Chapter 7 Trustees Play Important Role in Enforcement Against Bankruptcy Crimes

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Introduction

Chapter 7 trustees can play a vital role in the identification and referral of bankruptcy-related crimes. The United States Trustee program strives to foster greater collaboration between trustees and the Department of Justice as we address these critical issues.

For example, at the NABT's Annual Convention in September 2016, we arranged for a special agent from the Federal Bureau of Investigation to discuss the threats to businesses posed by cybercrimes such as the use of "ransomware" – malicious software that blocks access to a computer system until a ransom is paid – as well as hacking schemes. And an upcoming issue of the *USA Bulletin*, which reaches prosecutors and investigators throughout the Department of Justice, will feature articles on bankruptcy fraud written by authors from DOJ components including the Executive Office for United States Trustees, various United States Trustee Program field offices, United States Attorneys' Offices and the Criminal Division. (Issues of the *USA Bulletin* are available on the Department's Web site at https://www.justice.gov/usao/resources/united-states-attorneys-bulletins.)

This article briefly reviews the chapter 7 trustee's duty to refer suspected criminal violations as set forth in 18 U.S.C. § 3057(a).

Trustee's Duty to Refer Violations

Pursuant to 18 U.S.C. § 3057, trustees with reasonable grounds to believe that a violation of Federal law has occurred have a duty to report the facts and circumstances to the appropriate United States Attorney. A similar duty is imposed on the United State Trustee by 28 U.S.C. § 586(a)(3)(F). Section 4.N.9 of the *Handbook for Chapter 7 Panel Trustees* describes the trustee's duty to report criminal conduct, the referral procedure and the importance of coordinating with the United States Trustee. The Handbook also provides guidance regarding the most common bankruptcy crimes, sources of information for referrals and criminal enforcement procedures regarding panel trustee employees.

There are three primary reasons why it is important for trustees to make criminal referrals. First, making referrals fulfills the trustee's statutory duty and is an integral part of the trustee's commitment to uphold the integrity of the bankruptcy system.

Second, the information provided in a referral is not only relevant to the criminal activity identified but may prove helpful to other pending investigations, not related to the bankruptcy case, that may involve the subject. The referral of suspected wrongdoing also positions the United States Trustee Program to detect systemic misconduct and respond through taking appropriate civil enforcement actions and referring the criminal conduct to law enforcement.

Third, trustees are the front line of the bankruptcy system and often have more direct contact with debtors and other participants in the bankruptcy system than either judges or United States Trustee personnel. The United States Trustee Program depends on trustees' experience and skill as bankruptcy professionals to identify suspicious conduct and to provide information about suspected criminal activities in a timely manner.

Partnership with United States Trustee Program

As in so many other matters, the most effective way for trustees to carry out the duty to refer suspected bankruptcy crimes is to work in partnership with the Program. Communication is key. We encourage trustees to contact their United States Trustee's office if they have any suspicion that a crime has occurred. A simple phone call or email is sufficient to start the referral process. Sometimes "something just doesn't feel right" about a debtor's testimony at the 341 meeting or an attorney's fee declaration. That "gut feeling" that a trustee develops through experience is invaluable in detecting criminal activity where, for example, a debtor is concealing an asset or counsel is not truthfully disclosing the full amount of the fees charged to clients.

Once a trustee refers a suspected crime to the United States Trustee, the United States Trustee will review the matter, make a criminal referral under 28 USC § 586 and provide support to law enforcement. This support may include assistance from our field office personnel regarding bankruptcy procedure and details of the bankruptcy case at issue. It may also include the expertise in bankruptcy fraud-related prosecution provided by the United States Trustee Program's Office of Criminal Enforcement, which consists of Regional Criminal Coordinators as well as approximately 25 Special Assistant United States Attorneys around the country.

Successful Criminal Prosecution

A recent criminal prosecution in the Northern District of Illinois illustrates the value of coordination among the Program, the chapter 7 trustee and law enforcement. This successful prosecution began when the chapter 7 trustee contacted the United States Trustee's Chicago office with his concerns after the section 341 meeting. Based on the debtor's testimony, the trustee suspected the debtor had lied about his assets and might be concealing valuable property. As it turned out, the trustee's "gut feeling" was spot on and led to the discovery that the debtor had failed to disclose seven luxury cars, including a 1966 Corvette, a 1971 Corvette, a 1978 Pontiac Firebird Trans Am, a 1981 DeLorean, a 1989 Pontiac Firebird Trans Am, a 1997 Dodge Viper and a Lamborghini.

The debtor was initially charged with concealing ownership of seven vehicles with a total value of approximately $294,000 by failing to disclose them in his bankruptcy petition, and with lying under oath about his ownership of the cars in testimony he provided during the section 341 meeting, a Rule 2004 examination and a hearing before the bankruptcy court. According to the criminal Information, after filing bankruptcy the debtor allegedly sold the Lamborghini for $122,000 and kept the proceeds. He stored the other six vehicles in a garage to hide them from the trustee. Although the bankruptcy court issued an order directing him to turn over five of the cars, the debtor kept them. After learning that the bankruptcy trustee was seeking court authorization to access the garage, the debtor moved the cars in the middle of the night to various locations to keep them hidden.

The immediate referral of the debtor's actions to law enforcement by the United States Trustee's office and the chapter 7 trustee contributed to the FBI's successful efforts in locating the hidden vehicles and provided evidence resulting in the debtor's prosecution. The debtor ultimately pleaded guilty and in January 2016 he was sentenced to 18 months in prison followed by 36 months of supervised release. The United States Trustee also obtained the waiver of the debtor's chapter 7 discharge of $1.7 million in unsecured debt. Throughout, the chapter 7 trustee coordinated with the Program's Trial Attorney and with law enforcement to achieve justice through both criminal and civil enforcement.

Conclusion

Private trustees are on the front lines in detecting suspected bankruptcy crimes and have a duty to report such matters. I encourage you to contact the office of the United States Trustee if you suspect that a crime has been committed. Successful criminal prosecutions arising from such efforts help to protect the integrity of the bankruptcy system for all participants.