

**"Fresh Start or False Start?--
Identity Theft in Bankruptcy Cases"**

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Janet Doe^{3/} received an official-looking letter addressed to her son John. She opened the letter and discovered that it directed John to appear at a meeting of creditors convened as part of his Chapter 13 bankruptcy case. Janet was shocked at this notice, because she knew John had never filed for bankruptcy. John was five years old. Janet sought help from the nearest United States Trustee field office. She suspected that John's father--her estranged husband--filed the case to stay an impending foreclosure of the family home. The father had filed for bankruptcy twice before, and his second case had been dismissed less than three months earlier.

Ruth Roe's employment regularly took her away from home for extended periods of time. At some point, another woman began to impersonate Ruth, using Ruth's name, Social Security number, and educational and professional licensing information to take out loans for real property and vehicles in Ruth's name, and even to obtain a professional license and employment in Ruth's field. The woman failed to repay the loans, and ultimately filed a Chapter 13 petition using Ruth's name and SSN. Ruth found out about the long-standing fraud when she returned from her work assignment and discovered that her credit record was severely damaged.

One of Beth Boe's friends asked if she could transfer her house into Beth's name because she had some "tax problems." Beth also co-signed a mortgage note on her friend's house. After

^{1/}All views expressed in this article are those of the author and do not necessarily represent the views of, and should not be attributed to, the United States Department of Justice or the United States Trustee Program.

^{2/}The author wishes to thank the United States Trustee Program employees who provided information for this article. For more information about bankruptcy-related identity theft, see "'What Do You Mean, I Filed Bankruptcy?' or How the Law Allows a Perfect Stranger to Purchase an Automatic Stay in Your Name," Maureen Tighe (United States Trustee for Region 16) and Emily Rosenblum, 32 Loyola of Los Angeles Law Review 1009 (June 1999).

^{3/}These examples of identity theft are based on cases reported to the United States Trustees, but the names of all individuals have been changed.

falling behind on the mortgage payments, the friend filed for Chapter 13 bankruptcy in Beth's name. The friend actually made payments on "Beth's" Chapter 13 plan for several years. Beth found out about the bankruptcy when she applied for a vacation loan. The loan was denied because of the bankruptcy filing and large home loan listed on her credit record.

At the request of her landlord, eighteen-year-old Martina Moe signed some documents the landlord needed to "help him own property." Martina did not understand that the documents named her as a co-owner of an apartment building guaranteed by a Federal Housing Administration loan. Some time later, Martina was denied credit because she had two bankruptcy filings listed on her credit record. She discovered that her landlord had filed for bankruptcy in her name to stay foreclosure on one of his rental properties. In fact, he had filed multiple bankruptcy cases in the names of numerous current or former tenants and employees. The U.S. Trustee, the Chapter 13 trustee, and an employee of the Bankruptcy Clerk had flagged the petitions as unusual; they were all filed on behalf of pro se debtors by a bankruptcy petition preparer who had previously used a false SSN, and none attempted to discharge anything but real property debt.

New Law: Federal Initiatives

Each of these cases represents a variation of identity theft--the use of another person's personal data in some way that involves fraud or deception, typically for economic gain. Historically, the "victim" of identity theft was considered to be the creditor who was deceived into extending goods or services; the person whose identity was actually appropriated had little legal recourse. In October 1998, Congress enacted the Identity Theft and Assumption Deterrence Act, 18 U.S.C. §1028 ("Identity Theft Act") to ameliorate this situation. The Identity Theft Act made it a crime to "knowingly transfer[] or use[], without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law."

To assist wronged victims, the Identity Theft Act designated the Federal Trade Commission as the federal clearinghouse for receiving and processing identity theft complaints, providing information to consumers, and referring consumers to the

appropriate agencies for investigation of their complaints.^{4/} In July 2000, an FTC official testified before Congress that the agency's Identity Theft Hotline, in operation since November 1999, was already receiving more than 800 calls per week.^{5/} About two-thirds of these calls were from consumers who suspected they were victims of identity theft.

Violations of the Identity Theft Act are investigated by agencies such as the Federal Bureau of Investigation; the Secret Service, for bank and credit card fraud; the U.S. Postal Inspection Service, for mail fraud; the Social Security Administration's Office of Inspector General, for fraud relating to Social Security benefits; and the Internal Revenue Service, for tax fraud. The Justice Department handles the prosecution of cases under the Identity Theft Act. To help coordinate identity theft investigation and prosecution, the Justice Department created a working group that includes members from Justice components such as the U.S. Trustees, the FBI, and the Criminal Division; from other federal entities including the FTC, Secret Service, U.S. Postal Inspection Service, IRS, and Social Security Administration; and from state and local governments.

Federal agencies scheduled three identity theft workshops for the fall of 2000. These workshops were designed to build upon the Treasury Department's March 2000 identity theft "summit meeting," which brought together federal, state, and local government representatives, consumer advocacy groups, credit organizations, and others in the private sector to develop a public/private partnership to prevent identity theft and help its victims. On October 23-24, the FTC hosted a public workshop focusing on assisting victims of identity theft, which included a presentation by U.S. Trustee staff. On October 25, the Social Security Administration held a second public workshop to address means to prevent identity theft. On December 6, the Justice Department's Criminal Division and the Secret Service will host a workshop on law enforcement, with attendance limited to

^{4/}To help disseminate information to the public, both the Justice Department and the FTC have developed web sites containing a wealth of information about identity theft. The Justice Department web site is www.usdoj.gov/criminal/fraud/idtheft.html. The FTC web site is www.consumer.gov/idtheft.

^{5/}Testimony of Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection, before the Senate Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information (7/12/00).

representatives of law enforcement agencies.

Identity Theft and Bankruptcy

A significant number of identity theft cases are related to bankruptcy in some way. The U.S. Trustee Program's primary role on the Justice Department's identity theft working group is to outline the various ways in which identity theft intersects with bankruptcy, and to explain how the Program can assist law enforcement as it monitors the integrity of the bankruptcy system.

The cases described earlier in this article merely hint at the range of actions that may constitute bankruptcy-related identity theft. Forms of bankruptcy-related identity theft include, without limitation:

- Filing for bankruptcy using the name and/or SSN of another known person, such as a parent, sibling, child, or other relative; a spouse, ex-spouse, "significant other" or ex-significant other; a current or former business partner, co-employee, cosigner on a debt, friend, neighbor, or fellow student; or even a deceased person.
- Incurring debt under a false name and/or Social Security number and then filing for bankruptcy, using that name and/or number, to discharge the debt. Sometimes this debt is owed to the government, via a farm loan, small business loan, student loan, or similar obligation.
- Transferring property into the name of a relative or friend, and then filing for bankruptcy using that person's name and/or SSN to avoid foreclosure. Typically the transferee agrees to the transfer "to help out," but does not understand the legal ramifications.
- Filing for bankruptcy using a false name and/or SSN that was apparently randomly chosen, because it does not belong to a person known to the perpetrator.
- Transferring a fractional interest in real property into the name of an innocent person whose bankruptcy case is pending. The pending case stays foreclosure on the perpetrator's real property once the innocent debtor is listed as a partial owner.

- Using a false SSN when identifying oneself as a bankruptcy petition preparer.

In many instances, it appears that bankruptcy cases are filed under a false identity solely to obtain the benefit of the automatic stay, primarily to delay foreclosure or eviction. In such cases, the filer fails to appear at the Section 341 meeting of creditors and the case is dismissed. A record of the filing remains, however, in the court record and on the victim's credit record.

In extreme cases of identity theft, a perpetrator may wholly co-opt another person's identity--obtaining driver's and professional licenses, obtaining employment, applying for apartments, taking out home and automobile loans, applying for credit cards, and even receiving traffic tickets and warrants under the false identity. Illegal immigration rings have used this method to create identities for illegal aliens. The false name and SSN are initially used to obtain employment, and subsequently to establish credit; ultimately, the illegal alien files for bankruptcy using the false name and SSN to discharge the debt incurred. Whatever the circumstances surrounding such a "total identity steal," the bankruptcy filing is only part of a complex scheme of impersonation, which often collapses only when the victim discovers the fraudulent bankruptcy cases listed in his or her name.

Warning Signs

Typically, a fraudulent bankruptcy filing comes to the attention of bankruptcy professionals when the victim contacts the U.S. Trustee's office to inquire why he or she has received notice of a Section 341 meeting in the mail, or why a bankruptcy is listed on his or her credit record. There are other warning signs, however, to which bankruptcy professionals and lenders should be alert. They include:

- A client's failure to bring a purported joint debtor to meet with bankruptcy counsel. One debtor wife asked her bankruptcy attorney to let her take the bankruptcy petition home for her husband to sign, because he was too busy to come with her to the attorney's office. In fact, she forged her husband's name on the joint petition and filed it without his knowledge.
- A debtor's failure to appear at the Section 341 meeting. In the case described above, the debtor wife

appeared at the meeting of creditors with a man who falsely claimed to be her spouse and falsely testified that he had signed all of the documents. It is much more common, however, for the fraudulent filer not to appear at the Section 341 meeting. In such a case, the bankruptcy petition may have been filed solely for the purpose of temporarily avoiding foreclosure or eviction, without the knowledge of the true holder of the name and SSN.

- The same real property listed in different bankruptcy cases. This may indicate that a perpetrator is filing serial cases in multiple false names to avoid foreclosure on the property.
- Bankruptcy petitions, filed serially in the same or neighboring jurisdictions, that contain the same debtor's name but different SSNs; the same names with different middle initials; or slightly different forms of the same name.

Remedies

Cases of suspected bankruptcy-related identity theft should be reported to the nearest U.S. Trustee field office^{6/}. In addition to harming the victim, identity theft clearly impairs the integrity of the bankruptcy system. U.S. Trustee employees may, if appropriate, pursue various civil enforcement remedies.

By statute, the Program is a neutral party that represents the public interest. Thus, U.S. Trustee staff cannot directly represent the victim, who would be well advised to obtain private counsel to address the specific problems caused by the identity theft. Nonetheless, civil enforcement remedies that promote the integrity of the bankruptcy system often benefit the identity theft victim as well, and staff often work with the victim to obtain information necessary for enforcement actions. Depending upon the circumstances of the case and the procedures preferred by the Bankruptcy Courts in the local jurisdiction, actions by U.S. Trustee staff may include:

- Moving to dismiss a pending case in which the bankruptcy filer used a false name and/or SSN. In some cases the U.S. Trustee also seeks a specific court

^{6/}Contact information for United States Trustee field offices is available at www.usdoj.gov/ust.

finding that the named person did not file the case or authorize the filing, and that the signature was a forgery.

- Moving to expunge or void a pending or closed case. The U.S. Trustee seeks expungement from the case docket as well as the court's automated system, and in some cases seeks to have the hard copy of the case file sealed.
- Moving to correct the debtor's SSN in the bankruptcy court record.
- Moving to have the discharge revoked or the discharge date extended until the SSN is corrected.
- Moving for an in rem order for relief from the automatic stay with respect to all real property interests in the debtor's name.
- Moving to vacate the order for relief.
- Placing the burden upon the debtor to amend the petition to correct the SSN; to obtain a court order that the true holder of the number did not file the bankruptcy case or authorize it to be filed; and to serve that order upon the three major credit reporting agencies.
- As in any other case of suspected criminal bankruptcy fraud, assisting law enforcement by helping to obtain relevant information and documents, advising on bankruptcy law, providing expert testimony at trial, and generally providing expertise on bankruptcy law and procedure.

New Identification Procedure

Over the last few years, a number of U.S. Trustee offices and private trustees have introduced procedures to better detect the use of a false name and/or SSN in bankruptcy cases. In some districts, for example, the U.S. Trustee requires photo identification or notarized verification of SSN for Section 341 meetings conducted by tele-conference. In other districts, Chapter 7 and Chapter 13 trustees require debtors to produce photo identification and proof of SSN.

The U.S. Trustee Program has begun work to initiate, in 19 districts, a pilot program that will require identification at the Section 341 meeting. The pilot program is modeled after the

Program's first region-wide debtor identification procedure, launched by Region 11 U.S. Trustee Ira Bodenstein in the fall of 1999. All Chapter 7 and Chapter 13 debtors who file in the region--which consists of Wisconsin and Northern Illinois, with headquarters in Chicago--are now required to provide the panel trustees and standing trustees with proof of identity and SSN at the Section 341 meeting.

Region 11 adopted this policy after uncovering a substantial number of instances of incorrect SSNs on bankruptcy petitions. While some of these were typographical errors, others were instances of Social Security and/or identity fraud that were referred to the U.S. Attorney's office for prosecution.

Region 11 initiated the identification procedure in September 1999 with the Chapter 7 panel trustees in Chicago. By mid-November 1999, all panel trustees and standing trustees in the region were requiring all debtors to comply. In general, implementation proceeded smoothly, and practitioners in the region now routinely inform their clients that proof of identity and SSN will be requested at the Section 341 meeting. Acceptable forms of identification include a driver's license, state identification card, or passport. Proof of SSN may be provided through documents such as a driver's license, Social Security card, or payroll check stub.

If a debtor fails to provide adequate proof of identity and SSN at the Section 341 meeting, the trustee automatically continues the meeting to the trustee's next date for meetings. If the debtor provides an SSN different from the one listed on the petition, the trustee asks the debtor to explain the discrepancy, reports the matter to the U.S. Trustee field office, and continues the Section 341 meeting; the debtor's attorney is expected to file an amended petition with the correct SSN before the continued meeting date. The debtor's attorney may be required to notify the three major credit reporting agencies that the SSN was used erroneously.

If debtor's counsel does not file the amended petition, the trustee delays the filing of the no-asset report and/or seeks dismissal of the case. Before the continued Section 341 meeting, the U.S. Trustee field office investigates whether the incorrect SSN was used intentionally or inadvertently, using a proprietary public records search data base. If it appears that the use was intentional, the U.S. Trustee or the private trustee files a motion to dismiss the case or deny discharge, and the matter is referred to the U.S. Attorney for criminal prosecution.

Typographical errors in SSNs have declined noticeably since this identification procedure was instituted in Region 11, resulting in a more reliable official record. In addition, the new policy has helped to maintain the accuracy of innocent victims' credit records, by identifying incorrect use of an SSN long before the victim might otherwise have learned of the error.

Clearly, this identification procedure will not catch all instances of bankruptcy-related identity theft. Some filers will fail to attend the Section 341 meeting; others may produce false identification at the meeting. As the nationwide pilot program takes shape, however, the identification procedure will be fine-tuned--with input from the bankruptcy community--to improve its efficiency and effectiveness within each pilot location. Taken as a whole, the Section 341 meeting identification procedure, the civil enforcement remedies pursued by U.S. Trustee staff and private trustees, and the Program's continuing participation with concerned public and private groups will help fight bankruptcy-related identity theft.