REMARKS OF

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I. Introduction

Thank you so much for allowing me to be with you again this year at your important annual NABT convention. Let me begin by extending my gratitude for all that you do to make the bankruptcy system effective for all of the stakeholders and for the American public. Your job is seldom glamorous, but it is always essential to achieving the goals of a fresh start for debtors and the efficient distribution of assets to creditors.

I thank Marty Sheehan for his successful term as your President. I did not know until last year that Marty and I share the bond of being native New Englanders. Of course, that means that we are fellow citizens of Red Sox Nation. That New England upbringing no doubt has contributed to his professional accomplishments. I look forward to our continued collaboration long after his term ends this week.

My congratulations also are extended to Rick Nelson. If there is a more quietly effective and levelheaded member of the bankruptcy community, I have not met that person. Rick will serve this association's interests well. I will call upon Rick often during the coming year to discuss issues and matters of mutual interest.

I am joined today by my Executive Office colleagues Doreen Solomon and Suzanne Hazard, who need no introduction. Also with us is Acting Deputy Director and United States Trustee Bill Neary, as well as Chicago's hometown United States Trustee Pat Layng. And last, but not least, United States Trustee Sam Crocker is here as well. Some of you know Sam as UST; some of you know Sam as former President of the NABT; but all of you know Sam as the nation's number one fan of Johnny Cash.

II. Mortgage Servicer Enforcement

I will start my report to you with news about the Program's top priority of mortgage servicer enforcement. More than three years after the National Mortgage Settlement and implementation of the new national mortgage servicing standards, the USTP continues to investigate and take action against banks and other servicers that fail to comply with the Bankruptcy Code and Rules.

Hopefully, you all are aware of our most recent national settlement with JPMorgan Chase Bank. The settlement was brought in a case involving debtors who received a payment change notice (PCN) that tripled their mortgage payment from about $500 to $1,700 per month. They challenged Chase's asserted increase. The United States Trustee intervened and sought testimony from the putative Chase employee who signed the PCN under penalty of perjury attesting that the information was true and accurate. But Chase never could produce that employee. There was a reason for that – because that employee had left Chase well before the filing and never had anything to do with the PCN in question.

The long and short of it is that Chase acknowledged that it filed in courts throughout the country more than 50,000 PCNs that were not signed by an employee who could attest to the

accuracy of the information. Chase also acknowledged that thousands of other PCNs were inaccurate, missing, or untimely.

Homeowners were aggrieved and so was the integrity of the bankruptcy system. The settlement provided for payment of more than $50 million. More than $43 million was paid in cash or credits to upwards of 25,000 homeowners. An additional $7.5 million was paid to the ABI Endowment Fund to support the Credit Abuse Resistance Education program known to many of us as CARE. In addition to paying money, Chase agreed to make changes to internal procedures and submit to a compliance review by an Independent Reviewer.

The Chase settlement was our 10th national settlement over the past seven years, and the fifth to address mortgage servicing. We will continue to carry out energetic mortgage servicing enforcement efforts and seek global resolutions to address systemic, multi-district violations.

I am confident that we have the attention of the banks and the mortgage servicing industry. There have been improvements in practices and we have seen better cooperation in our investigations. But we still need your continued assistance and information to help us identify nationwide pattern or practice problems that we should investigate and pursue to remediation. Stay tuned for future developments. There will be more.

III. **Unsecured Creditor Violations**

Even though mortgage servicing demands our priority attention, we also are making progress in the area of unsecured claims. As I reported to you at your conference last year, we reviewed claims broadly, took actions, and developed data on industry compliance with bankruptcy disclosure rules. Among other things, we produced a PowerPoint for delivery to trustees and local bench and bar meetings addressing the large amount of stale debt that is pursued through the bankruptcy system. I hope many of you were able to see the presentation of the PowerPoint made by Doreen and Sam earlier today.

Currently, we are looking carefully at conduct by banks that sell a large volume of consumer debt and those that buy that debt. For example, we have served several banks with discovery orders to determine if their debt selling activities improperly compromise the "fresh start" by impairing the discharge injunction through failure to update credit reports to reflect the discharge of sold debt.

At least three banks have announced changes to their credit reporting procedures. These changes may help prevent claims buyers from pursuing discharged debt. They also may make credit reports more complete so that other credit report users – such as landlords and prospective employers – do not mischaracterize such debt as a current financial burden. Much activity is afoot.

In addition to conduct by the banks and claims sellers, we are looking at debt buyers. Currently, we are investigating two high volume debt buyers who filed proofs of claim signed by the same person in such volume that we suspect "robo-signing."

IV. **Best Practices on Document Production**

Let me move on to another matter on which we are collaborating. As I have previously reported to you, we had investigated complaints about some trustees routinely making unnecessarily burdensome requests for documents from debtors. We took corrective actions in appropriate cases and are reviewing other cases. But, upon review, it seemed clear that some trustees and some debtor's counsel needed to be reminded about the need for sufficiently tailored requests for information and the need for prompt satisfaction of those legitimate requests. Unnecessary requests by trustees and dilatory compliance by debtor's counsel both mean the loss of precious time and money for the entire system, including for the debtors themselves.

I am pleased to report that, at my request, the NABT, along with the National Association of Chapter 13 Trustees and the National Association of Consumer Bankruptcy Attorneys, have met several times over the past year to share experiences and discuss best practices. In fact, that group met with the USTP just yesterday for what perhaps was the wrap up meeting.

The ideas and analyses emanating from these meetings will greatly inform our refinement of the Best Practices guide that the Program first issued in 2012. I hope that we can identify lessons learned since that initial guide was developed and produce a new guide that responds to the most pressing issues. I then will ask all United States Trustees, chapter 7 and chapter 13 private trustees, and the debtor's bar to use the new guide as a training tool to help ensure that we can reduce inefficient and counterproductive document production practices.

I am deeply grateful to your colleagues Marty Sheehan, Rick Nelson, and Bill Schwab for their active participation in this important endeavor.

V. **Supreme Court Cases**

This past year has been productive on many fronts. Let me highlight our appellate practice as one of the most important activities of the USTP. We participate in well over 100 appeals each year, whether that be as appellant, appellee, or amicus. In this past year, as in previous years, we also have been significantly involved in several Supreme Court cases.

The Supreme Court heard six bankruptcy cases this term. The Government filed *amicus* briefs in three of those cases. In fact, the USTP's General Counsel was listed among the government's counsel in the two cases that most directly touch on our work. We also consulted closely with the Solicitor General, who is the Government's Supreme Court advocate, on the other bankruptcy cases heard by the Court. Regardless of the outcome, we all benefit when we receive Supreme Court guidance. Each of these bankruptcy decisions merits close attention by those of us whose day-to-day work entails application of the high Court's rulings.

Let me say an extra word about the *Baker Botts v. Asarco* decision. The high Court disagreed with our position that attorneys may obtain fees for defending their section 330 fee requests if they substantially prevail in their defense of the amount the objecting party sought to cut. The Court affirmed the Fifth Circuit's *per se* prohibition of those fees.

Already we have seen several attempts to circumvent the *Asarco* decision. We have filed briefs in two districts. As I speak here today, we are putting the finishing touches on guidance to our field on how we will approach issues that have arisen, or that surely will arise, from the *Asarco* decision. Once issued, we will publicly post the USTP's legal policy on this so practitioners will know what litigation response, if any, they can expect from us in a number of factual scenarios.

Let me now turn to a few matters that go directly to day-to-day trustee administration.

VI. Case Filings, Trustee Case Administration, and Trustee Compensation

Overall bankruptcy filings are in the midst of a five-year decline approaching 50 percent after having doubled in the previous three years. There are some commentators who expect filing rates to rise depending upon such factors as interest rates, upcoming due dates on high yield bonds that fund some businesses, and other variables in the broader economy. Filing trend data merit close attention by all of us with responsibility for bankruptcy case administration.

Even though the number of filings has declined, trustees continue to administer an incredibly high volume of cases. Last year, you administered more than 600,000 cases. You closed more than 64,000 asset cases and disbursed more than $3 billion to creditors. The fact that more than 64,000 asset cases were closed means that trustees submitted nearly 130,000 final reports that were filed in bankruptcy court. Almost certainly, trustees issued hundreds of thousands of checks in those asset cases.

Any discussion of case administration has to include a word about trustee compensation. I addressed this issue in Congressional testimony a few months ago. Nationwide, total chapter 7 trustee compensation from all sources–including no-asset case fees, commissions on distributions in asset cases, and fees to the trustee as professional in a case–declined about 3.9 percent in fiscal year 2014 from fiscal year 2013. This was the second year in a row we saw a decline in compensation. This is a concern.

We all know that the 2005 amendments to the Bankruptcy Code require chapter 7 trustees to do more work in each case. Yet, the no-asset fee has not increased in more than 20 years. Accordingly, without endorsing any particular proposal, the USTP restated to Congress its view that an increase in the no-asset fee is well justified.

VII. Continuity of Trustee Operations

One of the emerging issues we have discussed with the NABT and many trustees over the past year is how to manage transitions when – through external emergency, trustee absence, or other reason – swift action is needed to ensure that estate assets are protected. Judge Stout spoke to this issue a moment ago. I want to express agreement with his sentiments and expand a bit upon this issue.

All of us are familiar with long-standing procedures for handling more temporary situations, such as short-term absences requiring a substitute to preside at section 341 meetings.

We also know about emergency actions taken in rare cases of trustee misconduct. And two years ago, the USTP consulted with NABT on additional procedures to follow during natural disasters or other emergencies that may knock out computer systems or other communications.

With the tremendous cooperation of trustees and vendors, we have greatly enhanced our capacity to carry out vital chapter 7 responsibilities despite unexpected computer and communications disruptions. We have developed step-by-step procedures that are memorialized in guidance we have provided to our field offices, and we expect that all trustee operations have disaster recovery plans in place as well.

It seems logical that we should turn next to developing and memorializing clear-cut steps for ensuring continuity of operations when the disruption is caused by the unexpected disability of a trustee. In most cases, the trustee is absent for a short duration so that his office and duly retained professionals can administer the cases. But, in some unfortunate circumstances, trustees are permanently unable to perform their fiduciary duties. The importance of the proper handling of these disability-caused transitions has been highlighted to me over the past months by Judge Stout. With his years of experience as a trustee, practitioner, and now judge, he has brought important insights that can help the USTP address this matter more comprehensively in the future.

By law, the United States Trustee must appoint a successor trustee. We also have procedures in place whereby we ensure that assets and records are secured. Almost always, this is accomplished with the extensive assistance of the trustee's staff. Except in rare circumstances in which the United States Trustee steps in to administer assets directly, we reassign cases in an equitable fashion to ensure equal distribution consistent with the principles of blind rotation and the need for immediate security. In many cases, the successor trustee retains counsel already employed in the case to reduce costs and ensure expeditious resolution. The trustees also propose a fair distribution of the trustee commission so that the work performed by the former trustee is properly recognized in accordance with section 326.

In response to recent discussions with Judge Stout, the NABT leadership, and many of you, the USTP is now developing both step-by-step guidance to the field and amendments to the Chapter 7 Trustee Handbook to ensure that the Program's protocols are more precise and are followed consistently throughout the country. Among the points we may wish to make more clear in the future are the primacy of securing assets and records, and the need for trustees to maintain records in a system that makes transfer more seamless. We also will cover the duty of the USTP to intervene and object to any proposed division of compensation that does not fairly reflect the work involved. Also, in those instances in which a successor trustee does not employ already retained counsel, we will review the new retention to be sure that changing horses in mid-stream is likely either to lower the cost of administration or increase the dividend for creditors.

As we move forward on trustee succession and other emergency planning, we will consult with the NABT early and often. Our goal is to produce a comprehensive protocol that will guide trustees and USTs alike in carrying out their important responsibilities during a period of crisis.

VIII. **Section 341 Meeting Security**

To achieve our joint goal of making the consumer bankruptcy system more effective and efficient for all stakeholders, we need to make sure that the fundamentals of daily practice are done right. Nothing is more fundamental to the bankruptcy process than the section 341 meeting.

There are more than 400 section 341 meeting sites around the country. We maintain such a large number of sites to reduce costs for debtors and their counsel. Consumer debtors can ill afford to lose a full day's work to travel to a federal building many miles from their home. Upon reflection, I think we do an extraordinary job and go to great lengths to locate and conduct section 341 meetings in the most efficient way possible.

As you know, many of the section 341 meeting rooms are in federal space, but other sites are in rented, non-government buildings. Given the large number of geographically dispersed sites, not all sites have the same level of security. In section 341 meeting sites in federal facilities, there are armed federal security personnel and magnetometers controlling building access. At other sites, we have been able to work with the Federal Protective Service (FPS) to provide preventive security measures. In some locations, geographical proximity necessitates reliance on local law enforcement.

Along with Bill Neary, Doreen Solomon, and other USTP senior staff, I have been working with the federal security and bankruptcy communities to develop a more consistent security scheme. On this matter as well, I am particularly grateful for the leadership, support, and perseverance of Judge Stout. As a former chapter 7 trustee, Judge Stout has long recognized the volatility and inherent risks present in bankruptcy proceedings, especially section 341 meetings where the emotions of debtors and creditors sometimes run high.

Although we have not had unaddressed emergencies in section 341 meetings, it is important to continually reassess security needs and not wait until a tragedy occurs. That is why we have made efforts to strengthen our relationship with the FPS and the United States Marshals Service, as well as to seek out additional federal space, especially in courthouses, where we can co-locate our section 341 facilities. I also have asked the Administrative Office of the U.S. Courts for any assistance it may provide to us in identifying vacant courthouse space that we may lease for section 341 and other purposes.

This year, we expanded our security review in many respects. Most significantly, Acting Deputy Director Bill Neary recently led a review of all section 341 meeting sites to identify those sites at highest risk. He developed a list of 14 sites that should be given priority for enhanced security. I am pleased to announce to you today that each of these 14 sites, in locations throughout the country where we conduct a high volume of section 341 meetings, now has or soon will have on-site FPS protection. These are pilot sites from which we hope to learn how to be most efficient in providing security, such as the number of guards necessary to protect multiple rooms, possible scheduling adjustments to ensure adequate security, and other information.

I have set aside $1 million to provide the additional security at these pilot sites through next year. Depending upon budgets and knowledge learned from the pilots, we will decide on the best way to move forward in future years. Our goal is to ensure that reasonable security is provided at all sites. Inevitably, that means some balancing of countervailing considerations, including an assessment of whether maintaining sites in locations with few cases and high security costs is viable.

You and others in the bankruptcy system perform a great service for all stakeholders. We do not want concerns over physical security to compromise those efforts. We will provide more information about the pilot sites and enhanced security measures as we move forward.

IX. **Conclusion**

I wish you another successful and productive annual conference. I thank you again for your positive collaboration on so many matters of urgent importance to both the USTP and chapter 7 trustee communities. And most of all, I thank you for your service to bankruptcy stakeholders – including debtors in financial distress who are entitled to a fresh start, creditors whose survival is made more precarious by non-payment of a debt, and the American public whose national economy depends upon an effective bankruptcy system recognized in the Constitution itself. You do important work. For that, you have my deepest respect.

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