bankruptcy standards contained in the NMS that bind the largest servicers. Although the independent Monitor appointed under the NMS has done an outstanding job testing discrete metrics, there are many standards not tested by the metrics and not followed by the settling servicers. These breaches of compliance will not be detected unless the chapter 13 trustees and the USTP continue to scrutinize servicer filings.

Recently, the Monitor reported that nine of ten metric failures had been corrected by the settling servicers. At the same time, the USTP found a disturbing pattern of failure to comply with non-tested standards, ranging from failure to document claims, to excessive loan default fees, to failure to inform borrowers and trustees of payment increases. With some assistance from the Monitor, we are engaging the violating banks to negotiate remedies to cure those deficiencies.

Perhaps the most alarming indication of continued violations of the National Mortgage Settlement standards and bankruptcy law involves an acknowledgement by one bank that a payment change notice filed in bankruptcy court – under an attestation of personal knowledge and review of the servicer's records – was signed in the name of a former employee who had nothing to do with reviewing the bankruptcy account in question. That's right, the problem of robo-signing – which ignited public indignation against large banks more than three years ago – still had not been corrected.

Other disappointing illustrations of continued noncompliance pertain to a number of cases we have identified that contain apparent deficiencies in escrow accounting and noticing. Some large financial institutions appear to have continued difficulty keeping track of tax and insurance payments that are part of the mortgage escrow. These problems can cause severe difficulties for debtors and the viability of their repayment plans. We will investigate these and other serious problems that the servicing industry has not fixed. Neither chapter 13 trustees nor the United States Trustees should allow this continued assault on the integrity of the bankruptcy system by the mortgage servicing industry.

As the second prong of our approach, we continue to take appropriate action in cases involving the next tier of non-settling banks. We also have joined federal and state agencies in trying to reach national settlements to cover those institutions not under the NMS who have failed to meet the bankruptcy standards. Just last month, the Attorney General announced a settlement with SunTrust Mortgage. We were an essential partner in investigating SunTrust's conduct and negotiating that agreement.

Thirdly, many of our offices have confirmed to me the accuracy of stories in the *New York Times*, *Wall Street Journal*, and other news outlets that newer or rapidly growing entrants in the servicing industry exhibit the same improper practices that the largest banks committed before the NMS. Greentree, for example, which bought a large share of ResCap's loans that are subject to NMS monitoring, has failed eight testing metrics. Further, a recent review of our field office enforcement activities regarding boutique servicers was, as Yogi Berra would say, déjà vu all over again.

There are limits on our resources. But I have visited with many of our USTP managers, lawyers, and professional and support personnel. They tell me we can see this through. And with their commitment, so we will.

Unsecured Claims Review

I mentioned to you last year that we were reviewing unsecured claims, especially those filed by high volume claims filers and claims purchasers, to determine their rate of compliance with disclosure rules, such as identification of the initial creditor and the date of the last payment made on the account. The USTP is the only national enforcer of bankruptcy law. As such, we wanted to move forward with this project even as we continue to address the problems of the mortgage servicing industry.

We reviewed more than 22,000 claims over about a ten month period and found great variation in compliance amongst filers. We had some success in changing the practices of one filer and have seen some improvement in the performance of others. In fact, it appears that credit card and other unsecured claims filers probably are doing a better job in following the Bankruptcy Rules than we saw when we started our review of the mortgage industry. Of course, that statement has some caveats since we did not do a scientific sample and we were limited in the extent of our review of individual claims.

The final phase of this project consists of two elements. First, we have selected a handful of offices that will continue to measure compliance by a sample of high claims filers. This will help measure progress and identify systemic or widespread issues that may require more robust remedial actions. Second, we produced a PowerPoint presentation that our field offices can deliver at trustee training and bankruptcy bar events. The presentation addresses effective means of claims review and how to determine if non-compliance with disclosure rules may show infirmities with the underlying claims. Other than in exceptional circumstances involving systematic abuse in which the USTP becomes involved, it is the trustees and debtors' counsel who should bring claims objections, such as on the basis of stale or discharged debt. We hope the PowerPoint is a useful training tool that you will take advantage of in the future.

I am glad we undertook the unsecured claims project and hope that resources increasingly will allow us to test compliance. Our actions can provide consistency and raise issues as appropriate for judicial resolution that will benefit all stakeholders in the bankruptcy system.

DEBTOR COMPLIANCE AND RELATED MATTERS

Our enforcement activity is by no means confined to the credit industry. In fact, most actions are taken to ensure that the more than one million debtors who enter the bankruptcy system – about one-third of them in chapter 13 – satisfy their obligations as well. More than 57 percent of the 44,000 formal and informal civil enforcement actions we took last year related to combating debtor fraud and abuse in chapters 7 and 13 cases.

Although most debtors' counsel do a good job looking out for their clients' interests, we – and I am sure you – are sometimes frustrated by the task of sorting through schedules and statements of financial affairs that are inaccurate or incomplete. In many instances, these problems should have been fixed by debtors' counsel before filing. Our debtor audit results year after year show a pattern of material misstatements in about one quarter of the consumer cases filed.

Furthermore, our section 707(b)(2) means test review is often impeded by a lack of information from the debtor. Last year, we exercised our statutory duty to decline to file motions to dismiss in 63 percent of all statutorily "presumed abuse" cases that were not voluntarily dismissed or converted to chapter 13. We did this because we found special circumstances, such as a recent job loss or medical catastrophe, which justified an adjustment to the current monthly income calculation. This requires a lot of diligent inquiry. Unfortunately, debtors' counsel too often are slow to provide the necessary information we need to administer the means test fairly and to the benefit of their clients.

On the flip side of the coin, consumer lawyers recently complained to me that trustees routinely ask for too much information. The concerns pertain mainly to chapter 7. Although you as trustees have independent fiduciary duties, the USTP does assess trustee performance and efficiency in seeking and reviewing documents from debtors as part of that evaluation.

I think it may be useful to convene again the NACTT, the chapter 7 National Association of Bankruptcy Trustees, and the National Association of Consumer Bankruptcy Attorneys, along with the United States Trustee Program, to assess how we are using the Best Practices guide we issued in 2012. The guide was designed both to help reduce unnecessary paperwork and to sensitize debtors' counsel to the need for prompt responses to trustees. But, given the ongoing issues, it either is not being followed as closely as we had hoped or there may be areas we should reexamine.

Let me raise one last issue with respect to debtors, and that is to restate a concern that I have expressed before – that the high rate of *pro se* filings is harming the efficiency and effectiveness of the bankruptcy system to the detriment of debtors and creditors. I will continue to be in dialogue with the NACTT about creative approaches, including steps that chapter 13 trustees may be able to take to assist *pro se* debtors either to move forward with a confirmable chapter 13 plan or to convert to chapter 7 where eligible debtors at least can receive a discharge of debts.

UNIFORM CHAPTER 13 REPAYMENT PLANS

There is another important step the bankruptcy system could take to make the consumer bankruptcy practice more efficient and effective. The USTP favors a uniform chapter 13 plan with appropriate flexibility to reflect an individual debtor's financial situation. I commend Judge Wedoff, Chair of the Judicial Conference's Advisory Committee on Bankruptcy Rules, and John Rao of the National Consumer Law Center for developing an initial draft of a form Chapter 13 Plan that the Bankruptcy Rules Committee began considering in September 2012.

I hear more and more from judges and practitioners that they want greater consistency in bankruptcy administration. As for the USTP's view, we believe strongly that the notion of justice requires us to act consistently in districts from coast to coast and north to south. Chapter 13 practice, perhaps more than any other aspect of bankruptcy practice, has developed anomalies and differences on a district by district basis. That makes it more difficult to be sure that debtors are treated the same no matter where they live. And it makes it harder for creditors to comply with the law. Objectionable provisions should not be buried in repayment plans, and creditors should be responsible for expeditiously reviewing a clear, easy-to-follow plan.

I know that the Rules Committee is still considering public comments received on the draft form plan published in August 2013. As a non-voting participant on the Bankruptcy Rules Committee, we will be of whatever assistance we can in helping the Committee develop a useful form plan that can be implemented throughout the country.

CHAPTER 13 TRUSTEE COMPENSATION

Finally, I come to the topic of chapter 13 trustee compensation. I am pleased to report that chapter 13 trustee operations are, by and large, quite efficient. Last year, trustees expended $322 million while distributing nearly $6.3 billion to creditors. The average percentage fee applied to receipts was 5.7 percent, which is down from 7.7 percent just four years ago.

On the issue of individual chapter 13 trustee compensation, you know that the USTP diligently sets compensation in accordance with statutory standards. By statute, the Attorney General sets compensation no higher than the rate of basic pay for Executive Level V of the federal pay scale plus the cash equivalent of benefits given to federal employees who perform equivalent services. The Attorney General has delegated the authority to set compensation to the Director of the USTP.

The rate of basic pay is easy to set. Today, it is $147,200. Approximately 96 percent of all chapter 13 trustees receive this maximum amount. Although some suggest that we adopt the courts' individualized approach to setting trustee compensation in bankruptcy administrator districts, we instead provide the maximum compensation allowed by law to all chapter 13 trustees except those who have an exceptionally small caseload.

The benefits amount is more challenging to set. We promised the NACTT that we would reevaluate the benefits calculation every three years. This year is three years removed from our

last calculation so we have been busy consulting with the NACTT on the process for setting the new benefits amount.

The benefit setting process involves looking at a full panoply of benefits given to federal employees and trying to apply those calculations to trustees. We have avoided making individualized calculations and instead provide the maximum allowed for a particular benefit to all trustees, regardless of a trustee's individual circumstances. Last year, benefits totaled 35.1 percent of the salary. I note this contrasts with trustees in bankruptcy administrator districts who receive 23 percent of salary in cash for benefits.

I am pleased to report that we have determined that most chapter 13 trustees will receive $58,902 in cash value of benefits in addition to their base salary. This amount represents an increase of 14 percent over three years. Trustees who were hired on or after January 1, 2013, will receive a slightly lower cash value of benefits to reflect changes made by Congress in 2012 that requires newer federal employees to contribute more towards their retirement annuity.

I am confident we have been exhaustive in identifying benefits received by federal employees that reasonably can be reduced to cash value. But we will continue to reassess every three years to ensure we are considering a complete list of federal benefits and making the most accurate calculation of cash value.

CONCLUSION

That completes my report from the USTP. There remains a lot of work to be done by chapter 13 trustees and by the United States Trustee Program. We work side by side on so many issues of importance to the bankruptcy system. And this association makes that collaboration so much more effective than it otherwise would be.

I commend you for the important work you do, for your compassion for the debtors who appear before you, for your commitment to return funds to creditors in accordance with the law, and for your dedication to the wellbeing of the entire bankruptcy system.

May you enjoy a successful and productive annual meeting. I hope to chat with some of you before heading back to Washington later this morning. All the best to you and thanks again.

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