

**Remarks by  
Clifford J. White III  
Director  
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United States Department of Justice**

**at the**

**44<sup>th</sup> Annual Seminar  
National Association of Chapter 13 Trustees**

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## **Introduction**

Thank you for the opportunity to join you for the NACTT's 44<sup>th</sup> Annual Seminar. Let me start by congratulating Martha Bronitsky on her stellar term as the NACTT President. She has been an extremely effective advocate for the chapter 13 trustees in all of her dealings with the United States Trustee Program. We have relied on Martha's experience and knowledge of chapter 13 practice in tackling a number of challenges over the past year. I speak for the entire leadership of the USTP when I say thank you to Martha, Michael Joseph, and to the rest of the NACTT leadership for their work which has benefitted the entire bankruptcy system.

Although Martha will soon get a well-deserved respite from her duties as President, I feel fortunate that we will be dealing with such a worthy successor in Kevin Anderson. We in the Program know Kevin well and have the highest respect for him. You will be well served by his leadership. Kevin, I look forward to working with you over the next twelve months.

I also want to join with Martha and my other esteemed colleagues on the stage in welcoming you to Boston. My wife and I hail from the South Shore, which consists of those towns between Cape Cod and Boston. I am glad that many of you will have the opportunity to make a pilgrimage on Saturday to the shrine known as Fenway Park. I also hope you will celebrate the Fourth of July weekend by walking the Freedom Trail through Boston. Just follow the Red Line down the streets and you will see the story of America's revolutionary period. And, if you're feeling particularly adventurous, you may wish to travel 30 miles south of here, to Plymouth, near my home town. You can go back in time to the 1600s and visit Plimoth Plantation, the Mayflower, and many other historic sites relating to the Pilgrims.

I know that I sound like a tour guide so I guess I should move on from the Red Sox and from Massachusetts history to the subject of bankruptcy practice. Many might argue that I know more about baseball and colonial history than I do about bankruptcy practice, but I will move on anyway.

## **Mortgage Fraud and Abuse**

Among the issues the NACTT and United States Trustees have cooperated on during the past year is attacking mortgage fraud and abuse. It was a prime topic of my talk at last year's opening session and it is my prime topic again this morning. There is probably no issue that I personally have devoted more attention to over the past year than combating mortgage scams, both civilly and criminally. In fact, the number of criminal referrals we have made to United States Attorneys in these types of cases nearly doubled between 2007 and 2008.

Let me spend a few minutes describing our initiative in this area and providing some examples of our recent progress. We view our initiative as having three prongs. They are not all new. Some have been staples of our work for a long time. Importantly, chapter 13 trustees have been key partners for us in tackling each prong.

First, we combat debtor fraud. For example, recently we prosecuted a debtor, his attorney, and other co-conspirators who perpetrated a sham sale of the debtor's house so they could siphon off the loan proceeds and the debtor could continue to live rent free.

Second, we combat foreclosure rescue schemes. Like you, we are in a good position to uncover these types of operations because the bad actors often disguise themselves as bankruptcy petition preparers. I doubt there is a trustee here who has not come across a case in which a distressed homeowner was bombarded with offers to help stave off foreclosure, paid a handsome sum to a con artist who performed no useful services, and still lost the family home to foreclosure. To buttress our work in this area, we formed a special working group within the Program to assist our offices in finding and pursuing these really heart-breaking cases. And, we are making real progress.

The third prong is our newest prong, even though it is already two years old. We continue to combat mortgage servicer violations of the Bankruptcy Code. We aim to hold mortgage servicers to the same standard of completeness and accuracy in their filings that we do the debtors who owe them money.

We have undertaken a significant amount of litigation in this area. For example, several weeks ago, the bankruptcy court in the Northern District of Ohio ruled in our favor on a complaint against Countrywide Home Loans, Inc. The judge found that Countrywide's conduct in preparing court filings was "reckless" and reflected "an indifference to the truth." And, in the Southern District of Florida, the district court recently reversed the bankruptcy court's dismissal of the United States Trustee's adversary proceeding against Countrywide. The district court found that the United States Trustee had standing. In reversing the bankruptcy court, the district court held that we could seek sanctions for Countrywide's past misconduct, including injunctive relief to prevent future harm caused by Countrywide's practices and conduct.

We also recently prevailed in a case involving HSBC. In that case, the court criticized HSBC's use of a third-party electronic system to manage defaulted loans in bankruptcy, stating that its "thoughtless mechanical employment of computer-driven models and communications to inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy system."

Let me provide one final example of our mortgage servicer and creditor abuse enforcement efforts. I am pleased to announce that this week we entered into a settlement agreement with a major lender to resolve complaints involving the bank's improper disclosure of more than 2,500 Social Security numbers on proofs of claims filed in bankruptcy courts in approximately 45 judicial districts. Under that agreement, the bank will notify affected debtors, file appropriate papers to correct the court filings, and take remedial steps to prevent a recurrence of these impermissible breaches of privacy. This case is one of many that we have taken in recent months against creditors who have failed to comply with legal requirements to protect the personal information of their customers in bankruptcy.

### *Chapter 13 Minimum Standards for Mortgage Proof of Claim Review*

One of our biggest challenges in attacking improper mortgage servicer practices is the ability to identify the right cases to bring. In the ordinary paper flow, we often do not see evidence that gives rise to knowledge of inaccurate proofs of claim or motions for relief from stay.

To help us address this issue, I came to your convention last summer and announced that we would work with the NACTT to develop Guidelines for Reviewing Mortgage Proofs of Claim. Chapter 13 trustees are in a good position to identify inaccuracies in creditor filings and either file objections or refer the matters to the United States Trustee.

Although the Guidelines were issued by us, we gratefully received much input from trustees and the NACTT in their development. In disseminating the Guidelines, and in many subsequent communications with United States Trustees and staff in the Program, I have emphasized that the USTP offices should apply them with two animating principles.

First, our primary objective is to catch bad mortgage servicers, not to play a game of “gotcha” on the chapter 13 trustee’s evaluation. Second, USTP offices should exercise discretion in deciding which cases to bring. This requires coordination with chapter 13 trustees to make sure we get the kind of referrals we should act on in light of the overall circumstances in a district. In each district, USTs and chapter 13 trustees should consult about what kind of cases we are prepared to take, which cases chapter 13 trustees might tackle, and which cases do not merit action. There is no bright line test we can lay down from Washington. The goal is to make a difference and to improve bankruptcy practice, either with big cases or with much smaller cases, one district at a time.

Many of you have done much to address mortgage servicer violations of the Code. I commend you and thank you. Although I am leaving out scores of people who deserve public recognition, let me single out Ronda Winnecour for her work. Among other things, Ronda developed a checklist for trustees in reviewing proofs of claim. We are encouraging other trustees to consider adopting Ronda’s checklist or a version of it. Let me also highlight the work of Andrea Celli. Not only has Andrea been a leader in identifying abusive cases, but she, along with Byron Meredith and Marge Burks, traveled to the Justice Department’s National Advocacy Center a few weeks ago to help train USTP staff on combating creditor abuse.

The mortgage fraud and abuse work you are doing is important. It makes a real difference for homeowners and for the integrity of the bankruptcy system. I encourage you to work in concert with your local UST office. Thank you so much for your continuing efforts.

### **Language Assistance Plan**

On another important front, many of you are seeing a change for the better in our ability to accommodate non-English speaking debtors at section 341 meetings. We have contracts in place to provide tele-interpreter services in about 200 languages. The service is free and is readily available in nearly 250 meeting rooms. We have distributed conference quality speaker phones to the vast majority of these locations to make it easier for the interpretation and recording. We also are exploring options for providing service at locations that are not within our direct control.

I strongly encourage you to make full use of the tele-interpreter services. Signage is being posted in meeting rooms to make sure that debtors know the service is available free of charge, and

our offices are engaging in outreach efforts to make sure the local bar is also aware of the free service. Your assistance in helping to spread the word would be greatly appreciated as well.

I am told that even those trustees who are like me, and are sometimes reluctant to try new things, are finding the service easy to use. Interpreters are readily available and the section 341 meetings proceed efficiently. There is no need to put cases with interpreters at the end of your docket. All debtors can be treated the same, with dignity, and have the same opportunity to hear questions and provide answers in their native language.

Inevitably, some issues or problems will arise. As they do, we certainly need to hear about them so we can implement the most effective language assistance program possible.

### **Technology in Section 341 Meetings**

A small number of judges have raised with me the issue of improved technology in section 341 meeting rooms. They suggest that greater use of technology not only would support the court's long-term goal of going "paperless," but also would allow trustees to conduct meetings more efficiently and thoroughly.

I know that, as a group, chapter 13 trustees are quite tech savvy and together we have addressed a number of technological improvements, including the use of wireless access points in section 341 meeting rooms and courtrooms. While there can be no compromise of the security of personal information, to the extent that we can overcome security problems, and to the extent we can avoid high costs, we are willing to explore better use of technology at section 341 meetings.

To that end, I am pleased that the NACTT has agreed to participate on a working group we are putting together with staff from our Program and representatives of the NABT. Being able to draw on your expertise and experience will be extremely helpful as we consider our options.

### **Conclusion**

Congratulations on convening your 44<sup>th</sup> Annual Seminar and I wish you a productive conference. You have accomplished much. And your good work and your partnership with the United States Trustee Program have allowed us both to better achieve our missions.

It is good to be with you. And even though I will be in and out of your conference today, I assure you that I will be with you and in my seat at Fenway Park on Saturday before the first pitch is thrown.

All the best. Thanks for letting me talk to you this morning.

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