REMARKS OF

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AT THE

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NATIONAL ASSOCIATION OF CHAPTER THIRTEEN TRUSTEES

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Introduction

Thank you very much for welcoming me this morning, and Happy 50th Anniversary to the National Association of Chapter Thirteen Trustees (NACTT). I enjoyed the time yesterday meeting with some members of the NACTT Board and seeing others of you last evening.

This is a spectacular venue. Salt Lake City is one of America's great cities with its famously wide avenues and magnificent mountain views. I seldom have a chance to spend much time in a city that I visit on business, but after a morning power walk with Doreen Solomon, I can tell you that it is one of my favorite places.

Salt Lake City also is the home base of one of the best chapter 13 trustees in the country. I have worked with Kevin Anderson on many matters, including on projects during his term as NACTT President. He epitomizes the best in a bankruptcy professional – he is diligent, compassionate towards the vulnerable, and, importantly, he follows the law. That is no doubt why soon we will call him Bankruptcy Judge Anderson. Congratulations, Kevin.

This organization has been fortunate during the past year to have been led by another trustee of the highest caliber. In all of my dealings with Robert Wilson, he has exhibited great professionalism and common sense. His quiet but determined demeanor has served your association well. I am grateful for the partnership with him during his tenure. Thank you, Robert.

And now I look forward to working with your incoming president, Mary Ida Townson. Mary Ida has been a critical part of many important joint projects over the years. She brings great energy and experience to the job and I know that we will work well together to address issues of mutual concern to the United States Trustee Program (USTP) and the NACTT in the coming year. Congratulations, Mary Ida.

Mortgage Servicer Enforcement

As I probably said to you last year, I am confident that one day in the future I will be able to talk to you in the past tense about the work you and the United States Trustees do to ensure compliance by the mortgage servicing industry with bankruptcy law and rules. Unfortunately, today is not that day and I must still talk about it in the present tense.

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 file proper bankruptcy notices or charge excessive and unreasonable fees. The Judicial Conference of the United States has done its job by providing us with changes to the Federal Rules of Bankruptcy Procedure that have helped us identify cases in which servicers do not get it right. From revised proof of claim forms to payment change notices to escrow statement attachments, servicers have to make disclosures to demonstrate that their accounting is correct so that debtors, trustees, and others can challenge improper claims, charges, and fees.

All USTP field offices play a role in policing compliance with the Bankruptcy Code and Rules. We analyze information and coordinate action where appropriate, particularly when dealing with widespread abuses of the bankruptcy system. In line with this, we have several ongoing reviews of servicer practices across multiple districts.

As I hope you already know, our most recent national settlement was 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 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.

The settlement provided relief for upwards of 25,000 homeowners, as well as accountability by the bank. Homeowners were aggrieved and so was the integrity of the bankruptcy system. Chase must pay or credit more than $50 million. About $43 million will be paid or credited to affected homeowners and $7.5 million will be 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 policies to ensure that the identified problems do not recur.

Under the settlement, an Independent Reviewer will ensure that Chase carries out its obligations, including by: identifying all affected homeowners; sending notices to debtors, trustees, and counsel; and making internal operational changes. To that end, we have asked both the Independent Reviewer and the NACTT to consult to ensure that the Reviewer has direct information from you about any instances of continuing non-compliance. I want to specifically thank Mary Ida Townson for her time and efforts in collaborating with the Reviewer who is monitoring Chase's compliance.

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 further and pursue to remediation. Stay tuned. There will be further developments.

Unsecured Creditor Violations

Even though mortgage servicing demands our priority attention, we also are making progress in the area of unsecured claims. We previously 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. If you have not done so already, I urge each of you to talk to your United States Trustee about presenting the PowerPoint at your local meetings, including those with the bench and bar. While objecting to stale debt in specific cases is generally not the USTP's job, helping to inform the broader bankruptcy community about how to identify potentially objectionable claims is a legitimate role for us and one in which we have served.

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. Much activity is afoot.

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.

In addition to conduct by the banks and claims sellers, we are looking at debt buyers. Currently, we are investigating high volume debt buyers who filed proofs of claim signed by the same person in such volume that we suspect "robo signing." Given the relatively modest number of high volume debt buyers, it may be that, if we uncover non-compliance and rectify it through court order or otherwise, we will see immediate and substantial improvements in bankruptcy practice in this area. We have already had some success. Let us hope for an expeditious resolution of our current investigations.

Section 341 Meeting Security

To achieve our joint USTP-chapter 13 trustee 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 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. I am particularly grateful for the leadership of Bankruptcy Judge Alan Stout of the Western District of Kentucky for his support and perseverance on this issue. 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. Acting Deputy Director Bill Neary recently led a review of all section 341 meeting sites to identify those sites at highest risk. We are preparing to pilot the use of on-site FPS guards at 14 locations that currently are without the preferred level of security. I have set aside $1 million to provide additional security at these pilot sites through next year.

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.

Best Practices for Document Production

Let me move on to another matter on which we are collaborating. I reported to you last year that we had investigated complaints about some trustees routinely making unnecessarily burdensome requests for documents from debtors. We took corrective actions in appropriate cases. But, upon review, it seemed clear that some trustees needed to be reminded about the need for sufficiently tailored requests for information and debtors' counsel of the need for prompt satisfaction of those legitimate requests. In the experience of United States Trustees around the country, there are instances where debtors' counsel delay production to us and to private trustees. These delays sometimes cause unnecessary pleadings to be filed and other actions to be taken. That means 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 NACTT, along with the chapter 7 trustees' National Association of Bankruptcy Trustees and the National Association of Consumer Bankruptcy Attorneys, have been meeting to share ideas on best practices. I will be informed by those discussions in refining the Best Practices guide that the Program issued in 2012. I hope that we can identify lessons learned since that initial guide was issued and produce a revised 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 debtors' bar to use the revised 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, Mary Ida (again!) and Martha Bronitsky, who have participated in this important endeavor.

Chapter 13 National Form Plan

On another matter of importance to both of us, USTP Deputy Director and General Counsel Ramona Elliott continues to work hard as an *ex officio* non-voting participant on the Judicial Conference's Advisory Committee on Bankruptcy Rules. We recognize that the absence of a trustee on the Advisory Committee makes it all the more important that we understand the trustees' perspectives on the issues that come before the Advisory Committee.

At your last annual meeting, I endorsed a national chapter 13 form plan. Subsequently, the Department of Justice (DOJ), speaking collectively for DOJ components, expressed that same view in writing to the Rules Committee. The advantages of a national form plan are apparent. It will promote consistency, compliance, and efficiency. All parties, including national creditors, and the courts will be able to analyze the plan with greater ease. Importantly, consistency means justice. Debtors ought to be treated similarly no matter the district in which they live. Within bounds, chapter 13 practice properly differs a bit from district to district. And repayment plans often require creativity for the benefit of all stakeholders. The goal is to ensure transparency in plans through a consistent form while allowing each debtor to tailor plan provisions to local law and the unique financial needs in each case.

I know that the NACTT has worked hard in analyzing various proposals for a form plan. The draft plan originally published by the Committee in August 2013 has been further revised. It was republished in August 2014, and the Committee is currently considering comments submitted in response. Among the comments received are those from trustee John Waage as Chair of the NACTT's plan committee, who serves as consultant to the Rules Committee group studying the issue. I also appreciate that a proposed compromise was developed by several bankruptcy stakeholders, including trustees David Peake, George Stevenson, and Rick Yarnall. I know that there has not been unanimity among chapter 13 trustees on this issue, but your advice has been invaluable to the Advisory Committee. Many thanks to all of those NACTT members who have provided input on this project.

Other Important Matters of Interest

There are many other important matters I wish time permitted us to discuss. Since I cannot get to them all, I will touch on just a few before my time expires.

Supreme Court Cases

First, the Supreme Court heard six bankruptcy cases this term. You will hear a lot more at the next session on these cases. 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. All of these decisions merit close attention by all of us whose day-to-day work entails application of the high Court's holdings.

- In *Baker Botts L.L.P. v. ASARCO, L.L.C.*, the 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. As we speak, the USTP is reviewing issues that will flow from that decision and our fee enforcement response.

- In *Bullard v. Blue Hills Bank*, we argued, together with the debtor and one major national bank that filed an *amicus* brief, that an order denying a debtor's proposed chapter 13 plan is final and may be appealed immediately. The Court disagreed, ruling that a bankruptcy order denying plan confirmation is not final because it did not "alter[] the status quo and fix the rights and obligations of the parties." We now have guidance from the Court that was needed, regardless of our position on the underlying issue.

- In the anxiously anticipated case *of Wellness International Network, Ltd., v. Sharif*, the Program also actively assisted the Office of the Solicitor General in its briefing and argument. Our position prevailed in that case, with the Court holding that "Article III is not violated when the parties knowingly and voluntarily consent to adjudication [of a *Stern* claim] by a bankruptcy judge." The Court further held that the necessary consent may be implied, but whether express or implied, it "must still be knowing and voluntary."

The Court also issued two opinions in bankruptcy cases in which the United States did not participate.

- The *Bank of America, N.A. v. Caulkett* and *Bank of America, N.A. v. Toledo-Cardona* cases resulted in a combined decision, with the Court ruling that chapter 7 debtors cannot strip junior mortgage liens under section 506(d) on the basis that the amount of the loans secured by senior mortgage liens was greater than the current market value of the debtors' homes.

- And in *Harris v. Viegelahn*, the Court held that post-petition wages not yet distributed by a chapter 13 trustee must be returned to the debtor after the debtor converts to chapter 7. I know this decision has raised a number of questions by chapter 13 trustees on the proper administration of cases. We certainly want to hear more from trustees about any questions that may arise in day-to-day practice.

That was a busy lineup of bankruptcy cases on which the Supreme Court gave us definitive guidance. Although the positions of the United States Trustee Program and chapter 13 trustees did not always prevail, the bankruptcy system always benefits from the consistency brought by final adjudication of important matters involved in our daily practice. We will continue to work with the Solicitor General on bankruptcy issues arising in other cases that the Court may hear in the future.

Filings

Finally, a word about the economics of bankruptcy practice. Overall bankruptcy filings are in the midst of a five-year decline approaching 50 percent after having doubled in the previous three years. Chapter 13 filings too are declining, but at a lesser rate than overall filings. The volume of cases and disbursements flowing from chapter 13 cases have allowed the USTP to set the chapter 13 percentage fee at an average of 6 percent. We do not expect any dramatic departures from the percentage fee in the foreseeable future.

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, employment rates, and other variables in the broader economy. In May, non-USTP data show that the number of consumer cases continued to decline, but the number of commercial chapter 11 cases increased.

Filing trend data merit close attention by all of us with responsibility for bankruptcy case administration so we will be watching intently and will make adjustments as needed.

Conclusion

I know you will enjoy another valuable and enjoyable convention. We in the United States Trustee Program remain grateful for the professionalism and diligent service that chapter 13 trustees perform for the bankruptcy system, day in and day out. Your caring for the vulnerable and your commitment to efficient case administration make the system work for all stakeholders. You have my greatest respect as the USTP goes about its job to oversee the work of trustees and to enforce the Bankruptcy Code to ensure fairness for all parties.

May each of you and your families enjoy a Happy Independence Day. Let's heed the advice of John Adams who wrote in a famous letter to his wife Abigail in 1776: The day of American Independence "ought to be solemnized with pomp and parade, with . . . bonfires and illuminations from one end of this continent to the other from this time forward forever more."

It is always a pleasure to be with you. Thanks for giving me your time this morning.

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