REMARKS OF DIRECTOR TARA TWOMEY AT THE 58TH ANNUAL SEMINAR OF THE NATIONAL ASSOCIATION OF CHAPTER THIRTEEN TRUSTEES

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INTRODUCTION

Good morning and thank you. It is an honor to be here with you again at your annual seminar. Last year, I was with you in San Francisco providing commentary on recent cases and an update on the world of student loans. Today, I wear a different hat, but I can assure you that I am no less passionate about the Bankruptcy Code and its promise of relief to financially struggling Americans.

We know that bankruptcy is a constant balancing act between a debtor's fresh start and the fair and equitable distribution of assets to creditors. We know that chapter 13 has the potential to breathe new life into those burdened by financial struggles and offer them a second chance at rebuilding their futures. We know that successful chapter 13 cases deliver as much or more to creditors than what they would receive in chapter 7. And we know that debtors' success in chapter 13 is no small feat; the road from confirmation to completion of a plan is often riddled with obstacles and challenges.

I want to start today by telling you about a divorced father living in an apartment with his 13-year-old son. He is a maintenance worker with a steady job, but behind on taxes and credit cards. Payday loans did not solve his financial troubles. He filed a chapter 13 and confirmed a plan in about two months. So far so good. Then came the car accident and a motion to dismiss for failure to make plan payments. Still, he managed to persevere. Fast forward five years, his son is now 18, his priority debts were paid in full, his unsecured creditors were paid 79 percent, and he received his discharge.

Let me also tell you about a couple—a machinist and a retail associate. They originally filed chapter 13 to save their underwater family home from foreclosure. Unfortunately, they were unable to maintain steady employment and they lost the house. But they did not give up on their chapter 13. Ultimately, more than three years after filing, they discharged various debts owed to debt collectors, credit card companies, and medical centers. They paid a 25 percent dividend to their unsecured creditors and were able to keep the family cars. They did their best.

And finally, I want to tell you about a retiree living on Social Security and a pension, but still deeply in debt, struggling to keep up with mortgage and car payments. Bankruptcy does not solve the underlying social conditions that leave many of our seniors in debt after a lifetime of work, but it does provide a last safety net. In this case, the debtor completed his plan, paid about $27,000 over 45 months, and received his discharge.

These debtors are not alone. In the past few months, I reviewed these cases as well as those of a laborer, a waitress, a programmer, an administrative assistant, a retail manager, and several retirees. They all completed their plans and received their discharges. Some paid significant dividends to unsecured creditors and others just barely managed to cure the arrearages on home mortgages. None had a flawless path, but they made it.

These cases are a reminder that the work you do has the power to transform lives, offering individuals and families a chance to rebuild and thrive. I thank you for all your hard work.

TRENDS, OPERATING RESERVES, AND RECRUITMENT

Filing Trends

Over the last few years, we have collectively faced immense challenges with a global pandemic disrupting every aspect of our lives. The consumer bankruptcy community saw filings drop to historic lows. Stimulus money, expanded unemployment benefits, and payment pauses provided a lifeline for many families, keeping them afloat. But the tide is turning.

The rise of mortgage interest rates means that mortgage modifications are harder to structure. The student loan payment pause, which has offered temporary relief to tens of millions of borrowers, is coming to an end. Additionally, a significant portion of individuals who have benefited from continuous Medicaid coverage during the pandemic will lose that safety net because of recertification requirements.

In the first two quarters of Fiscal Year (FY) 2023, chapter 13 filings across the nation were up 27 percent compared to those quarters in FY 2022. I believe that upward trend will continue. There may not be a tsunami of filings, but I think we can expect a gradual return to our pre-pandemic baseline.

Operating Reserves and Recruitment

Given the pandemic-driven decrease in filings, I understand that many of you have concerns about the sustainability of trust operation receipts. There are two operational items I want to highlight with respect to these concerns.

First, we are continuing to suspend the cap on operating reserves. We will address significantly under- or over-reserved operations on an individual basis. We also will continue to evaluate whether conditions support the reinstatement of an operating reserve cap, but now is not that time.

Second, we have been and will continue to consider trust operation consolidations if case filings are insufficient to support a trusteeship. In practice, this means that when there is a vacancy for a standing chapter 13 trustee, we will consider consolidation before opening a recruitment effort.

And when we do recruit, we are committed to efforts that will attract trustee candidates who reflect our nation's rich diversity and represent a broad range of personal and professional backgrounds, experiences, and perspectives. Why? Because the people we serve—both debtors and creditors—are not limited to those of a particular race, color, religion, sex, national origin, age, sexual orientation, or physical ability. We cannot ignore the diversity that surrounds us in our day-to-day work. I believe that inclusivity among bankruptcy professionals reinforces a sense of fairness and justice for all stakeholders.

TRUSTEE COMPENSATION

While we are talking about trust operations, let me touch on trustee compensation. As you all know, compensation for standing trustees consists of two components: base pay, which is reviewed every year; and the cash value of comparable employment benefits, which currently is reviewed every three years.

We have just recently completed the three-year review of the cash value of employment benefits, and I am able to report that, effective in FY 2024, trustees will receive an increase of just over 5.5 percent for that component of compensation. The exact amount depends on the date of your appointment, and notices will go out to each trustee with the details prior to the new fiscal year starting October 1st. In arriving at this percentage, we used our standard fact-gathering approach and applied the same analysis as in prior years.

VIDEO 341 MEETINGS

I want to turn now to the ongoing project of our transition to video 341 meetings, which impacts all of you. I know that you have been hearing about this for a while. Indeed, many of you led the way, rapidly pivoting to video 341 meetings during the pandemic.

We have certainly learned a lot from our collective experiences. For instance, we learned that the statutory obligations of section 341 can be satisfied in most cases without requiring that a debtor take a day off from work, travel long distances, or secure childcare to attend an in-person 341 meeting. And we have learned that the virtual format not only makes it easier for debtors, but also, in many cases, makes it easier for creditors to participate.

Building on our experience, earlier this year we piloted Zoom 341 meetings in Region 19 (Colorado, Utah, and Wyoming), and I think it is fair to say that the feedback from those trustees was universally positive. I want to specifically recognize the efforts of your colleague from Salt Lake City, Lon Jenkins, who was an early adopter and advocate for video 341 meetings. Lon's experience in conducting concurrent 341 meetings helped us understand your needs better. With a successful pilot under our belt, we initiated the broader rollout, starting with Region 9 (Ohio and Michigan) and Region 15 (the San Diego area, Hawaii, and the Pacific Island territories). Noticing of Zoom 341 meetings recently began in those two regions.

We now are ready to move forward with the broader nationwide expansion, which will occur in two waves. Wave 1 will cover our eastern regions—generally east of the Mississippi—and Wave 2 will cover the western regions. The goal is to have trustees in all USTP regions conducting Zoom 341 meetings by early next year.

I want to thank you all for your cooperation in moving this project forward. I am aware that a few of you have expressed concerns about the process. I want to assure you that there is no game of "gotcha" here. We have consistently worked with the NACTT and individual chapter 13 trustees to address concerns, and we will continue to do so.

DEBTOR EDUCATION

Lastly, let me turn to debtor education and start by saying we all have a role in ensuring that debtors who complete their plan payments do not lose out on their discharge because they fail to fulfill the debtor education requirement. I want to tell you about a debtor; I will call her Maria. Maria filed chapter 13 and over the course of five years paid $15,000 into her plan with about a 16 percent dividend to unsecured creditors. Even though she had filed her certificate of financial education with the court more than two months before the chapter 13 trustee's final accounting was docketed and the case was closed, she did not receive her discharge, purportedly for failure to comply with the debtor education requirement. Through a combination of complex case closure procedures and inattention by debtors' counsel, Maria did not get her fresh start despite successfully traveling the road from confirmation to plan completion.

A USTP field office found 27 Marias in one district over a two-year period. That is, 27 debtors who did not receive their discharges despite having completed their plans and filed debtor education certificates. Now the good news is that this story had a happy ending. The USTP field office filed motions to reopen all 27 cases and the debtors in each case ultimately received their discharge.

The bad news is that there were more than 170 chapter 13 debtors in the same district who, during the same two-year period, completed their plan payments and were eligible for but did not receive a discharge. The majority of these debtors, however, had not filed a debtor education certificate.

I share this story with you for three reasons. First, we find that when debtors take the debtor education course, the certificate usually gets filed. This is not a problem of missing certificates; more commonly the problem is a failure to timely take the course. Second, I want to acknowledge and thank all of you who engage in the debtor education process and work with debtors to make sure they get across the finish line. Finally, this story is an important reminder of the role you can play in reminding debtors of the debtor education requirement through targeted engagement. I ask you to consider efforts to ensure awareness and compliance as part of your case closing procedures if you do not already do so. We all have a role to play in ensuring the bankruptcy system works as it should for stakeholders.

CONCLUSION

I want to thank you for the opportunity to speak with you today and for welcoming me into my new role. I am lucky to have such a great team in the USTP who has helped to get me acclimated, especially Deputy Director/General Counsel Ramona Elliott who has provided invaluable support. I also want to thank the leadership of the NACTT for their partnership with the Program. Since coming on board in February, I have had the opportunity to engage several times both with your outgoing President, Rusty Simon, and with the NACTT liaison group to address system-wide challenges as we have moved out of the pandemic and towards normal operations. I am grateful for their insights. I now look forward to working with your new President, Krispen Carroll, and building on those positive results.

I will be heading back to Washington right after this session, but we have several people from the USTP who will be here throughout the seminar. They are Kevin Epstein, the U.S. Trustee for Region 7, who is also covering Region 6; Mike Bujold, our Acting Deputy Director for Field Operations; and Bob Gebhard, our Assistant Director for Oversight. I encourage you to seek them out to share your ideas and suggestions on how the USTP can better support you and the chapter 13 system.

Best wishes for a productive and successful meeting.