REMARKS OF

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INTRODUCTION

Thank you for inviting me again to speak at the outset of your annual conference. I value the chance to meet with the chapter 13 trustees on whom the United States Trustee Program (USTP or Program) and the entire bankruptcy system depend to fairly and efficiently administer about 300,000 new cases each year.

I am especially grateful to Mary Ida Townson for her service as a trustee and as President of the NACTT over this past year. She is as dynamic, level-headed, and effective as any trustee with whom I ever had the pleasure of working. She is a splendid leader of this organization. I also have had the pleasure of working with your incoming President, Sims Crawford. I have a great deal of respect for Sims and his commitment to improving the bankruptcy system. What's even better is I can honestly say that, as a trustee in Alabama, he has never – not even once – had a dispute with his United States Trustee. Congratulations, Sims.

A few months ago, I had the chance to talk with 16 of the "newer" members of the chapter 13 trustee ranks when they spent a day at our Executive Office. While some of the trustees had upwards of two years under their belts, the group also included five trustees who had been appointed within just a few months of the training. Those newest additions included former chapter 7 trustee Carey Ebert of Texas with whom I worked before. I must say that I found the meeting with the whole group to be invigorating and I benefitted from hearing their views on current bankruptcy issues. I hope they are all here at this conference because they will be fine additions to the NACTT.

Each year at this conference, I like to take the opportunity to update you on the USTP and invite your action on some matters of mutual interest. I had a chance to give an update to many of you when I spoke in January at your mid-year meeting in DC, just as an epic snow storm was about to hit the Nation's Capital. You will be pleased to know that things quickly returned to normal in Washington. Then again, maybe you will not be pleased to hear that.

Bankruptcy Filings

A common topic of discussion at gatherings of bankruptcy professionals is the trends in bankruptcy filings. As you know, bankruptcy filings doubled from 2007 to 2010 and have now dropped by nearly 50 percent over the past five years. You just saw the data and heard the views from the Administrative Office of the U.S. Courts (AOUSC) on bankruptcy filings. In the 88 judicial districts covered by the U.S. Trustee Program, during the first three quarters of Fiscal Year 2016, chapter 13 filings were down by one percent; chapter 7 filings fell by 10 percent; and chapter 11 filings continued their upward climb, growing by 14 percent. Importantly, the rate of decline in consumer cases is falling and the rate of increase in chapter 11 cases is growing. It may well be that your offices could soon start seeing increases. Even though I know some of you had to downsize in recent years, it appears you are well positioned to deal with a future rise in filings.

Security at Section 341 Meetings

Increasingly over the past several years, trustees, judges, and USTP personnel have shared with me heightened concerns about security at section 341 meetings. We maintain about 400 section 341 meeting sites, including in remote locations far from the United States Trustee's office. We do this for the benefit of debtors, creditors, and professionals who otherwise would have to drive many more miles to participate in these mandatory meetings. Maintaining so many section 341 meeting sites is costly and so is providing security. We do not wish to close any locations and yet it is not realistic to provide the optimum level of security at all 400 sites.

Under the leadership of Judge Alan Stout of the Western District of Kentucky, who is a former chapter 7 trustee, I have worked with the National Conference of Bankruptcy Judges to explore options to enhance section 341 security. I also have received valuable assistance from the NACTT and the chapter 7 trustee association in considering this matter.

Last year, I devoted $1 million from the Program's base budget to expand security. In 16 of our less secure locations, we now provide Federal Protective Service armed guards. The comments I have received from trustees, practitioners, and parties have been overwhelmingly positive. Not only has the additional security been welcome, but the overall professional atmosphere of the meetings has been enhanced. Today, I can report to you on four additional steps.

First, in the President's budget request for Fiscal Year 2017, Congress has been asked to appropriate $2.2 million so that we can expand our security footprint to additional locations. Second, we have provided the AOUSC with a list of sites where we would like to add security by moving our section 341 meeting rooms into federal courthouses. With the recent downsizing of the federal courts, there is excess space. If we can match our security needs with that space, it will be a win-win situation – not only will we have more section 341 meeting rooms in fully secured locations but the courts will have less unoccupied space.

Third, the United States Marshals Service will notify all of their district operations that they have the authority to provide security in emergency situations at section 341 meetings. From time to time, you or the United States Trustee has advance notice of a potential security threat. If the meeting room is not in the courthouse, there may be some confusion as to who can provide security. That confusion now has been eliminated. While the Marshals may not always have personnel available at the time needed, they will provide security if resources are available. We generally make only a handful of such requests a year and should not now take undue advantage of the Marshals' policy to provide emergency assistance.

When a situation arises that you believe warrants security, you should work through your United States Trustee to determine the best course of action. The first and best option when a volatile situation is anticipated is to attempt to move the proceeding to a federal courthouse. When that is not possible, the United States Trustee can request a presence by the Marshals Service at the originally planned 341 meeting site.

Fourth, the United States Marshals Service has agreed to provide the telephone number of its Threat Management Center to United States Trustees and chapter 7, 12, and 13 trustees. Calls to the Threat Management Center should be made only in extreme circumstances and should be done in close coordination with your United States Trustee. This is a security feature never before provided to us, and I am extremely grateful to the Marshals for their favorable consideration of this request.

Underperforming Consumer Attorneys

Based upon information provided by judges, practitioners, our own staff, and even by Mary Ida when she spoke with the U.S. Trustees at our quarterly meeting last November, the USTP has turned its attention this year to the issue of underperforming consumer attorneys. For many years, the Program has done a very good job addressing professional misbehavior by filing motions to disgorge fees under section 329 and taking other actions on a case-by-case basis. But with more and more national consumer practices these days, and an increase in advertising through the Internet, new and unconventional models of law firm operations merit review.

In particular, the USTP is looking at patterns of allegations that large consumer firms that operate across district lines are not operating in accordance with bankruptcy requirements. Among other issues, we have looked into allegations of improper or improperly disclosed fee sharing, tie-ins with non-legal entities, sham partnership agreements, the unauthorized practice of law, substandard services, and lawyers who act solely as appearance counsel and meet their clients for the first time at the section 341 meeting.

As I have reported to you before, if a national consumer law firm violates bankruptcy standards, then the USTP will seek nationwide relief utilizing the same model for enforcement as we do in addressing problems with mortgage servicers. Investigations are conducted by offices around the country, we identify patterns, and we seek monetary and injunctive relief that reaches conduct committed nationwide. In one recent case in the Western District of Virginia, we investigated and took action against a multi-state consumer law firm. The bankruptcy court imposed relief against the law firm and its lawyers for, among other things, the unauthorized practice of law, failure to disclose fees, fee sharing, and substandard legal services. Although the terms of the relief in that case did not extend nationwide, the court's legal and factual findings were compelling and the law firm subsequently ceased operations. In another matter, we have filed 14 complaints or other actions, and have obtained information through formal discovery or otherwise in dozens of cases. Other investigations also are underway and I expect to discuss this topic further at your next meeting.

I ask all of you here today, who see the impact of poorly performing consumer lawyers, to communicate with your local Assistant U.S. Trustee about problems you are seeing. The evidence you amass from your day-to-day administration of cases is essential to our ability to mount an effective enforcement campaign to protect consumers, trustees, the courts, and the entire bankruptcy system.

Mortgage Servicer Enforcement

Staying on the topic of enforcement, let me also update you on our ongoing mortgage servicer oversight efforts. We continue to engage banks and boutique mortgage servicers to ensure compliance with the Bankruptcy Code. I am gratified by the reaction we have received from many in the mortgage and financial community who are now self-reporting to us on operational flaws they have detected, either through their own internal compliance reviews or after localized USTP inquiries or actions have led them to discover broader problems. While we are prepared to litigate when necessary, this trend is a welcome outgrowth of the success of our enforcement efforts and may augur well for the future consensual and efficient resolution of violations.

Last year, we entered into settlements totaling more than $130 million that were confined solely to bankruptcy violations. And this year, we played a key role with our federal and state partners in reaching a $470 million agreement with HSBC Bank to resolve a panoply of mortgage origination and servicing issues. We have numerous ongoing investigations and negotiations that may well result in further remediation by servicers who continue to fail to comply with bankruptcy law and rules. The violations range from the same kinds of inaccuracies and inflated claims we addressed with the largest banks in the National Mortgage Settlement of 2012 to more narrow, but still critically important, issues of proper noticing and other billing practices that we believe require monetary remediation to debtors, changes to policies and procedures, and independent monitoring.

Combatting Unsecured Creditor Abuse

Let me also bring you up to date on an important enforcement priority I previously have talked to you about – that is, investigating and taking actions to police compliance by unsecured creditors. Among the issues of concern to us are possible robo-signing and the filing of a high-volume of stale debt claims. In the view of the USTP, violations such as these are not merely matters of technical non-compliance, but rather a serious affront to the integrity of the bankruptcy process.

As we have argued in the mortgage context, the failure to properly certify a proof of claim – which is, after all, entitled to prima facie validity – is not a minor technicality. It is a violation of rules that were put in place by the Judicial Conference of the United States to ensure that creditors perform due diligence, file accurate information, and identify a responsible official who can be held accountable when requirements are not met.

The USTP contends that, at the very least, robo-signing is a blatant abuse of process. It is not good enough to say that robo-signing is okay unless the U.S. Trustee or another party can prove the underlying claim was inaccurate. Although we have shown in some cases that creditor claims have been inaccurate or not adequately documented, the act of robo-signing in and of itself is an outrageous abuse. It is a flouting of judicial rules that, if detected by the USTP, will result in action seeking robust remediation. The fact is, after literally years of public attention, there is simply no good excuse to robo-sign proofs of claim and other documents that are filed in bankruptcy court.

Similarly, the filing of a large number of claims on debts that are beyond the applicable statute of limitations for collection in state court is unacceptable. In bankruptcy, such claims are uncollectible only if the debtor, trustee, or other party raises an objection. Any stale debt claimants who manipulate the system by strategically filing in those courts where they are most likely to be undetected are abusing the process.

My concern over stale debt claims is not about a stray debt slipping through within a large claims portfolio. Rather, it is the business model to manipulate the bankruptcy process to collect stale debts that would be troubling. There are multiple victims of a scheme to file a high volume of stale debt claims. The foremost victim is the integrity of the bankruptcy process. Debtors whose estates should not have to pay the debt, or whose chapter 13 plan feasibility is compromised by the claim, are additional victims. And creditors who will collect less money than they would if the stale claims were disallowed – maybe millions of dollars less in thousands of cases – also are victims.

Much of the discussion thus far on stale debts in bankruptcy has pertained to the Fair Debt Collection Practices Act (FDCPA) which is beyond the traditional jurisdiction of the USTP. For my purposes today, I espouse no position on the legal dispute over the application of the FDCPA in bankruptcy. But the USTP does have a duty to investigate allegations that the bankruptcy courts are being abused by the intentional filing of a volume of clearly objectionable claims.

Trustees have an important role in policing filed proofs of claim and identifying those that seek to recover stale debt. However, when faced with the high volumes of stale debt claims that we know are being filed, the task of identifying and objecting to them is daunting. Those debt buyers are unfairly shifting the burden of identifying these objectionable claims to you. I wish I could report more concretely on the status of our investigations, but today I will simply say that we expect to have more to report at a later conference.

Chapter 13 Trustee Administration

Before closing, let me just say a few words about trustee administration and related matters. By and large, chapter 7 and chapter 13 trustees do an outstanding job in serving the bankruptcy system and meeting the highest ideals of a fiduciary. On rare occasion, however, we have to take actions against trustees who poorly manage their cases or engage in improper behavior.

Although bankruptcy requires transparency, there are privacy concerns that cause us not to make public all actions taken to address performance and conduct issues. We post on our Web site only final agency actions that are appealed to the Director under our regulations. I urge you to read those decisions when they are posted. Over the past year, we have posted two final agency decisions that were appealed to me. Among other things, I hope these and past decisions give you a sense of the scope of problems we sometimes deal with in overseeing struggling trustees, as well as our view of the seriousness of certain types of performance or conduct deficiencies.

On another matter of trustee administration, I am grateful to your association and others who reviewed our "Best Practices for Document Production Requests by Trustees in Consumer Cases." The best practices not only set forth some basic scenarios showing how trustees can reduce paperwork demands, but they also make clear that debtors' counsel are expected to satisfy reasonable requests for documents without undue delay.

Recently, the NACTT, the National Association of Bankruptcy (Chapter 7) Trustees, and the National Association of Consumer Bankruptcy Attorneys all reviewed the guide in light of their experiences since it was first issued in 2012. No recommendations for changes were made, but each organization has committed to providing training to their membership. The best practices are not, by their terms, enforceable except to the extent they lay out principles and basic scenarios that should inform trustees and counsel in making decisions about the most efficient manner in which to proceed in the case at bar.

The NACTT and USTP also have been collaborating on the development of clearer guidance on trustee succession issues. This year, we will issue new Handbook guidance to provide, among other things, for the successor trustee to retain the former trustee for a period of up to three months to ensure an orderly and efficient transition. We also will encourage the successor trustee to use the expense fund for the purchase of a three-year "tail" insurance policy that will insure the prior trustee for three years against actions taken while that trustee's policy was in place.

Finally, a word on the proposed nationwide chapter 13 plan. I know that chapter 13 trustees have been following this matter closely. The Department of Justice is on record supporting a nationwide plan. Earlier this month, the Judicial Conference's Advisory Committee on Bankruptcy Rules published for comment proposed rules related to its nationwide chapter 13 plan. The Committee previously approved the mandatory form plan after publishing it twice for comment. The proposed rules implement a "compromise plan" by requiring the use of the official plan form unless a district adopts a local plan form that contains certain prescribed elements consistent with the national form. Thus, the proposed rules provide courts some discretion while ensuring consistency regardless of whether a particular district opts out of the national form plan.

The Committee published the proposed amendments to Rule 3015 and new 3015.1 on July 1st, with an expedited three-month comment that ends October 3rd. If approved, it is possible that the national plan and the rules providing for the "compromise plan" could become effective in December 2017.

The NACTT designated chapter 13 trustee Jon Waage to consult with the Committee on this matter. His participation has been instrumental in assisting the Committee to attempt to resolve the widely differing views expressed during both comment periods on the form plan. The USTP continues to believe that the so-called "compromise plan" will advance the objective of providing consistency in chapter 13 practice by increasing efficiency within districts and promoting the fair application of the law.

Conclusion

That covers the points I wanted to convey to you today. We have a partnership to make the bankruptcy system work for all stakeholders. You do your jobs well, and we in the USTP depend upon your diligence in case administration and on the information you provide to us for our enforcement and other priorities.

I hope your meeting in this historic city is successful. Beyond the bankruptcy sessions, I hope you also get to see the sights where our nation's Founders did their work, as well as the other markers where the history of our young country was made. Savor the patriotic experience.

Thank you so much for your time and attention.

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