

U.S. Department of Justice
U.S. Trustee Program



UNITED STATES TRUSTEE PROGRAM

ANNUAL REPORT OF SIGNIFICANT ACCOMPLISHMENTS

FISCAL YEAR 2003

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Front Row: Peter Ainsworth; Charles E. Rendlen III; Saul Eisen; W. Clarkson McDow, Jr; Cliff White; Lawrence Friedman; Robert D. McCallum, Jr., Associate Attorney General; Phoebe Morse; Ilene Lashinsky; Sara Kistler; Roberta DeAngelis; Nancy Gargula; Deirdre Martini; Mary May; Steven Dillingham; Jeff Miller

Back Row: Sandra Rasnak; Mark Redmiles; Steven Katzman; Richard Clippard; Stephen Goldring; Ira Bodenstein; Charles McVay; Richard Simmons; Debera Conlon; Felicia Turner; R. Michael Bolen; Habbo Fokkena; William Neary; Donald Walton



Department of Justice Strategic Objective

Protect the integrity and ensure the effective operation of the Nation's bankruptcy system.

United States Trustee Program Mission Statement

The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system.



Message from the Attorney General

I commend the United States Trustee Program for the important work it has done over the past three years. Under the leadership of Director Friedman, the Program has carried out the Department of Justice's mandate to combat fraud and abuse in the bankruptcy system.

The role of the United States Trustee Program in the bankruptcy system is vital. The Program performs critical administrative, regulatory, and litigation responsibilities that allow the system to function effectively. Its efforts promote efficiency and ensure the integrity necessary to protect debtors, creditors, and the public interest.

I congratulate the dedicated men and women of the United States Trustee Program—attorneys, analysts, paralegals, and administrative, technical, and support staff—for their many accomplishments during Fiscal Year 2003. I urge all to continue to apply their energies and skills to achieving the Program's goals and priorities. The United States Trustee Program continues to be an important component of the Department of Justice and plays an essential role in the administration and performance of the nation's bankruptcy system.



ROBERT D. McCALLUM, JR.

Message from the Associate Attorney General

The United States Trustee Program plays a vital role in combating fraud and abuse, accomplishing this task in a number of ways. Through its National Civil Enforcement Initiative, the Program ferrets out fraud and abuse committed by debtors, creditors, attorneys, petition preparers, and others. In addition, through its newly created Criminal Enforcement Unit, the Program has a national focal point for its work in enhancing criminal enforcement of bankruptcy law violations. The Criminal Enforcement Unit, in tandem with the Program's 95 field offices, has strengthened the referral of criminal cases and has increased the Program's ability to assist law enforcement in the investigation and prosecution of bankruptcy crimes.

Achieving these goals requires legal skills, management expertise, and the commitment of all Program staff. The Program's progress in developing performance-based management systems is impressive. Measuring bottom line results is a key objective of the President's Management Agenda. The Program should take great pride in the more than \$600 million in documented results from civil enforcement and related efforts during Fiscal Year 2003.

I am confident that the many accomplishments of the Program during this fiscal year will serve as a foundation for even greater accomplishments in the future. The Program has an important role in the Department of Justice's Strategic Plan. I am convinced that the Program is better prepared and more capable of fulfilling its mission and goals than ever before. I look forward to the Program's continued accomplishments and contributions to America's bankruptcy system in the years ahead.



Message from the Director

I am pleased to present the United States Trustee Program's *Fiscal Year 2003 Annual Report of Significant Accomplishments*, which details many of the Program's activities and achievements from October 1, 2002, through September 30, 2003. The U.S. Trustee Program takes great pride in pursuing a balanced and fair approach to protecting the integrity of the bankruptcy system, while implementing practices to improve the efficiency and effectiveness of the Program.

Fiscal Year 2003 has been a period of substantial accomplishment and enhanced productivity for the Program. Through our national civil and criminal enforcement initiatives and our cooperative efforts with other law enforcement agencies, the Program increased its efforts to combat civil and criminal fraud and abuse in the system, whether by debtors, creditors, or others who seek to take advantage of individuals in financial distress.

The Program also supervised private bankruptcy trustees who administer cases in Chapter 7 and Chapter 13, with the goals of recovering assets for creditors and granting debtors a fresh start. We monitored and assisted in the successful administration of Chapter 11 business reorganizations, from small cases to large complex ones. We provided professional training at the National Bankruptcy Training Institute and developed improved management systems to help our employees and the private trustees perform their duties at the highest level, every day, across the nation.

In the years ahead, we plan to build upon these successes and reinforce the Program's efforts to promote the integrity and performance of the bankruptcy system and maintain excellence in our operations. Future challenges and planned activities include supporting promising programs to educate consumer debtors and assist them in developing personal financial management skills, and continuing to assess the performance of the Program's operations to ensure that an optimum return on investment is achieved.

I am grateful to the Attorney General and to the Congress for their continued support of the Program and our mission, and to our Program's talented and dedicated employees who work diligently to make our bankruptcy system fair, effective, efficient, and free from fraud and abuse.

Please accept my invitation to learn more about the U.S. Trustee Program by reading our *FY 2003 Annual Report of Significant Accomplishments*.

A handwritten signature in black ink, appearing to read "Lawrence A. Friedman".

Lawrence A. Friedman, Director
Executive Office for United States Trustees



Executive Summary

Fiscal Year 2003 marked the second year of impressive results for the U.S. Trustee Program's National Civil Enforcement Initiative, launched by the Program in October 2001 to focus resources upon combating fraud and abuse in the bankruptcy system.

In FY 2003 the Program continued to take a balanced and fair approach to pursue this goal. Top priorities of the Initiative were to seek civil remedies against debtors who engage in fraud or who abuse the bankruptcy system, and to protect consumer debtors from misconduct by attorneys, bankruptcy petition preparers, creditors, and others seeking to take advantage of their financial difficulties. For example, in FY 2003 the Program's activities to obtain denial, waiver, or revocation of discharge in Chapter 7 prevented the discharge of approximately \$400 million in unsecured debt. Similarly, the Program's informal inquiries and formal court actions seeking dismissal for substantial abuse prevented Chapter 7 discharge of almost \$200 million in unsecured debt. The Program obtained hundreds of injunctions against bankruptcy petition preparers who violated the Bankruptcy Code, as well as fines paid and fees refunded to consumer bankruptcy debtors.

The Program continued its supervision of the private trustees who administer cases under Chapters 7, 12, and 13 of the Bankruptcy Code. The private trustees act as partners with the Program in carrying out the National Civil Enforcement Initiative by identifying potential fraud and abuse as well as bringing actions to recover assets. In FY 2003, trustees administering Chapter 13 repayment plans and Chapter 12 family farmer cases collected almost \$4.5 billion to be distributed to creditors, while trustees administering liquidations under Chapter 7 closed more than 40,000 asset cases, generating \$1.5 billion in funds for distribution to creditors.

As civil enforcement progressed nationwide in FY 2003, the U.S. Trustee Program bolstered its criminal enforcement activities through its Criminal Enforcement Unit of veteran federal prosecutors. This Unit worked to increase the detection and prosecution of criminal conduct within the bankruptcy system, assisting Program staff as they coordinated with federal investigative agencies and United States Attorneys on criminal case referral, development, and prosecution. The Unit trained Program staff, helped build relationships with prosecutors and others in the criminal justice system, and participated in criminal cases alongside the Assistant U.S. Attorneys and others in law enforcement.

The Program continued to monitor Chapter 11 business reorganization cases to ensure they move through the bankruptcy system in a timely and efficient manner. The Program also continued to develop and refine its information technology systems to capture its work efforts and assess its performance. It completed the nationwide rollout of a civil enforcement reporting system, and launched a criminal enforcement tracking system to record its actions in referring and assisting criminal investigations.

CHAPTER 1

THE U.S. TRUSTEE PROGRAM



The United States Trustee Program is a component of the Justice Department that protects the integrity of the bankruptcy system by overseeing case administration and litigating to enforce the bankruptcy laws.

The Program's mission is set forth in Strategic Objective 2.6 of the Department of Justice's Strategic Plan for Fiscal Years 2003-2008. That objective is to "Protect the integrity and ensure the effective operation of the Nation's bankruptcy system." The Department's Strategic Plan provides these four strategies to achieve that objective:

- Enforce compliance with federal bankruptcy laws and take civil actions against parties who abuse the law or seek to defraud the bankruptcy system.
- Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring, and providing investigative and prosecutorial support of cases.
- Promote the effectiveness of the bankruptcy system by appointing and regulating private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors.
- Ensure financial accountability, compliance with the Bankruptcy Code, and prompt disposition of Chapter 11 bankruptcy cases.

Every year since 1996, more than one million individuals and businesses have filed bankruptcy, making the bankruptcy caseload the largest in the federal court system. By law, the U.S. Trustee has standing to participate in every bankruptcy case. To help protect the public interest in maintaining an effective and efficient bankruptcy system, the U.S. Trustee participates in almost all cases either directly or through trustee oversight.

Every year since 1996, more than one million individuals and businesses have filed bankruptcy, making the bankruptcy caseload the largest in the federal court system.

In FY 2003, U.S. Trustees processed 1,580,825 new bankruptcy case filings. More than 70 percent of those cases were filed as Chapter 7 liquidations (1,137,723); approximately 27 percent were Chapter 13 repayment plans (432,545); and just under 1 percent were Chapter 11 reorganizations (9,782). The remaining cases were filed under Chapter 9, Chapter 12, or ancillary to a foreign proceeding.

Federal bankruptcy law offers a fresh start to the honest but unfortunate debtor. By filing a bankruptcy case, the debtor is immediately protected from creditor collection efforts and can obtain a discharge from most debts and/or a readjustment of certain liabilities. In return, the debtor is required to disclose information voluntarily and truthfully regarding all assets and liabilities as well as any pre-bankruptcy transactions to which the debtor may have been a party. Chapter 7 debtors are required to surrender assets to the trustee for liquidation and distribution to creditors, except for assets that are exempt under state or federal law. Chapter 11 and Chapter 13 debtors retain possession of their assets, but pay all or a portion of their debts through plans approved by the court.

CHAPTER 2

ORGANIZATION AND ADMINISTRATION



Photo 1: Lawrence Friedman; Christopher Cannon, Chairman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary

Photo 2: Executive Office for United States Trustees headquarters, Washington, D.C.

Photo 3: Lawrence Friedman; Melvin Watt, Ranking Member, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary

Organization

The U.S. Trustee Program consists of an Executive Office for U.S. Trustees in Washington, D.C., and 21 regions operating out of 95 offices across the country, covering 88 judicial districts in 48 states and two territories.

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Executive Office for U.S. Trustees

The Executive Office for U.S. Trustees (EOUST) provides comprehensive policy and management direction to the U.S. Trustees and their staff, as well as administrative support and central coordination to the regional and field offices. The EOUST is headed by Director Lawrence Friedman, who reports to the Associate Attorney General in the Justice Department. There are approximately 75 employees in the EOUST in five operational units.

- **The Office of General Counsel** coordinates the Program's litigation activities and provides legal counsel to the Program. It advises U.S. Trustees and Assistant U.S. Trustees in order to ensure consistency in the Program's legal positions, coordinates responses on significant legal issues, decides whether to take appeals of court decisions, and coordinates with the Justice Department's Civil Division and Solicitor General where necessary.

- **The Office of Review and Oversight** coordinates the supervision of private trustees who administer cases under Chapters 7, 12, and 13. It helps ensure that trustees satisfy fiduciary standards through the regulation and auditing of trustee financial and administrative operations.

- **The Office of Research and Planning** engages in strategic planning, analyzes management and case data, conducts research, and provides public information. The Program's information technology unit supports the automation activities of the EOUST and the field offices, and is affiliated with this office.

- **The Office of Administration** provides a wide range of services for the Program, including budget, personnel, procurement, facilities, travel, and security. It offers administrative guidance and support to the U.S. Trustees and their staffs.

Regions and Field Offices

The Program's 21 regions are defined pursuant to 28 U.S.C. § 581(a). Each region is headed by a U.S. Trustee who is appointed by the Attorney General and whose basic authority is conferred under 28 U.S.C. § 586. By statute, the six judicial districts in Alabama and North Carolina do not participate in the Program; in those districts, bankruptcy case administration is overseen by a court official called a Bankruptcy Administrator. The U.S. Trustees serve under the Director of the EOUST to ensure national uniformity in policies and procedures, while allowing for necessary variances due to local case precedent, practices, and rules. They also represent the Program locally in dealing with other participants in the bankruptcy system, including bankruptcy judges, private trustees, and bankruptcy practitioners.

The number of Program offices in each region varies. For example, by statute Region 14 consists of the District of Arizona and has one office in Phoenix, while Region 2 consists of the Northern, Southern, Eastern, and Western Districts of New York as well as the Districts of Connecticut and Vermont, and has eight offices in Albany, Brooklyn, Buffalo, Central Islip, Manhattan, Rochester, and Utica, N.Y., and New Haven, Conn. Most states within the jurisdiction of the Program have at least one Program office. Many offices are responsible for handling cases in more

than one location; Program staff appear in court in more than 160 locations around the country, and conduct or oversee proceedings in about 280 other sites.

Each Program office is headed by an Assistant U.S. Trustee. The Program's role in bankruptcy administration melds aspects of law and financial analysis, and Program staff include trial attorneys, financial analysts, paralegals, and administrative, technical, and support staff. The Program is represented in court by the U.S. Trustees, often through Assistant U.S. Trustees and trial attorneys. The Program's financial analysts help prescribe and monitor financial accountability standards for private trustees and Chapter 11 debtors; many analysts are Certified Public Accountants and some are also Certified Fraud Examiners. At the conclusion of FY 2003, the Program's 95 field offices were staffed by 103 Assistant U.S. Trustees, 211 trial attorneys, 216 bankruptcy analysts, 232 paralegals, and 265 administrative, technical, and support staff.

Just as there are differences in the number of offices per region, there are significant differences in the number of employees per office. While approximately 28 percent of the offices have six or fewer employees, the largest office—Los Angeles—had 45 employees and the next largest—Manhattan—had 30 at the end of FY 2003. The difference in staffing levels reflects the wide variance in caseload among the regions and offices, as well as the types of cases filed. For example, Region 21 had responsibility for 189,686 cases filed during FY 2003, while Region 15 had responsibility for 16,597 cases filed during the same period. The Chicago office handled 53,787 cases filed during this period, whereas the Anchorage office was responsible for 1,541 cases. During FY 2003, the Manhattan office handled the largest number of Chapter 11 filings, followed by Wilmington and Dallas; Cleveland had the largest number of Chapter 7 filings, followed by Chicago and Detroit; and Atlanta and Memphis had the largest number of Chapter 13 filings.

Budget and Appropriations

The U.S. Trustee Program is funded through fees paid in bankruptcy cases. No general revenues are appropriated to support the Program.


The U.S. Trustee Program is funded through fees paid in bankruptcy cases.

The Program has two principal sources of revenue. First, each debtor pays a filing fee in an amount set under 28 U.S.C. § 1930(a)(1)-(5). Pursuant to a statutory formula, the fees are allocated among the Program, the U.S. Treasury, the court system, and the Chapter 7 trustees. Second, the Program receives quarterly fees from each Chapter 11 debtor throughout the life of the Chapter 11 case, as set forth in 28 U.S.C. § 1930(a)(6). In addition, smaller amounts of revenue are generated from interest on U.S. Trustee System Fund balances and investments in Treasury notes and bills, Chapter 7 case administration receipts, and excess operating reserves of Chapters 12 and 13 trustees.

Funds allocated to the Program are deposited into the U.S. Trustee System Fund, established in the United States Treasury. Congress makes annual appropriations to the Program from this fund, and revenues in excess of the amount appropriated by Congress remain in the fund.

The Program's appropriation for FY 2003 totaled \$155.7 million, with 1,198 authorized positions. Approximately 86 percent of the budget was needed to cover costs relating to personnel and facilities, including rent for the offices and for approximately 450 meeting rooms where the first meetings of the debtors and creditors are held as required under 11 U.S.C. § 341.

The Justice Department's budget process incorporates performance planning and reporting, in compliance with the Government Performance and Results Act of 1993. This ensures that performance measures are used when resource



decisions are made and that resource allocations are consistent with the Department's FY 2003-2008 Strategic Plan.

In addition, the Program's management decisions reflect the President's Management Agenda, issued in August 2001, and the Attorney General's Management Initiatives, announced in November 2001.

The President's Management Agenda sets forth five government-wide initiatives:

- Strategic management of human capital.
- Competitive sourcing.
- Improved financial performance.
- Expanded electronic government.
- Budget and performance integration.

Included among the Attorney General's Management Initiatives are the following:

- Develop performance-based, mission focused leadership.
- Streamline, eliminate, or consolidate duplicative functions.
- Focus resources on front-line positions.
- Coordinate communications and outreach.
- Improve Department-wide financial performance.
- Strengthen hiring, training, and diversity policies.
- Utilize technology to improve government.

CHAPTER 3

NATIONAL CIVIL ENFORCEMENT INITIATIVE



Photo 1: Lisa Geyer

Photo 2: Mark Redmiles; Sandra Rasnak; Antonia Darling

Photo 3: Leroy Culton

Fiscal Year 2003 marked the second year of impressive results for the U.S. Trustee Program's National Civil Enforcement Initiative. This initiative was launched by the Program in October 2001 to focus Program resources more specifically upon combating fraud and abuse in the bankruptcy system.

Top priorities of the Initiative are to seek civil remedies against debtors who engage in fraud or who abuse the bankruptcy system, and to protect consumer debtors from misconduct by attorneys, bankruptcy petition preparers, creditors, and others who seek to take advantage of the debtors' financial difficulties. The methods of addressing these issues are varied, but most involve actions taken under the following provisions of the Bankruptcy Code:

Top priorities of the Initiative are to seek civil remedies against debtors who engage in fraud or who abuse the bankruptcy system, and to protect consumer debtors from misconduct by attorneys, bankruptcy petition preparers, creditors, and others who seek to take advantage of the debtors' financial difficulties.

- 11 U.S.C. § 727 to deny or revoke a Chapter 7 discharge.
- 11 U.S.C. § 707 for abuse of Chapter 7.
- 11 U.S.C. § 110 for improper conduct by bankruptcy petition preparers.
- 11 U.S.C. § 329 for disgorgement of payments to professionals employed by the debtor or the bankruptcy estate.
- 11 U.S.C. §§ 109(g) and 349(a) for abusive repeat filings and other bad faith filings.
- Federal Rule of Bankruptcy Procedure 9011 for sanctions against professionals.

In addition, the Program and the private trustees whom it oversees take actions to protect consumers by remedying improper conduct by creditors and other third parties, including: objecting to claims filed by creditors who chronically or willfully fail to demonstrate they are entitled to payment in the amount or priority asserted in the proof of claim; seeking to avoid liens and bringing actions for the failure to timely release liens; taking actions to address violations of the automatic stay; challenging improper reaffirmation agreements; pursuing violations of the Truth in Lending Act, the Homeowners Equity Protection Act, and the Federal Credit Reporting Act; and bringing actions to prevent the unauthorized use of official court language in written solicitations to consumer debtors.

During FY 2003, the Program expanded the training and resources available to staff members carrying out civil enforcement duties. Two Co-Coordinator of the National Civil Enforcement Initiative lead a Civil Enforcement Resource Team of more than 20 attorneys, analysts, and paralegals with extensive experience in civil enforcement who are available to share their expertise with other Program staff. Team members assist with civil enforcement issues and cases nationwide; answer questions from staff members; provide forms and examples; advise on specific cases; provide training; make public presentations; and assist with litigation, including multi-jurisdictional litigation against those who violate the bankruptcy laws in more than one judicial district.

The program also conducted a debtor audit mini-pilot project during FY 2003 as part of the National Civil Enforcement Initiative. The mini-pilot project was designed to test a variety of review procedures that may be used by U.S. Trustee staff and outside contractors to determine the accuracy, veracity, and completeness of information contained in the petitions, schedules, and statements filed by individual Chapter 7 debtors. During the mini-pilot project, 4,000



“The National Civil Enforcement Initiative encompasses Program activities designed to advance and protect the integrity of the federal bankruptcy system through the use of civil litigation. The majority of our civil enforcement matters proceed through a series of steps that include identifying potential concerns, engaging in further investigation, and, if warranted, taking corrective action. The Civil Enforcement Resource Team is just one of the resources we have developed to help sustain this effort.”

*Mark Redmiles,
Civil Enforcement
Co-Coordinator, EOUST*

petitions were reviewed by Program staff in Dallas, Indianapolis, Chicago, Denver, Spokane, and Tampa. Based on the results of the mini-pilot project, a more extensive six-month pilot project was commenced in August 2003 to review selected cases filed between October 2003 and March 2004.

Civil Enforcement Actions

Denial or Revocation of Discharge

The primary reason an individual files for bankruptcy is to obtain a bankruptcy “discharge,” which releases the debtor from personal liability for payment of certain debts and prevents creditors from taking any action to collect those debts. Chapter 7 is designed to give a fresh start to the honest but unfortunate debtor by granting such a discharge.

A Chapter 7 discharge is usually issued 60 days after the first date set for a meeting of creditors, unless a complaint seeking denial of the debtor’s discharge has been filed under 11 U.S.C. § 727. A bankruptcy discharge may be denied if the debtor engaged in any of various types of improper conduct, including: concealing assets; withholding information on the bankruptcy petition, schedules or statement of affairs; destroying property to hinder or defraud a creditor or trustee; knowingly making a false oath; or refusing to obey a court order. In some cases, this conduct may include engaging in a credit card bust-out, which involves running up large purchases or cash advances on credit cards with no assets to show for it and no intent to repay, or engaging in serial filing, where a debtor seeks bankruptcy relief repeatedly in violation of Bankruptcy Code provisions that limit refilings.

In addition, a previously granted discharge may be revoked as a result of information discovered after the discharge was entered. Actions to deny or revoke discharge provide one of the stron-

gest remedies available against debtors who undermine the integrity of the bankruptcy system.

In FY 2003, 877 actions seeking denial or revocation of the debtor’s discharge were filed. Discharges were denied in 609 cases, or 94.6 percent of the 644 cases that were resolved either by judicial determination or by the debtor’s voluntary waiver of discharge after the action was filed. In addition, in some cases criminal proceedings were instituted against the debtors based on the same conduct that led to denial or revocation of discharge. (These figures represent a snapshot in time; for example, the numbers of Section 727 actions filed and Section 727 actions decided during FY 2003 may not match because some were filed before the reporting period and some were decided afterward.)

As a result of U.S. Trustee actions pursuant to Section 727, debtors were prevented from discharging more than \$406 million in unsecured debt in FY 2003. This total included a number of cases with unusually large amounts of unsecured debt.

Actions brought by the Program to deny or revoke discharge include the following:

As a result of U.S. Trustee actions pursuant to Section 727, debtors were prevented from discharging more than \$406 million in unsecured debt in FY 2003.

Concealment and Failure to Disclose

- The Bankruptcy Court for the Northern District of Texas approved a married couple’s voluntary waiver of Chapter 7 discharge after the Dallas office conducted an inquiry and a Bankruptcy Rule 2004 examination based on a Chapter 7 trustee’s referral. On their bankruptcy schedules the debtors listed \$856,000 in unsecured debt and \$3,250 in monthly income, as well as a home they purchased for approximately \$420,000 but valued at \$300,000. They failed to disclose a boat and



ALBERT LOFTUS

several late model vehicles, including a Porsche, Ford Excursion, and Corvette, and they made payments from their corporate business account for personal expenses including a home equity loan, a boat loan, car loans, insurance, utility bills, and credit card bills.

- After a trial on a complaint filed by the Lexington office, the Bankruptcy Court for the Eastern District of Kentucky denied the discharge of an owner of a convenience store chain and gas distributor, preventing discharge of almost \$50 million in unsecured debt. The court found the debtor knowingly and fraudulently made false statements by failing to list various property interests, including ownership interests in six companies. The court also found the debtor acted with gross recklessness by failing to reveal, among other things, that he was a director or officer in seven companies.

- The Bankruptcy Court for the District of Oregon approved a stipulated judgment denying a debtor's discharge of almost \$27 million in scheduled unsecured debt. The judgment resulted from an investigation conducted by the Eugene office, in connection with the Oregon Attorney General's office, regarding a pyramid scheme the debtor operated pre-petition. The judgment arose from the debtor's failure to properly disclose and account for hundreds of thousands of dollars received in connection with the scheme. The U.S. Trustee also alleged the debtor failed to list assets and made other false statements in her schedules and at the Section 341 meeting. Much of the debtor's scheduled unsecured debt consisted of the promised "return" on the pyramid "investments."

- The Bankruptcy Court for the District of Rhode Island revoked the discharge of a husband and wife who tried to erase almost \$2.5 million in debt. The Providence office sought revocation after learning that the debtors hid approximately \$250,000 in cash, as well as inter-

ests in four residential properties and 10 promissory notes and mortgages.

- The Bankruptcy Court for the Central District of California entered a default judgment granting the Santa Ana office's request to deny the discharge of a debtor who listed monthly income of zero, no earnings for the two years before filing, monthly expenses of \$150, and property valued at \$550. The U.S. Trustee searched the public records and discovered that the debtor failed to disclose a former business and a transfer of real property for \$400,000 made within a year pre-petition. After learning from creditors that the debtor may use other names and own property overseas, the U.S. Trustee ultimately determined the debtor's assets may include an Egyptian villa with a pool, numerous large commercial refrigerated warehouses, a potato farm, livestock, and a market complex. The U.S. Trustee obtained an order to examine the debtor and obtain documents under Bankruptcy Rule 2004, but the debtor failed to appear or produce the documents. The default judgment prevented discharge of \$416,750 in unsecured debt.

- The Bankruptcy Court for the Eastern District of Virginia granted the Alexandria office's request to approve a debtor's waiver of discharge, preventing discharge of \$16.23 million in debt, including \$9.25 million in unsecured debt. The debtor was president and sole shareholder of a family-owned printing company. In its complaint to deny discharge, the U.S. Trustee alleged that, in connection with the company's Chapter 7 bankruptcy, the debtor transferred company assets to another family-controlled company and failed to disclose the transfers. Through discovery and interviews with current and former employees, the U.S. Trustee learned that the debtor also failed to disclose an inheritance, a tax refund check, and a life insurance policy in his personal bankruptcy case. The debtor agreed to waive discharge after learning the U.S. Trustee had this information.

"The Dallas office reviews every Chapter 7 case, regardless of the amount of income or debt, for violations of the Bankruptcy Code. What makes our civil enforcement effort successful is the combination of leadership and teamwork. This case resulted from the combined efforts of a paralegal, two analysts, and a trial attorney, with hands-on advice from the U.S. Trustee. My initial review of this case framed our first question: With a monthly income of \$3,250, how can these debtors live in a \$420,000 house; drive a Porsche, Corvette, and Ford Excursion; and own a boat?"

*Albert Loftus,
Paralegal Specialist,
Dallas*



“In this case we conducted an extensive investigation that included examining the debtor at the Section 341 meeting, obtaining information from creditors, and issuing subpoenas to lending institutions. We uncovered numerous misstatements and omissions in the bankruptcy documents, including the debtor’s use of at least 10 aliases. The debtor’s apparent plan to slip through the system unnoticed and receive a discharge of his debts was disrupted by the scrutiny that we give to Chapter 7 cases in which the debtor attempts to discharge a large amount of debt.”

Cynthia Burnette, Acting Assistant U.S. Trustee, Tampa

- Based on a complaint by the Tampa office, the Bankruptcy Court for the Middle District of Florida denied discharge of a debtor who made a false oath, preventing discharge of \$272,000 in unsecured debt. The debtor failed to disclose his use of several aliases and Social Security numbers, and his interest in a limited partnership. The U.S. Trustee investigated and found the debtor led a lavish lifestyle using false names, including leasing a Los Angeles town home for more than \$4,000 per month while reporting \$7,800 in annual income on his federal income taxes.

Credit Card Bust-Outs

- Granting a request by the Brooklyn office, the Bankruptcy Court for the Eastern District of New York entered default judgment denying a debtor’s discharge of \$280,255 in credit card debt on 35 credit cards. The U.S. Trustee’s requests for discovery from five creditors revealed that in two months the debtor charged more than \$60,000 in goods and services, including \$20,000 at jewelry stores, \$6,000 at computer and electronics stores, \$3,000 in airline tickets, and \$25,000 in cash advances.

- The Bankruptcy Court for the Northern District of Illinois approved waiver of discharge by a debtor who listed approximately \$225,000 in debt on around 20 credit card accounts and testified at his Section 341 meeting that most of the debt arose from gambling. Through discovery issued to the credit card issuers, the Chicago office learned that in two days the debtor engaged in around 20 transactions in a scheme resembling check kiting. He executed numerous balance transfers including several transfers of \$40,000, the cash advance limit on some of his credit cards. Credit card company documents revealed the debtor reported income and assets substantially greater than the amounts listed in his petition.

- Based on a complaint filed by the San Jose office, the Bankruptcy Court for the Northern District of California entered a default judgment denying the discharge of a debtor who sought to discharge \$94,000 in unsecured debt. In the months before the filing, the debtor engaged in a pattern of buying expensive items on credit cards and quickly selling them significantly below cost. The debtor testified at her meeting of creditors that she had purchased on credit a diamond necklace for \$12,000 and a diamond ring for \$4,455, and then sold them for \$4,000 and \$1,000. She testified that the jewelry was sold to people she did not know in Reno, where she gambled. She also testified that she purchased on credit a large screen TV for \$4,000 and other high end electronics for \$4,000, all of which she sold to her landlord and employer for \$2,000.

- The Bankruptcy Court for the District of Kansas entered an agreed order denying discharge to a debtor who listed 43 credit cards, no secured debt, few assets, and \$298,609 in unsecured debt. The debtor agreed to denial of discharge to avoid litigating against the Wichita office.

- In response to a complaint filed by the Corpus Christi office, the Bankruptcy Court for the Southern District of Texas entered default judgment to deny discharges to spouses who, in the three years before filing bankruptcy, increased their credit card debt from \$30,000 to \$315,000 on 55 cards, allegedly by using cash withdrawals and wire transfers to pay for Internet stock transactions. The debtors appeared to maintain their creditworthiness by paying one dollar more than the monthly minimum payment on each card. Just before filing bankruptcy they also made a substantial down payment on a luxury home; bought two 2002 SUVs; and took numerous vacations, including a \$9,000 trip to Hawaii.



RICHARD WIELAND

Serial Filers

• At the request of the Newark office, the Bankruptcy Court for the District of New Jersey entered a default judgment against and denied the discharge of a serial filer who listed addresses in New Jersey and California. Between January 2001 and March 2003, the debtor filed seven Chapter 13 petitions and two Chapter 7 petitions in Newark, San Francisco, and Modesto, Calif. She had violated orders entered in three cases, which barred her from refiling for specified periods. In the New Jersey cases, the debtor failed to file schedules or a statement of financial affairs, but a prior petition she filed jointly with her husband in Modesto listed \$191,586 in unsecured debts.

• The Bankruptcy Court for the Eastern District of California denied the discharge of two spouses because they knowingly and fraudulently made a false oath in connection with a bankruptcy case. The debtors failed to disclose three bankruptcy cases filed within six years before the current case. Two Chapter 13 cases had been dismissed for bad faith with 180-day bars to refiling. In all, the debtors filed nine cases in nine years. When the Fresno office demanded disclosure of prior cases, the debtors amended their petition but did not identify the cases.

Dismissal for “Substantial Abuse”

A Chapter 7 consumer case may be dismissed under 11 U.S.C. § 707(b) for “substantial abuse.” Bankruptcy courts generally determine the existence of “substantial abuse” based upon a consideration of the totality of a debtor’s circumstances including, most often, the debtor’s financial ability to repay creditors. For example, a high income Chapter 7 debtor who spends large sums on luxury goods and services may be subject to a motion to dismiss for substantial abuse under Section 707(b) if the debtor can otherwise repay creditors outside of bankruptcy

or through a Chapter 13 repayment plan. Only the U.S. Trustee or the court may seek dismissal for substantial abuse.

In FY 2003, U.S. Trustees filed approximately 3,980 substantial abuse motions. During FY 2003, approximately 2,434 substantial abuse motions were either granted by bankruptcy courts or resulted in the voluntary conversion of Chapter 7 debtors to Chapter 13. Further, as a result of U.S. Trustee informal investigations, debtors either voluntarily converted to Chapter 13 or provided additional information to support their Chapter 7 filings in more than 5,300 cases, without the necessity of formal motions or litigation. (As with Section 727 complaints to deny discharge, these figures reflect a snapshot in time; the numbers of motions filed and motions decided during FY 2003 may not match because some were filed before the reporting period and some were decided afterward.)

In the aggregate, U.S. Trustees pursued over 26,000 debtors through investigations and formal actions pursuant to Section 707(b), and prevented the immediate discharge in Chapter 7 of more than \$192.5 million of general unsecured debt.

In the aggregate, U.S. Trustees pursued over 26,000 debtors through investigations and formal actions pursuant to Section 707(b), and prevented the immediate discharge in Chapter 7 of more than \$192.5 million of general unsecured debt. The amount of debt not discharged in Chapter 7 as a result of actions taken by U.S. Trustees pursuant to Section 707(b) is the actual amount of unsecured debt listed on the debtors’ schedules where the cases were either dismissed or voluntarily converted to Chapter 13.

“Bankruptcy Analyst Janneane Cruse identified a petition listing \$298,609 in debt and \$2,547 in assets. We discovered the debtor had 43 credit card accounts, but he could not explain what happened to the items he purchased or the cash advances he received. Our investigation revealed that one of the debtor’s relatives also filed bankruptcy, listing over \$200,000 in unsecured debt. Bankruptcy Analyst Ed Walsh helped me analyze the credit card statements of both debtors. When faced with actions to deny their discharge, on grounds that included failure to explain the loss of assets, both debtors agreed to denial of discharge.”

Richard Wieland, Trial Attorney, Wichita



“I didn’t realize that debtors were filing abusive cases in all parts of the country until I transferred from California to Ohio. When I worked in the Los Angeles and Woodland Hills offices, I thought my region had an usually high level of bankruptcy abuse. After relocating to Columbus, I saw that abuse of the system is a national problem. The Midwest’s lower cost of living makes it that much more egregious when debtors who earn \$80,000 to \$100,000 per year, and are able to repay a significant amount of their unsecured debt, try to discharge that debt in Chapter 7.”

*MaryAnne Wilsbacher,
Trial Attorney, Columbus*

Examples of actions by the Program include the following:

- Granting a motion by the Santa Ana office, the Bankruptcy Court for the Central District of California dismissed the case of a debtor who listed \$499,651 in credit card debt incurred for “everyday living expenses.” The U.S. Trustee subpoenaed the debtor’s credit card statements and discovered that within six months before filing she bought \$136,000 of merchandise from jewelry retailers. She also spent \$51,000 in two weeks at a major warehouse retailer, and made at least six bad check payments totaling \$144,000. The dismissal order barred her from discharging any of that debt in a future case.

- Granting a motion by the Woodland Hills office, the Bankruptcy Court for the Central District of California dismissed with prejudice the case of a debtor who used more than 23 credit cards to accrue around \$300,000 in primarily credit card debt. He accrued approximately \$120,000 of the debt at a time when his tax returns reflected low or negative income.

- Spouses converted to Chapter 13 before a hearing on the Indianapolis office’s motion to dismiss for substantial abuse. Approximately 14 months before filing bankruptcy, the wife became eligible to draw from a trust worth over \$300,000. She and her husband spent the entire balance before they filed bankruptcy. The U.S. Trustee’s review of checking account records and its Bankruptcy Rule 2004 examination of the debtors revealed more than \$48,000 in debit withdrawals, most of which were for cash advances, and over \$177,000 in disbursements, in part to purchase personal property not listed on the bankruptcy schedules.

- The Bankruptcy Court for the Southern District of Florida entered an agreed order of dismissal after the Miami office sought to dismiss the case of an emergency room physician who earned

\$245,887 per year and tried to discharge \$265,948 in unsecured debt. In addition to his homestead, the debtor had ownership interests in real property in Washington, D.C.—with equity of more than \$509,000—and three vacant lots in Colorado.

- A married couple in the Middle District of Tennessee converted to Chapter 13 just before a hearing on the Nashville office’s motion to dismiss for substantial abuse. The debtors earned \$145,000 per year and sought to discharge \$184,000 in credit card debt while continuing to lease a new Cadillac and pay for a timeshare in Hawaii.

- The Bankruptcy Court for the Western District of Tennessee dismissed a debtor’s case for substantial abuse on motion of the Memphis office. The debtor sought to keep her 2003 Corvette, for which she had reaffirmed \$59,000 in debt and had committed to pay \$1,100 per month, while seeking to discharge over \$49,000 in unsecured debt.

- The Bankruptcy Court for the Southern District of Nevada ruled for the Las Vegas office, dismissing with prejudice the case of a married couple unless they converted to Chapter 13 within 10 days. The debtors sought to discharge nearly \$110,000 in unsecured debt on more than 30 credit cards, while making 401(k) contributions and 401(k) loan repayments of more than \$1,800 per month.

- Ruling for the Miami office, the Bankruptcy Court for the Southern District of Florida dismissed, with prejudice to refiling for one year, the case of spouses who sought to discharge \$128,579 in unsecured debt even though the husband was a pharmacist earning more than \$100,000 per year. The court found the debtors’ automobile-related expenses excessive: the wife drove a BMW and the husband refused to relinquish a 2001 Infiniti SUV although he owned a less expensive third vehicle. The court also found other expenses excessive or not reasonably necessary for maintenance and support, including lawn care and pool maintenance.



KATHY SCHMITT

Improper Conduct by Attorneys

Lawyers who engage in unethical conduct or provide substandard representation harm their clients and undermine the integrity of the bankruptcy system. The U.S. Trustee monitors attorney conduct and adherence to professional standards, and takes action against inadequate representation and unlawful activity by counsel. Civil enforcement actions by the U.S. Trustee include asking the court to temporarily or permanently bar the attorney from appearing in bankruptcy cases and coordinating with state bar associations or other regulatory bodies as they pursue attorney disciplinary proceedings. Enforcement actions also include requesting reduction or disgorgement of debtors' attorneys' fees under 11 U.S.C. § 329 and seeking sanctions or similar remedies.

In FY 2003, U.S. Trustees pursued almost 900 actions seeking disgorgement of debtors' attorneys' fees in both consumer and business cases, resulting in disgorgement of more than \$4.7 million. During the same period, U.S. Trustees pursued over 200 other actions for attorney misconduct and referred approximately 37 attorneys to state bar associations or other disciplinary boards.

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These are examples of Program actions:

- The Tyler office obtained an agreed judgment against a high-volume consumer bankruptcy attorney in the Eastern District of Texas, requiring him to disgorge to his clients \$43,350 in undisclosed fees for "extra work" performed in dozens of Chapter 13 bankruptcy cases. Contending that his initial fee agreements with debtors did not cover certain services, the attorney charged additional, undisclosed fees for actions such as filing responses to motions to lift the stay protecting a debtor's house or car, amending Chapter 13 plans, and responding to adversary complaints.

- Three bankruptcy judges in the Southern District of Indiana, sitting en banc, approved the Indianapolis office's settlement of charges against two attorneys who engaged in improper fee collection. The settlement barred the attorneys from filing new bankruptcy cases in Indiana and Southern and Central Illinois; removed them as counsel in approximately 100 pending Chapter 13 cases; and froze around \$20,000 in fees from Chapter 13 estates, for distribution to replacement attorneys or debtors who were overcharged. The U.S. Trustee filed a motion for sanctions after learning the attorneys billed their clients directly rather than collecting fees through the Chapter 13 repayment plans, failed to report payments received from clients, and threatened to turn clients over to the IRS or FBI if direct payments were not made to the attorneys.

- The Harrisburg office entered into a stipulation with an attorney suspending him from practice before the Bankruptcy Court for the Middle District of Pennsylvania for at least one year, and requiring him to reimburse \$18,000 to various former clients, pay \$10,000 to the U.S. Trustee, and forgo \$39,870 in fees requested in 20 Chapter 13 cases. The stipulation resolved U.S. Trustee motions seeking sanctions or fee review in approximately 50 cases, based on allegations of repeated failure to communicate with clients, intentional

"In Rochester, my staff and I spend time educating the bankruptcy bar about 'substantial abuse.' We lead brown bag discussions on Section 707(b) and participate in Continuing Legal Education programs, explaining some of the red flags such as attempting to maintain luxury items while seeking a Chapter 7 discharge. Before we file a Section 707(b) motion in a particular case, we discuss the case in depth with the debtor's attorney. We have seen a decline in abusive Chapter 7 filings, so we believe our educational approach is having a positive effect."

Kathy Schmitt, Assistant U.S. Trustee, Rochester



“The outstanding result obtained in this case shows the real benefit of careful, meticulous discovery and trial preparation. Our staff developed the case over several years in cooperation with the Chapter 13 trustee. We knew that this attorney routinely undervalued his clients’ property and, through discovery, we were able to uncover his handwritten notes documenting his conduct as well as his efforts to alter documents that clients provided to him. Overwhelming evidence, accumulated through painstaking discovery, moved this case to a successful settlement.”

Anne Fiorenza, Assistant U.S. Trustee, Harrisburg

undervaluation of debtors’ assets, and negligent failure to file answers to motions for relief from stay. Evidence in the most damaging case strongly suggested the attorney altered documents and withheld critical documents during discovery.

- The Bankruptcy Court for the Eastern District of Missouri approved a settlement between a bankruptcy attorney and the St. Louis office, requiring the attorney to pay approximately \$20,000 in sanctions to various debtors; prohibiting him from filing bankruptcy cases for six months; and requiring him to take 30 hours of ethical and bankruptcy training. The U.S. Trustee sought sanctions against the attorney and a paralegal with whom he was associated. In October and November 2002, the attorney filed more than 530 Chapter 7 petitions, but he failed to file the related bankruptcy documents in a timely and accurate manner. A detailed review of 53 schedules in cases he filed revealed repeated errors and omissions.

- The Bankruptcy Court for the Eastern District of Pennsylvania granted a motion by the Philadelphia office for sanctions under Bankruptcy Rule 9011 against a debtor’s attorney who failed to disclose that his client filed at least six Chapter 13 cases in the past six years and the client’s wife filed at least four Chapter 13 cases. The attorney represented both debtors in all the cases, filed identical documents in all cases, and filed the current case while the previous one was pending.

- The Minnesota Supreme Court, affirming a decision by the Board of Professional Responsibility, suspended a bankruptcy attorney from the practice of law for six months after finding that he engaged in a pattern of misconduct amounting to an intent to deceive the bankruptcy court and creditors. The attorney filed two Chapter 11 cases for parents and a son who engaged in farming. Before the filing he took title to several pieces of real estate owned by the clients, but he failed to disclose the transfer in his employment appli-

cations and in the clients’ bankruptcy schedules. After the transfer was discovered at the Section 341 meeting, the attorney gave various explanations and delayed for several months the hearing on the Minneapolis office’s objections to his employment. The bankruptcy court denied both of his employment applications on the ground that he intentionally concealed the transfer. The U.S. Trustee referred the matter to the Board and assisted in its investigation; a Trial Attorney from the office testified at the preliminary hearing before a panel of the Board and at the trial before a referee.

- Granting a motion by the Richmond office, the Bankruptcy Court for the Eastern District of Virginia sanctioned a debtor’s attorney who falsely indicated to the court that he obtained the debtors’ signatures before filing their cases electronically. In actuality, the attorney had the debtors sign their petitions at their Section 341 meeting, a month after the petitions were filed.

Violations by Bankruptcy Petition Preparers

A bankruptcy petition preparer is a non-attorney who prepares debtors’ bankruptcy documents for a fee. Petition preparers are governed by 11 U.S.C. § 110, which requires, among other things, that they disclose in court filings their identities and the fees they receive. Section 110 also limits the practices that petition preparers may engage in, barring them from activities such as advertising “legal” services, charging excessive fees, collecting clients’ payments for court filing fees, or engaging in unfair, deceptive, or fraudulent conduct. Nonetheless, some petition preparers charge exorbitant rates, fail to make necessary disclosures, and engage in other prohibited conduct.

To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge document preparation fees, impose fines, and enjoin prohibited conduct by petition preparers. In



LEE BARNHILL

some cases, the U.S. Trustee's enforcement activities are enhanced through the use of a national data base developed in FY 2001 to track bankruptcy petition preparers who are under investigation or have been enjoined or found to engage in unauthorized practices. The data base can be useful because petition preparers often operate nationally or cross state lines to evade detection.

A new challenge facing the Program is the emergence of Internet-based technologies that may be employed by bankruptcy petition preparers. Cases filed with the involvement of Internet-based preparers are appearing with increasing frequency across the country. A petition preparer operating through an Internet site may be located virtually anywhere, including in a foreign country, and may provide services to debtors living in any jurisdiction.

In FY 2003, U.S. Trustees initiated over 840 formal actions against petition preparers. During the same period, bankruptcy courts granted relief in 645 actions which, in the aggregate, resulted in the imposition of over \$440,000 in fines and the return of approximately \$195,000 in client fees. More than 250 injunctions were issued as a result of actions filed by U.S. Trustee offices during FY 2003.

In FY 2003, U.S. Trustees initiated over 840 formal actions against petition preparers.

Examples of Program actions against petition preparers include:

- The Bankruptcy Court for the Eastern District of Texas issued a default judgment in an adversary proceeding brought by the Tyler office against an Internet document preparer service and its principal. In each of 94 cases, the court found that the defendants were bankruptcy petition preparers who completely failed to comply

with Section 110, imposed a \$1,000 fine, and required all fees to be disgorged to the debtors. The bankruptcy court also permanently enjoined the defendants from rendering legal advice or preparing bankruptcy petitions. During FY 2003 U.S. Trustees also prevailed in actions against this preparer and its related entities in other states including Massachusetts, Pennsylvania, Iowa, Minnesota, Tennessee, Oklahoma, and California.

- The District Court for the Northern District of California awarded a debtor \$62,680 in damages against husband and wife bankruptcy petition preparers. The Oakland office brought an action against the preparers seeking fines, fee disgorgement, injunctive relief, and certification to the district court for damages for fraudulent and deceptive acts. The U.S. Trustee had learned that the preparers took advantage of the debtor, an elderly woman with dementia, by having her deed her home jointly to herself and them. To stall the woman's creditors, the preparers placed her in a Chapter 13 bankruptcy. They then brought about a below-market sale of the home and attempted to dismiss the Chapter 13 case to collect their share of the home's equity. However, the U.S. Trustee opposed case dismissal, sought conversion to Chapter 7, and subsequently filed an adversary proceeding.

- The Bankruptcy Court for the Southern District of Illinois permanently barred a bankruptcy petition preparer, her business, and any employee of either entity from preparing bankruptcy documents for filing within the judicial district. In addition, an attorney who received free office space at the preparer's business, in exchange for signing bankruptcy petitions prepared by the business, was barred from practicing before the bankruptcy court in the district. The preparer and the attorney were ordered to disgorge all payments received from 39 clients, totaling approximately \$12,000. The Peoria office discovered the extent of the violations while investigating the preparer's

"This case is especially important in the new era of electronic case filing, because it reinforces the requirement in the Bankruptcy Rules that the attorney obtain the client's written signature before filing the bankruptcy case. Without this requirement, it would be extremely difficult to hold the debtor accountable for the accuracy of the information in the petition or even prove the debtor consented to the bankruptcy filing."

Lee Barnhill, Assistant U.S. Trustee, Richmond



“Several members of the U.S. Trustee’s staff worked to bring these Internet petition preparers’ impermissible activities to light. Paralegal Specialist Beth Coughlin reviewed each pro se petition, contacted debtors as potential witnesses, and assisted with each defendant’s deposition. Bankruptcy Analyst Jim Cronin helped interview each debtor witness and develop testimony in preparation for a trial. While our enforcement actions were proceeding, Program staff in other jurisdictions also brought actions against the preparers to address their continuing violations of Section 110.”

*Paula Bachtell,
Trial Attorney, Boston*

apparent violation of a prior injunction.

- The Bankruptcy Court for the District of Massachusetts approved a stipulation between the Boston office and the principals of an Internet document preparation service, permanently enjoining the principals from preparing bankruptcy petitions anywhere in the United States and directing them to remove from their web site any reference to bankruptcy. The principals had ignored a prior injunction by continuing to prepare petitions without disclosing their involvement, to advertise “legal” services, and to engage in the unauthorized practice of law.

- Acting on a complaint filed by the Dallas office, the Bankruptcy Court for the Northern District of Texas permanently enjoined an Internet document preparation service, its current and former officers, partners, agents, and others acting on its behalf, from preparing bankruptcy petitions in any jurisdiction in the country. The business was ordered to remove from the Internet any reference to the availability of bankruptcy petition preparation services, cease all such work in progress, refund monies to clients, and pay legal costs to the U.S. Trustee. Among other things, the business’s document preparation software selected debtors’ exemptions for them—a choice that required a legal analysis and determined whether certain assets were available to creditors in the bankruptcy case.

- Ruling for the Fresno office, the Bankruptcy Court for the Eastern District of California permanently enjoined a bankruptcy petition preparer from preparing petitions and engaging in the authorized practice of law. The preparer, a disbarred attorney, failed to disclose that she prepared bankruptcy documents for compensation in at least 120 bankruptcy cases between January 2002 and May 2003. She charged debtors \$300 to complete their bankruptcy documents, but she frequently made errors and included inaccurate information. She also provided unauthorized

and unsound legal advice to the debtors, some of whom incurred additional expense to correct procedural mistakes.

- Ruling for the Spokane office, the Bankruptcy Court for the Eastern District of Washington issued an injunction against a bankruptcy petition preparer, fined him \$16,000, and ordered him to disgorge fees to several debtors. Previously, on the U.S. Trustee’s motion, the court limited the preparer’s fee to \$75 per case, but the preparer evaded that limit by failing to disclose his name and preparation services on subsequent petitions. An unknown number of clients paid excessive fees before the practice was halted.

Serial Filings and Identity Fraud

Serial filing and bankruptcy-related identity fraud are two types of abusive conduct that sometimes, but not always, occur together. Serial filing means repeatedly filing bankruptcy solely for the purpose of frustrating creditors’ attempts to obtain payment or to foreclose on real property. Bankruptcy-related identity fraud can take various forms, but one of the simplest is to file bankruptcy under a false name and/or Social Security number.

Usually serial filers do not complete their cases, but remain in bankruptcy just long enough to obtain the automatic stay’s temporary protection from collection activity by creditors. The Bankruptcy Code prohibits a debtor from refiling within 180 days if the court dismissed the prior case because the debtor failed to appear before the court or abide by court orders, or requested voluntary dismissal following the filing of a request for relief from the automatic stay. Moreover, many courts will bar a debtor from refiling for a period beyond 180 days if the debtor has acted in bad faith. Some serial filers use false names and/or Social Security numbers in some or all of their bankruptcy cases in an attempt to escape this prohibition against immediate refil-



SEAN HAYNES

ing. However, the U.S. Trustee monitors its own data bases as well as court records for evidence of abusive refiling, and seeks dismissal or denial of discharge in such cases.

To curb bankruptcy-related identity fraud, since FY 2002 the U.S. Trustee Program has required all debtors to produce documents at the Section 341 meeting in an effort to confirm their names and Social Security numbers.

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Examples of cases involving serial filing and/or bankruptcy-related identity fraud include the following:

- A debtor was enjoined by the Bankruptcy Court for the Northern District of Texas from filing bankruptcy for three years and sanctioned in an amount representing unpaid filing fees in all cases associated with him. The debtor filed six Chapter 13 cases using three Social Security numbers. After he filed his seventh case, the Dallas office and the bankruptcy clerk found 50 filings by 19 of the debtor's family members or clients, with more than \$2,000 in unpaid filing fees.

- The Bankruptcy Court for the Western District of Tennessee barred a debtor from filing bankruptcy in any district in the country after the Memphis office sought dismissal of her case with prejudice, pointing out she filed 17 cases in eight years. In 2000, the court barred her from filing for two years, but after the two-year period expired she filed four cases in 15 months. A witness from the utility company testified the debtor owed the company more than \$13,000 and made no pay-

ments during the two-year prohibition period.


- The Bankruptcy Court for the Western District of Texas dismissed a debtor's Chapter 13 case on motion of the San Antonio office, barring her from refiling for two years and ordering her to pay a fine plus unpaid filing fees. The debtor did not disclose that she, her husband, and related entities had filed 15 bankruptcy cases since 2001. The debtor had filed four prior Chapter 13 cases—three in 2003 alone—which were all dismissed for her failure to fulfill her duties as a debtor and/or failure to confirm a plan. She filed her cases in the Southern and Western Districts of Texas and the District of Delaware, listing either no Social Security number, a false SSN, or zeroes instead of an SSN, and using false addresses for filings in the latter two districts. Her husband also filed in the Western District of Oklahoma and the Northern District of Florida, using false addresses and SSNs. The offices in San Antonio, Houston, Oklahoma City, and Tallahassee exchanged information and coordinated their enforcement actions regarding the couple's multiple filings.

- The Bankruptcy Court for the District of Oregon granted a motion by the Portland office to dismiss a debtor's Chapter 13 case and bar him from filing for five years. The debtor and his wife had filed six times since 2000. He failed to comply with court orders and bankruptcy procedures, omitted information from his bankruptcy schedules, concealed and damaged creditors' collateral, submitted false information on a credit application and falsely testified about it, and converted an insurance check jointly payable to him and another party.

- Ruling for the San Antonio office, the Bankruptcy Court for the Western District of Texas directed the bankruptcy clerk to correct a Social Security number in the court record. The debtor, who had the same name as his nephew, used the nephew's SSN when he bought a home, bought other items, and filed bankruptcy three times.

“The U.S. Trustee plays a vital role in fighting abuse of the bankruptcy system where creditors and trustees may lack the financial incentive or resources to take action. We surmise that the debtor kept filing bankruptcy so the local utility company wouldn't terminate services. While the utility company and the bankruptcy trustee may have been able to seek relief against the debtor, the U.S. Trustee was in a unique position to outline the full extent of the debtor's continuing abuse.”

*Sean Haynes,
Trial Attorney, Memphis*



The court record was corrected in each of the three cases to remove the nephew's SSN from the bankruptcy files. The court also dismissed the debtor's case with a 180-day bar to refile on motion of the Chapter 13 trustee, because the debtor did not appear at the meeting of creditors and filed two other cases within the previous year, both of which were dismissed.

- The Bankruptcy Court for the District of Minnesota dismissed a married couple's Chapter 7 case due to their pre-petition misuse of Social Security numbers not assigned to them. The debtors stated on their petition that they did not have Social Security numbers. The Minneapolis office discovered that when the debtors incurred certain debts listed on their schedules they used SSNs assigned to other individuals.

- An attorney who filed Chapter 7 bankruptcy seeking to discharge \$152,148 in unsecured debt stipulated to dismissal of her case with prejudice, after the Santa Ana office questioned her about her failure to disclose a 1998 filing in which she used a different last name and Social Security number. The attorney stated she did not recall the filing until the U.S. Trustee refreshed her memory. The attorney also said she used a different SSN in error for several years. That "erroneous" SSN, however, was different from either SSN she had used in her filings.

CHAPTER 4

CRIMINAL ENFORCEMENT



Photo 1: William Schantz

Photo 2: Richard Wieland; Peter Ainsworth; Edward Walsh

Photo 3: Lisa Maness

As civil enforcement continued to progress nationwide in FY 2003, the U.S. Trustee Program also bolstered its criminal enforcement activities with the creation of a Criminal Enforcement Unit, to increase the detection and prosecution of criminal fraud and other criminal conduct within the bankruptcy system.

Federal law directs the Program to refer criminal activity to the U.S. Attorneys and other law enforcement agencies and, upon request of the U.S. Attorney, to assist in prosecuting criminal violations of the bankruptcy laws. Bankruptcy fraud often is linked to other crimes, such as credit card fraud, tax fraud, identity fraud, federal benefits fraud, and money laundering. Further, the bankruptcy system is susceptible to fraud by individuals and entities who prey upon unsophisticated consumers in financial distress.

The U.S. Trustee's role in criminal enforcement is multi-faceted. Program staff help investigate cases of suspected bankruptcy fraud, often providing documentary evidence along with their referrals to the U.S. Attorneys. Program attorneys who are designated as Special Assistant U.S. Attorneys act as lead or assistant prosecutors in bankruptcy fraud cases. Program staff serve on inter-agency working groups, providing information on how bankruptcy interrelates with crimes such as federal benefits fraud, identity theft, and credit card fraud. In addition, they conduct training and outreach programs, where they teach law enforcement personnel and others how to recognize and pursue cases of potential criminal bankruptcy fraud.

The Program enhanced these activities in FY 2003 by creating a Criminal Enforcement Unit of former federal prosecutors located in several offices across the country. The Criminal Enforcement Unit assists Program staff as they coordinate with federal investigative agencies and U.S. Attorneys on criminal case referral, development, and prosecution. Members of the unit train Program staff in fraud detection, investigation, and referral; help build relationships with prosecutors and

others in the criminal justice system; and participate in criminal cases alongside the Assistant U.S. Attorneys and others in law enforcement.

The Program enhanced these activities in FY 2003 by creating a Criminal Enforcement Unit of former federal prosecutors located in several offices across the country.

Criminal Enforcement Actions

Criminal enforcement actions include prosecutions of:

- Concealment of assets.
- Crimes by attorneys and bankruptcy petition preparers.
- Credit card bust-outs and identity fraud.
- Various other crimes including tax fraud, bank fraud, mail fraud, money laundering, embezzlement, and perjury.

Concealment of Assets

Some debtors try to hide assets from creditors and from bankruptcy trustees by failing to disclose assets on the bankruptcy documents and by lying about their assets at the Section 341 meeting or in bankruptcy court. Sometimes, concealment of assets is only one part of a complex fraudulent scheme that includes other offenses such as wire fraud, mail fraud, securities fraud, real estate fraud, and tax fraud.

Sometimes, concealment of assets is only one part of a complex fraudulent scheme that includes other offenses such as wire fraud, mail fraud, securities fraud, real estate fraud, and tax fraud.



“With the creation of the Criminal Enforcement Unit, the Program has moved to the next level in assisting federal law enforcement. We are very fortunate to have a team of seasoned prosecutors whose contributions range from training Program employees and helping them prepare criminal referrals, to prosecuting criminal cases alongside Assistant U.S. Attorneys. The fact that we have a dedicated and talented staff with the experience and know-how to support any criminal bankruptcy fraud prosecution is a tremendous resource for our law enforcement partners.”

*Sandra Rasnak,
Acting Deputy Chief,
Criminal Enforcement
Unit, Chicago*

Concealment cases that were resolved in FY 2003 included the following:

- Following a one-week trial, a jury in the Southern District of Iowa found a debtor guilty of conspiracy to commit bankruptcy fraud, concealment of assets, false oaths, false declarations, bankruptcy fraud, and money laundering. The jury also convicted his wife of bankruptcy fraud, concealment of assets, and false oaths. While in Chapter 7 bankruptcy, the couple concealed approximately \$6 million in real estate, equipment, livestock, and cash. The Assistant U.S. Trustee in Des Moines testified before the grand jury and before the trial court as a bankruptcy expert. The debtor also agreed to forfeit his remaining interest in any property not handled in the bankruptcy.

- A debtor pleaded guilty in the Northern District of New York to bankruptcy fraud and concealment of assets in his Chapter 7 bankruptcy case. The debtor concealed an ownership interest in an investment account containing stock valued at more than \$204,000. The Chapter 7 trustee brought an action to revoke his discharge and recovered \$101,000 to pay creditors. The Albany office referred the matter to the U.S. Attorney.

- A former Guam territorial senator was sentenced in Guam to 71 months in prison, ordered to pay \$33,000 in restitution, and fined \$5,000 based on her conviction on 21 counts including three counts of bankruptcy fraud. When the woman filed Chapter 13 bankruptcy, she concealed a checking account, falsely stated she had not issued a financial statement within two years before filing, and understated her income for two years. During the trial, the Assistant U.S. Trustee in Honolulu testified as an expert witness on the bankruptcy process.

- A Chapter 7 debtor was sentenced in the Northern District of Georgia to 18 months in prison and ordered to pay \$350,000 in restitution

after pleading guilty to making a false statement under oath and making a false statement to the government. The defendant, who was the president of a Chapter 11 debtor company, failed to disclose the pre-bankruptcy sale of vending machines and accounts receivable and the receipt of pre- and post-petition payments for the machines and accounts, and denied the sale under oath at the Section 341 meeting and in bankruptcy court. On objection by the Atlanta office, the bankruptcy court had prohibited him from discharging over \$834,500 in debt in his individual Chapter 7 case. The trial attorney who pursued the objection to discharge testified before the grand jury and assisted the U.S. Attorney in obtaining the indictment.

- A Las Vegas man was sentenced in the District of Nevada to 57 months in prison and ordered to pay \$1.7 million in restitution for concealment of bankruptcy assets, tax fraud conspiracy, and tax evasion. The defendant was secretary and treasurer of a company that filed bankruptcy. The fraud included the diversion of more than \$1.4 million to nominees and nominee bank accounts, falsification of business expenses, and extensive use of cash to hide profits from creditors and the IRS. One co-conspirator was sentenced to 37 months in prison and ordered to pay \$565,391 in restitution, and another was sentenced to 30 months in prison and ordered to pay \$450,259 in restitution. The Las Vegas office referred the case for prosecution and worked with IRS Criminal Investigation and the U.S. Attorney.

- A debtor pleaded guilty to bankruptcy fraud and failure to file tax returns in the District of Idaho. On his bankruptcy schedules, the debtor stated he owned two guns worth \$400 and had no cash on hand. During the execution of a search warrant based on information about concealed assets, however, law enforcement officials discovered \$109,100 in currency in a locked box and more than three dozen firearms, including four automatic weapons. The Boise office assisted in the investigation and prosecution.



GUY GEBHARDT

• A real estate agent was sentenced in the Northern District of Georgia to seven years and six months in prison and was ordered to pay almost \$4.1 million in restitution to victims after her guilty plea to wire fraud and bankruptcy fraud. The woman recruited her “investors,” most of whom were elderly individuals and/or members of her church, by fraudulently representing their money would be used to make real estate bridge loans. When the Ponzi scheme began to unravel, she filed a Chapter 7 bankruptcy petition in which she made material omissions and misrepresentations. Meanwhile, she continued to solicit and receive money from investors. The Assistant U.S. Trustee in Atlanta arranged for an FBI agent to meet with victims at the woman’s Section 341 meeting and referred the matter to the U.S. Attorney.

Crimes by Attorneys and Bankruptcy Petition Preparers

On occasion, bankruptcy attorneys, bankruptcy petition preparers, and their employees engage in criminal activities to unjustly enrich themselves at the expense of the debtor, creditors, and/or other participants in the bankruptcy proceeding. Such actions include embezzling from the bankruptcy estate, assisting debtors in concealing assets, and engaging in activities that abuse the integrity of the bankruptcy process.

On occasion, bankruptcy attorneys, bankruptcy petition preparers, and their employees engage in criminal activities to unjustly enrich themselves at the expense of the debtor, creditors, and/or other participants in the bankruptcy proceeding.

The following are examples of crimes by bankruptcy professionals in FY 2003:

• An attorney pleaded guilty in the District of New Jersey to embezzling approximately \$120,000 from his law firm; various clients, including a company in bankruptcy; and a soccer club for which he served as treasurer. The Newark office referred the case to the U.S. Attorney and assisted in the investigation and prosecution, including providing grand jury testimony.

• An attorney and community college adjunct professor of business ethics pleaded guilty in the Eastern District of Pennsylvania to mail fraud, perjury, and bankruptcy fraud. The attorney falsely obtained a loan to fund his law practice and diverted the money for personal expenses; concealed in his Chapter 13 bankruptcy case a \$12,000 tractor and an agreement to receive a \$33,000 lawyer’s referral fee; failed to disclose that he transferred real estate to his parents five weeks before filing bankruptcy; and falsely testified at a bankruptcy court hearing. The Philadelphia office referred the matter to the U.S. Attorney and worked closely with the FBI.

• A bankruptcy attorney pleaded guilty in the Southern District of Mississippi to embezzling approximately \$163,500 in at least two bankruptcy cases in which he represented the debtors. The criminal referral was made by the Jackson office.

• A Houston man was sentenced in the Southern District of Texas to 57 months in prison and three years supervised release, and ordered to pay \$160,940 in restitution and a \$1,200 fine, following his conviction on 12 counts of bankruptcy fraud and mail fraud after a two-week jury trial. The man, who was a paralegal at a law firm, instructed clients to transmit their mortgage payments to him for payment to the lenders. Instead, he took the money. To forestall foreclosure of the clients’ homes, he placed the clients in bankruptcy, sometimes without their knowledge. He also settled clients’ personal injury claims without their knowledge and converted the funds to his own use. A number of victims made monthly payments to him for up to several years, and eventually lost

“This debtor attempted to conceal her Ponzi scheme by failing to disclose many of her creditors, but several victims appeared at the first meeting of creditors. I immediately telephoned an FBI agent with whom we had worked on other cases, and learned she was in the building. The agent came to the U.S. Trustee’s office at once, met with the creditors, and started the investigation. Prompt inter-agency cooperation among the U.S. Attorney, the FBI, and the U.S. Trustee was critical to preventing further losses to victims, as the woman continued to solicit ‘investments’ after she filed bankruptcy.”

Guy Gebhardt, Assistant U.S. Trustee, Atlanta



“In some cases, bankruptcy petition preparers cause financially distressed individuals to think they are going to receive debt relief, and fail to make clear that the individuals will be placed in bankruptcy. The debtors may end up paying for debt management services they never receive, with a bankruptcy on their credit record, and with no financial relief.”

Debera Conlon, Assistant U.S. Trustee, Norfolk

their homes. The Houston office discovered the scheme while investigating what appeared to be a serial filer. The U.S. Trustee also provided a victim impact statement for the court’s consideration in sentencing.

- A bankruptcy petition preparer was sentenced in the Northern District of Ohio to 90 months in prison and three years supervised release and ordered to pay approximately \$188,000 in restitution, in what is believed to be the first case brought under the criminal bankruptcy provisions of the Sarbanes-Oxley Act, which govern falsification of bankruptcy records. The petition preparer was charged with concealing the fact that he prepared and received fees for at least 125 petitions for filing throughout the country; engaging in mail fraud; and possessing a stolen Social Security card. The preparer contacted homeowners around the country who were facing foreclosure, and guaranteed to save their homes by filing bankruptcy on their behalf for a fee of approximately \$950. The petitions were usually dismissed by the bankruptcy courts, with the result that many homeowners lost their homes as well as the fee paid to the preparer. A Special Assistant U.S. Attorney from the Cleveland office helped prosecute the case. The preparer has appealed his conviction.

- An attorney and former company chairman was sentenced in the Eastern District of Missouri to two years in prison after pleading guilty to making false statements under oath during bankruptcy proceedings and tax evasion. The attorney gave testimony in which he attempted to deceive the Chapter 11 trustee by disguising the transfers of more than \$1 million in life insurance proceeds as a loan. In fact, the transfers were to other companies and accounts controlled by the attorney. The St. Louis office assisted the U.S. Attorney in investigating the case.

- A Los Angeles bankruptcy attorney was sentenced to 18 months in prison and three years supervised release and ordered to pay \$118,825

in restitution. The attorney, who authored books and gave speeches on bankruptcy, pleaded guilty in the Central District of California to providing false Social Security numbers, a false name, and/or other false information in two bankruptcy case he filed on his own behalf. The Los Angeles office assisted in investigating and prosecuting the case.

- A Beverly Hills, Calif., attorney was sentenced in the Central District of California to 32 months in prison and ordered to pay \$598,381 in restitution for conspiring to commit bankruptcy fraud and aiding and abetting tax evasion. The attorney, a pre-bankruptcy tax planning specialist who formerly worked for the IRS, participated in a scheme with another lawyer to help clients hide their wealth and then discharge federal and state tax liabilities in bankruptcy. For example, one doctor attempted to discharge over \$11 million in federal taxes and approximately \$2.5 million in state taxes, using corporations and trusts in various third-party names to hide real estate and \$4.5 million in cash. The Assistant U.S. Trustee in Los Angeles consulted with prosecutors on the case and testified as an expert witness.

Credit Card ‘Bust-Outs’ and Identity Fraud

Most often, bankruptcy-related credit card fraud consists of a debtor’s attempt to discharge credit card debt that was incurred through fraudulent conduct. Sometimes this is part of a scheme called a credit card bust-out. In a bankruptcy-related credit card bust-out, an individual runs up an enormous amount of consumer credit card debt for purchases and cash advances, and then files bankruptcy in an attempt to discharge the entire debt. To obtain the credit, an individual engaging in a credit card bust-out may make false statements on credit applications, such as giving a false name and/or Social Security number, false employment history, and inflated salary information to qualify for a higher credit limit. Typically, the purchases and cash advances occur within a two- or three-month period, with charges often



PAT HOGAN

incurred on multiple credit card accounts on the same day. Eventually, a bankruptcy case will be filed.

Most often, bankruptcy-related credit card fraud consists of a debtor's attempt to discharge credit card debt that was incurred through fraudulent conduct.

Bust-out schemes may be small local operations or may be run by organized rings as a part of a criminal enterprise. In some cases, the money is transferred overseas. Sometimes, individuals are approached by “recruiters” to participate in the scheme. The individual agrees to use personal credit cards and to obtain additional credit cards under his or her name or under a false name. The recruiter causes the individual to use the cards to obtain cash advances or merchandise that is sold for cash; the individual receives cash or merchandise as payment for participating in the scheme. The recruiter may instruct the individual to pay credit card bills with checks drawn on bank accounts with insufficient funds, and then to obtain additional cash advances or purchase additional merchandise before the checks are returned for insufficient funds. In addition, credit card bust-outs may involve collusive merchants who process fictitious credit card purchases for a portion of the proceeds, with or without the individual card-holder’s knowledge. After the fraud is accomplished, the recruiter may suggest that the individual file Chapter 7 bankruptcy to discharge the unsecured credit card debts.

These are examples of cases involving credit card bust-outs and/or identity fraud:

- Six debtors pleaded guilty to bankruptcy fraud in credit card bust-out cases handled by the Bankruptcy Task Force for the District of New Jersey, which includes the Newark office of the U.S. Trustee. Cumulative unsecured debt in the six bankruptcy cases exceeded \$1.8 million.

Of the five who have been sentenced, all were sentenced to prison and supervised release, and ordered to pay restitution in amounts ranging from \$194,000 to \$461,970.

- Several defendants were charged in the Central District of California in a bankruptcy fraud sweep arising from cases referred by the Santa Ana office. For example, an Irvine, Calif., man engaged in a scheme to defraud creditors of his clients, who were facing foreclosure. The man had his clients sign deeds transferring a partial interest in their homes to a fictitious person in whose name the man had filed bankruptcy, thus temporarily delaying foreclosure proceedings. He was ultimately sentenced to 13 months in prison and three years supervised release, and ordered to pay a \$10,000 fine. Another defendant in the sweep, a Huntington Beach, Calif., man, was charged with making false statements in his bankruptcy case to conceal prior bankruptcy cases in which he used various Social Security numbers. The Santa Ana Assistant U.S. Trustee testified before the grand jury and at the trial. This defendant received a 15-month prison sentence.

- A Chapter 7 debtor was sentenced in the Middle District of Florida to 12 months and a day in prison and 36 months of supervised release, and ordered to pay \$62,307 in restitution, based on her guilty plea to bankruptcy fraud. The debtor applied for and obtained credit cards using false Social Security numbers and the names of her dogs—Emily, Tulip, and Daisy. When she filed Chapter 7 bankruptcy, she listed more than \$265,000 in debt on 59 credit cards, approximately 23 of which were issued in the dogs’ names. The Tampa office uncovered the scheme by examining the debtor at her Section 341 meeting, and referred the case for prosecution. The U.S. Trustee also obtained denial of the debtor’s bankruptcy discharge.

“The criminal investigators and prosecutors in our district know they can rely upon the U.S. Trustee to provide solid and dependable criminal referrals. The defendant asserted his Fifth Amendment privilege against self-incrimination several times during the Section 341 meeting, but his testimony about the movement of money among the debtor, its creditors, and the bank hinted at wire fraud. We presented these facts to the FBI and the U.S. Attorney, and an investigation was opened immediately. Ultimately it led to his conviction and sentencing.”

Pat Hogan, Bankruptcy Analyst, Boston



“The first indications of trouble in the case were the scores of investors who attended the Section 341 meeting to check on their ‘trading’ accounts. Many were elderly people who had invested their life savings. The defendant’s testimony revealed minimal accounting controls for the tens of millions of dollars that passed through his company. We immediately sought appointment of an examiner and, on the basis of his report, obtained conversion to Chapter 7.”

David Ortiz, Trial Attorney, San Diego

Other Crimes

Virtually any type of criminal conduct can arise in connection with a bankruptcy case. Often the bankruptcy filing is the last step in a series of crimes that may include tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury.

Often the bankruptcy filing is the last step in a series of crimes that may include tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury.

Here are some cases involving various other crimes:

- The chief executive officer of a Chapter 11 debtor company pleaded guilty to mail fraud, wire fraud, and bankruptcy fraud in the District of Massachusetts. The CEO was accused of stealing more than \$1.6 million in customer funds that the freight forwarder company was supposed to use for shipping costs on behalf of its customers, and then falsely testifying about whether he took the funds. He was ultimately sentenced to 57 months in prison followed by three years of supervised release, and ordered to pay more than \$1.9 million in restitution. The Boston office assisted with the investigation and referred the case.

- A Richmond, Va., city councilman and his wife, both disbarred lawyers, pleaded guilty in the Eastern District of Virginia to engaging in conspiracy to defraud the United States. Both faced 16 charges of bankruptcy fraud, tax fraud, mail fraud, wire fraud, bank fraud, and embezzlement. The indictment alleged that the couple and their former law firms owed the IRS more than \$700,000 in delinquent taxes, penalties, and interest for assessments and liens dating back to 1986; money from the couple’s law firm trust account was used to pay \$114,000 in personal expenses;

and the couple filed bankruptcy six times to impair IRS collection efforts. The Richmond office referred the case for prosecution. The husband was sentenced to 37 months in prison and three years supervised release; the wife was sentenced to five years probation with one year home monitoring.

- A woman pleaded guilty in the Eastern District of Virginia to one count of bankruptcy fraud for altering checks to make it appear as if her husband made payments in his Chapter 13 case. At a hearing on the Chapter 13 trustee’s motion to dismiss the husband’s case for failure to make payments, the husband testified and produced the front and back of checks to verify plan payments. He also testified that his wife took care of the family finances and gave him the copies of the cancelled checks. A bank officer testified, however, that previous payment check “backs” had been substituted on new fronts. The Norfolk office referred the case to the U.S. Attorney.

- The former CEO of a Chapter 11 debtor company was convicted in the Southern District of California on 27 counts of mail fraud, wire fraud, money laundering, conspiracy to evade taxes, filing false tax returns, and engaging in perjury at the company’s Section 341 meeting. The CEO solicited more than \$30 million in investments from the public to trade in foreign currencies, but the company was actually a Ponzi scheme. The jury found that the money laundering yielded \$5.8 million and a 1998 Porsche Boxster—the first step toward having those assets forfeited to the government as part of the defendant’s sentence. While on pre-trial release in connection with the 27-count indictment, the defendant set up a new company and committed additional criminal acts involving similar conduct. He was separately convicted on 13 counts of wire fraud and mail fraud for that conduct, and was sentenced to more than 11 years in prison. A Trial Attorney from the San Diego office testified for the prosecution at both trials. The case resulted from a joint investigation



NANCY J. GARGULA

by the U.S. Trustee, FBI, IRS Criminal Investigation, and U.S. Postal Inspection Service.

- A debtor pleaded guilty in the Eastern District of Tennessee to knowingly forging an order of discharge under a bankruptcy judge's name. In his third bankruptcy case, the debtor forged a discharge order to stop a \$225 weekly wage deduction from being paid to the Chapter 13 trustee. The Knoxville office and the bankruptcy court referred the case for investigation and prosecution. The U.S. Trustee also obtained dismissal of the debtor's bankruptcy case.

- An employee of a Chapter 13 trustee intercepted debtors' checks, endorsed the backs with the trustee's signature, and made the checks payable to herself. A team from the U.S. Trustee Program reconstructed the trustee's financial records and determined that the employee embezzled 29 checks and money orders, totaling \$22,900. The employee pleaded guilty in the Western District of Michigan to one count of embezzlement from a trustee.

- A Portland, Ore., man was sentenced in the District of Oregon to 37 months in prison and ordered to pay \$308,732 in restitution after pleading guilty to making false statements on a loan application, making false statements to the Small Business Administration, and misuse of a Social Security number. The man operated a restaurant that was the debtor in voluntary Chapter 11 case and an involuntary Chapter 7 case. An investigation by bankruptcy analysts in the Portland office indicated he depleted the restaurant's assets, using over \$634,000 for his own purposes. The U.S. Trustee referred the bankruptcy matters to the U.S. Attorney and worked extensively with that office, the FBI, and the SBA before the defendant pleaded guilty and in connection with sentencing. The sentence is on appeal.

Multi-Agency Working Groups

Many successful criminal enforcement actions result from the work of national and local bankruptcy fraud working groups. As a member of

these law enforcement working groups, the Program serves as a resource for information and education on the bankruptcy system and specific law enforcement initiatives.

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The National Bankruptcy Fraud Working Group provides a coordinated mechanism for sharing information and assisting in the investigation and prosecution of bankruptcy crimes. This working group focuses on emerging areas of bankruptcy fraud such as corporate fraud, mortgage fraud, credit card bust-outs, and identity fraud. It includes members from Justice Department components such as the U.S. Trustee Program, the U.S. Attorneys, the Criminal Division, and the FBI, as well as representatives from a variety of federal agencies including the Internal Revenue Service, the Department of Housing and Urban Development's Office of Inspector General (HUD OIG), the Treasury Department, the Social Security Administration's Office of Inspector General, the Postal Inspection Service, the Veterans Administration, the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission.

U.S. Trustee field offices participate in approximately 60 local bankruptcy fraud working groups, which may include representatives from the U.S. Attorney's office, FBI, Secret Service, IRS, HUD OIG, Postal Inspection Service, and other federal law enforcement agencies. The local working groups discuss emerging issues, develop criminal referrals, and provide bankruptcy fraud training.

"The United States Attorneys who serve the four judicial districts in Indiana and Southern and Central Illinois have fully supported our efforts to conduct regular meetings and form Bankruptcy Fraud Working Groups where previously none existed. U.S. Attorneys Susan Brooks, Joe Van Bokkelen, Jan Paul Miller, Richard Byrne, and Ron Tenpas share a commitment to collaborate with the Program as we combat fraud and abuse in the bankruptcy system. As an example, U.S. Attorneys made their video conference facilities available so we could provide regional bankruptcy fraud training involving 120 attendees and trainers at 14 sites."

Nancy J. Gargula, U.S. Trustee, Region 10

CHAPTER 5

LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS



Photo 1: Ilene Lashinsky

Photo 2: Joseph Guzinski

Photo 3: Judith Canning

U.S. Trustee Duties in Chapter 11 Cases

The U.S. Trustee is an active participant in Chapter 11 reorganizations, although the degree of activity may depend on the size and nature of the case. In all Chapter 11 cases, the U.S. Trustee monitors activity to ensure that the cases move through the system in a timely and efficient manner. If the debtor is unlikely to reorganize successfully, incurs continuing losses or delinquent post-petition debt, engages in delay, or commits other acts prejudicial to creditors, the U.S. Trustee takes action that may result in dismissal of the case, conversion to a Chapter 7 liquidation, or appointment of a trustee or examiner.

Chapter 11 filings declined from 11,380 in FY 2002 to 9,782 in FY 2003. These filings included a number of large, complex Chapter 11 reorganization cases such as those of Consec Inc., with a reported \$61.4 billion in assets; UAL Corp., which reported \$25.2 billion in assets; Mirant Corp., which reported \$19.4 billion in assets; and NRG Energy Inc., reporting \$10.9 billion in assets.

While the demands in large, complex cases may be more immediate and resource-intensive than in small and medium-sized cases, the U.S. Trustees perform certain tasks in all Chapter 11 cases. These duties include:

- **Reviewing First Day Orders.** The U.S. Trustee closely reviews the debtor's requests for emergency orders early in a bankruptcy case, and ensures that the requested relief is tailored to the circumstances. For example, debtors may seek immediate court approval to retain professionals, obtain emergency financing, and pay certain suppliers. These requests may affect the rights of creditors and alter their ability to negotiate the terms of the debtor's reorganization later in the case.

- **Conducting Initial Debtor Interviews.** Immediately after a case is filed, the U.S. Trustee contacts the debtor's attorney to schedule an "initial debtor interview" to discuss the debtor's

reasons for filing the case, consider the debtor's plans for reorganization, assess the debtor's financial viability, and advise the debtor of its fiduciary obligations and the U.S. Trustee's role in case administration.

- **Appointing Official Committees.** As soon as possible after a case is filed, the U.S. Trustee appoints a committee of unsecured creditors. The U.S. Trustee also evaluates whether additional official committees should be appointed and engages in oversight of committee actions. Each committee upholds the interests of the creditor group it represents.

- **Conducting Meetings of Creditors.** Within 20 to 60 days after a case is filed, the U.S. Trustee schedules and presides at a meeting of creditors, where the debtor or its representative is examined under oath by the U.S. Trustee, the case trustee, creditors, or other parties in interest.

- **Appointing Chapter 11 Trustees and Examiners.** Although the debtor generally remains in possession of its assets while reorganizing in Chapter 11, the court may order the appointment of a Chapter 11 trustee if it determines that cause exists or that the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. A trustee "steps into the shoes" of the debtor's operating management, and acts as a fiduciary for all interested parties. As an alternative, the court may decide to leave the debtor's management in place, but direct the appointment of an examiner to investigate and report on the debtor's conduct, assets, liabilities, business operations, and financial conditions. If the court orders the appointment of a trustee or examiner, the U.S. Trustee, after consultation with the parties and subject to court approval, appoints a disinterested person to serve in that capacity. In FY 2003, the U.S. Trustee filed 187 motions to appoint a trustee or examiner. During that period, 166 motions to appoint a trustee or examiner were granted and nine were denied.



“The U.S. Trustee works to ensure that all participants in the Chapter 11 process comply with the requirements of the Bankruptcy Code and that the system fairly adjudicates the rights of the parties as expeditiously as possible.”

*Donald Walton,
Acting General Counsel,
Executive Office for
U.S. Trustees*

- **Monitoring Employment and Compensation of Professionals.** The U.S. Trustee reviews and, if appropriate, objects to applications filed by professionals seeking employment in the case, payment of compensation, and/or reimbursement of expenses. Professionals who serve in the case and receive payment from the bankruptcy estate might include attorneys, accountants, auctioneers, financial advisors, turnaround specialists, and real estate brokers. The Bankruptcy Code requires these professionals to be free of interests adverse to the bankruptcy estate. During FY 2003, 9,264 formal actions and informal inquiries initiated by U.S. Trustees regarding employment and compensation of professionals in both Chapter 7 and Chapter 11 cases resulted in professional fee reductions and disgorgements totaling almost \$45 million.

- **Reviewing Reorganization Plans and Disclosure Statements.** The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties to make sure they provide adequate and accurate information. During FY 2003, U.S. Trustees filed 964 objections to disclosure statements and 447 objections to confirmation of debtors’ plans. Objections to disclosure statements were sustained in 718 cases, while confirmation was denied or plans were voluntarily amended in 281 cases after a formal objection had been filed. In 360 cases, debtors voluntarily amended their plans of reorganization to comply with the U.S. Trustee’s concerns without the need for formal court action.

- **Ensuring Compliance.** The U.S. Trustee ensures that all required schedules, statements, and reports are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors. The debtor must file monthly operating reports that detail its financial condition and allow the U.S. Trustee, the court, and parties in interest to monitor the debtor’s progress toward reorganization.

- **Preventing Delay and Preserving Assets.** The U.S. Trustee takes action to prevent undue delay by, for example, filing a motion to dismiss a case, to convert the case to a Chapter 7 liquidation, or to appoint a Chapter 11 trustee. During FY 2003, U.S. Trustees filed 3,891 motions to dismiss or convert Chapter 11 cases. During the same period, 2,843 motions to dismiss or convert were granted and 120 were denied.

- **Combating Fraud.** The U.S. Trustee investigates criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution. The U.S. Trustee pursues civil penalties, and refers cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

During FY 2003, U.S. Trustees filed 3,891 motions to dismiss or convert Chapter 11 cases

Appointment of Trustee or Examiner

Pursuant to 11 U.S.C. § 1104, the U.S. Trustee or any party in interest may seek the appointment of a Chapter 11 trustee for cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case. Alternatively, the U.S. Trustee or any party may seek appointment of an examiner to investigate the conduct of the debtor. Generally, an examiner is appointed where there are questionable management activities, unexplained irregularities in the debtor’s financial history, or other special factors. In certain cases, the appointment of an examiner is mandated by the Bankruptcy Code if an examiner is requested by a party in interest.



LEONARD DEPASQUALE

Generally, an examiner is appointed where there are questionable management activities, unexplained irregularities in the debtor's financial history, or other special factors.

The following are examples of cases involving appointment of a trustee or examiner:

- During FY 2003, the examiner appointed by the U.S. Trustee in the Chapter 11 bankruptcy case of Enron Corp. submitted his second and third interim reports. In the second interim report, the examiner discussed Enron's material "special purpose entity" (SPE) transactions, concluding that Enron manipulated its financial statements and failed to make appropriate disclosures of its SPE transactions. The examiner stated many of these transactions were susceptible to challenges that could result in between \$1.7 billion and \$2.1 billion in value being restored to the debtor's estate. The examiner also identified approximately \$2.9 billion in potentially avoidable transfers that could be recovered by the debtor's estate. In the third interim report, the examiner stated there was evidence that Enron senior officers breached their fiduciary duties, and that certain financial institutions aided and abetted that breach and engaged in inequitable conduct such that the financial institutions' claims should be subordinated to those of other creditors. The examiner also found additional potentially avoidable transfers the estate could recover.

- The examiner appointed by the U.S. Trustee in the Chapter 11 bankruptcy case of WorldCom Inc. submitted his first and second interim reports during FY 2003. The first interim report included preliminary observations about the conduct of WorldCom's former management, board of directors, and service providers, and identified numerous areas for additional investigation. In the second interim report the examiner stated that WorldCom suffered a virtually complete

breakdown of proper corporate governance.

- The Providence office moved quickly to obtain the appointment of a Chapter 11 trustee in the case of a stockbroker who filed bankruptcy in the District of Rhode Island after the district court ordered him to disgorge more than \$18.9 million and to pay a \$250,000 fine in a Securities and Exchange Commission enforcement action. The debtor and his wife defrauded several investors out of more than \$50 million through investment schemes.

- After a trial on a motion by the Chicago office, the Bankruptcy Court for the Northern District of Illinois ordered appointment of an examiner in the Chapter 11 related cases of RHC Spacemaster, which manufactures shelving for major retailers. The debtors tried to prevent a \$44 million auction sale of substantially all their assets, in favor of a transaction that would have resulted in insiders owning certain assets and would have deprived the estate of further competitive bidding. The examiner was appointed to oversee the sale process and investigate the debtor. He subsequently conducted an auction sale that resulted in competitive bidding and a \$47 million sale price. The examiner also issued a report concluding that the debtor's board members breached their fiduciary duty to creditors by failing to continue the sale process in a fair and competitive manner.

- The Bankruptcy Court for the District of Maryland granted the Greenbelt office's motion to appoint a Chapter 11 trustee in the case of Sloan's Auction Galleries Ltd., a 150-year-old art and antique auction house. The court found that an actual conflict of interest between the debtor's management and a potential purchaser—an entity controlled by the chairman of the debtor's board—required appointment of a trustee to protect the bankruptcy estate's interest at the sale closing. When Sloan's filed bankruptcy, it owed approximately 600 consign-

"This case was a model for inter-agency cooperation when dealing with a debtor engaged in a complex multi-state Ponzi scheme to defraud investors. After the ruling in the SEC's action, we uncovered concealed assets and obtained emergency orders, including an order appointing a Chapter 11 trustee. Our office quickly obtained an order denying the debtor's discharge, and the Chapter 11 trustee located and took control of assets before the debtor could reach them."

*Leonard DePasquale,
Assistant U.S. Trustee,
Providence*



“The review of requests for compensation and reimbursement of expenses in large Chapter 11 cases is one of the more challenging responsibilities of the U.S. Trustee. With the advent of increasingly large multi-billion dollar cases, this review has become both more important and more difficult. In 2003, I participated on the fee review committee for the WorldCom case. What the Program has learned in Enron, WorldCom, and other large cases should help us greatly in developing new strategies for reviewing and controlling unreasonable and duplicative bills.”

John Byrnes, Assistant U.S. Trustee, Roanoke

ors more than \$4 million for items that had been sold. Previously, the court had granted the U.S. Trustee’s motion to appoint an examiner to investigate the debtor’s pre-petition conduct and control its post-petition expenditures.

- After the Richmond office obtained the appointment of a Chapter 11 trustee in the case of Fas Mart Convenience Stores, the trustee located the debtor’s principal—who had fled from Virginia to Pakistan—and obtained a \$1 million consent judgment against the principal along with a \$1.5 million consent judgment against a related non-debtor company.

- The Bankruptcy Court for the Southern District of Ohio ordered the appointment of a Chapter 11 trustee in the case of Erin Farms Inc., which operated 35 farms in central Ohio. The Columbus office argued for the appointment of a trustee on an emergency basis because the debtor could not account for 1,100 acres of winter wheat valued at more than \$1 million. At the emergency hearing, the debtor’s sole officer, director, and shareholder invoked his rights under the Fifth Amendment. Evidence provided by secured creditors showed the officer wrongfully harvested the wheat using someone else’s name.

- The Bankruptcy Court for the Central District of California granted a motion by the Woodland Hills office to appoint a Chapter 11 trustee in the case of Right on Time Moving. The debtor, which handled 200 to 300 moves per month, refused to pay on claims for damages arising from post-petition services. Its representatives had testified at the Section 341(a) meeting that the owners were forming a new company that would compete with the debtor. The Better Business Bureau joined in the U.S. Trustee’s motion, supplying evidence that the debtor ran a credit card payment for its services through the account of a different company.

Employment and Compensation of Professionals

The Program monitors professionals who serve in bankruptcy cases—such as attorneys, accountants, auctioneers, real estate brokers, and financial advisors—to ensure full disclosure of potential conflicts that may affect the professional’s disinterestedness, compliance with the law, and reasonable compensation.

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Examples of cases involving professional fees include the following:

- A management company owned and controlled by insiders of debtor GenTek Inc. agreed to disgorge approximately \$2.7 million in compensation, based on an action filed by the Wilmington office. The insider-controlled management company failed to disclose to the court that it provided strategic management, business, and financial advisory services, and the debtor failed to seek the company’s retention as a professional. The U.S. Trustee sought disgorgement when GenTek’s disclosure statement revealed the terms of the management agreement. Without admitting wrongdoing, the management company agreed to return all funds to the estate, and to waive any claims against the estate and refrain from seeking compensation from it.

- After a two-day trial in the case of manufacturer Jore Corp., the Bankruptcy Court for the District of Montana granted a motion by the Great Falls office to disqualify debtor’s counsel, vacate its employment order, and disallow more

than \$1.8 million in fees. Jore's case was filed under Chapter 11 and later converted to Chapter 7. In its application for employment in the Chapter 11 case, the law firm disclosed it represented a bank—the debtor's primary pre-petition secured creditor and post-petition lender—in unrelated matters, and it received oral conflicts waivers from the bank and the debtor. The firm did not disclose, however, that it agreed not to represent the debtor in litigation directly adverse to the bank. An actual, unwaived conflict of interest that subsequently arose was not disclosed until more than a year after filing, when the firm announced the debtor's intent to sue the bank on certain claims. The court found the terms of the conflicts waiver and the actual conflict were material, and the firm's failure to disclose was sanctionable even if negligent or inadvertent.

- Counsel for debtor 360networks (USA) Inc. agreed to reduce its fees by \$1.35 million after the Manhattan office questioned the nature and manner of the firm's disclosure in the case. In its final fee application, the firm revealed for the first time in a court pleading that, pre-petition, it received significant payments from the debtor that might qualify as preferential payments. The U.S. Trustee argued the firm had a duty at the beginning of the case to disclose all matters that might affect its disinterestedness or might create a materially adverse interest.

- The Manhattan office, assisted by other Program personnel, continued its involvement in the review and monitoring of professional compensation in the Enron and WorldCom cases, participating actively in fee review committees established by the Bankruptcy Court for the Southern District of New York. These committees generally consist of representatives of the debtors, creditors, and the U.S. Trustee, advised by professional fee auditors.

- The creditors' committee in the case of Thermadyne Holdings Corp. sought to retain a financial advisor and asked that the debtor be ordered to indemnify the advisor against harm from its acts. The Bankruptcy Court for the Eastern District of Missouri declined to approve the indemnification request, agreeing with the St. Louis office that it posed unfair risks to Thermadyne's creditors and the advisor did not prove it was reasonable. On appeal by the advisor, the Bankruptcy Appellate Panel for the Eighth Circuit affirmed. It held the bankruptcy court did not abuse its discretion in finding the indemnification agreements were unreasonable under the facts of the case. The advisor then appealed to the Eighth Circuit, but voluntarily dismissed its appeal after the parties briefed the issue.

- The Bankruptcy Court for the District of Delaware sustained the Wilmington office's objections to the application of debtor AC&S Inc. to retain an asbestos claims consultant, and directed the consultant to disgorge \$2.4 million it received for post-petition services provided without court authority. The debtor waited until nine months after filing bankruptcy to seek court approval to retain the consultant, which was affiliated with a law firm serving as special counsel to the debtor. In its application, AC&S indicated that before filing it retained the consultant to provide claims review services and paid it \$3 million, but did not disclose whether that payment was for work performed before or after the bankruptcy filing. In fact, 80 percent of the \$3 million was earned for work performed after the filing, without court approval.

- A \$1 million fee reduction by the Bankruptcy Court for the Northern District of Oklahoma was affirmed by the Bankruptcy Appellate Panel for the Tenth Circuit in the case of Commercial Financial Services. The bankruptcy court had reduced the fees of the debtor's financial adviser from the requested \$1.9 million to \$904,000. The panel agreed with the Tulsa office and the Unsecured



“In Pillowtex the Third Circuit sent a clear message that bankruptcy courts may not enter orders that postpone the consideration of questions relating to a professional’s eligibility for employment by the bankruptcy estate. The Third Circuit’s opinion and the substantial reduction of the law firm’s compensation on remand are testament to a strong inter-office team effort: Matt Sutko of the Executive Office for U.S. Trustees and Anne Murphy of the Department’s Civil Appellate Division worked closely with our office to successfully prosecute the appeal.”

Joe McMahon, Trial Attorney, Wilmington

Creditors’ Liquidating Trust that the requested fees were unreasonable in light of the time spent on the engagement. The panel found that the court correctly applied the factors to determine allowed compensation. The case is on appeal to the Court of Appeals for the Tenth Circuit.

- The Bankruptcy Court for the Northern District of California disallowed \$194,000 of the \$234,280 in fees requested by special counsel for debtor VSI Liquidating Corp., and \$187,000 of the \$487,000 requested by VSI’s general bankruptcy counsel. The San Jose office objected to special counsel’s fees because special counsel provided services beyond the scope of those for which it was employed. Some of those services required employment under 11 U.S.C. § 327(a), but special counsel was ineligible for employment under that provision because it held an undisclosed pre-petition claim of approximately \$390,000 and was therefore not disinterested. As to general bankruptcy counsel, the court agreed with the U.S. Trustee that the requested compensation was excessive, finding the size of the fee application “largely attributable to excessive billing or to the performance of work that was unnecessary or did not benefit the debtors’ estate.”

- The chairman of the board of debtor Petals Inc. agreed to resign after the Manhattan office objected to the debtor’s application to retain a law firm that employed the chairman’s brother. The chairman, a consultant to the debtor’s secured lender, was placed on the board at the lender’s request and became chairman one month before the debtor’s bankruptcy. The Bankruptcy Court for the Southern District of New York authorized the creditors’ committee to investigate and take appropriate action against the lender.

- A law firm reduced its final fee application by \$436,908 to resolve the Wilmington office’s objection to the firm’s retention in the case of Pillowtex Inc., and its related objection to the firm’s requested fees. The U.S. Trustee argued the

firm held an interest adverse to the estate because it received preferential payments within 90 days before the bankruptcy filing. The retention dispute was on remand from the Court of Appeals for the Third Circuit, which had reversed the bankruptcy court’s order approving the firm’s employment.

- The Third Circuit Court of Appeals reversed the district court’s dismissal of the U.S. Trustee’s objection to fees requested by a professional in the Chapter 11 case of Zenith Electronics. The district court’s order would have made it very difficult to obtain appellate review of any final award of professional fees in a Chapter 11 case. The Wilmington office asserted that the fees had been approved in contravention of 11 U.S.C. § 503(b)(3)(D) and (b)(4). The circuit court held the district court abused its discretion when it used the doctrine of “equitable mootness” to dismiss the U.S. Trustee’s appeal of the order awarding fees.

The U.S. Trustee takes action to prevent undue delay in Chapter 11 cases and to ensure that proper procedures are followed to preserve and enhance the value of estate assets for potential distribution to creditors.

Preventing Delay and Preserving Assets

The U.S. Trustee takes action to prevent undue delay in Chapter 11 cases and to ensure that proper procedures are followed to preserve and enhance the value of estate assets for potential distribution to creditors. For example:

- The Bankruptcy Court for the Middle District of Florida granted the Tampa office’s emergency motion to convert from Chapter 11 to Chapter 7 the case of McCarn’s All State Finance Inc. The debtor’s sole stockholder sold over \$45 million in promissory notes to more than 600



MARILYN SORENSEN

investors to raise capital for financing sub-prime automobile loans, but could not explain what happened to those funds. Neither the debtor nor the stockholder held a broker-dealer license or was authorized to sell securities in any state. More than 12 states issued Cease and Desist Orders against Allstate, the stockholder, and other interested parties based on violations of state securities law.

- The Bankruptcy Court for the Northern District of Illinois sustained the Chicago office's objection to confirmation of debtor SHC Corp.'s reorganization plan. Publicly owned SHC and its subsidiaries operated and sold payday loan store franchises. The plan called for an investor group to receive 75 percent of newly issued stock in the reorganized debtor in exchange for a pre-petition loan the group had made to a subsidiary of the debtor. The U.S. Trustee argued the plan's main purpose was to grant a controlling interest in a publicly held corporation without complying with federal securities registration requirements, in violation of 11 U.S.C. § 1129(d).

- The Bankruptcy Court for the Eastern District of Virginia sustained the Alexandria office's objection to payment of a lump-sum cash bonus totaling \$497,868 to 10 employees in the case of ReturnBuy Inc. The debtor sought to give bonuses to the employees for remaining with the company during the bankruptcy, although it had filed a motion to sell virtually all of the company's assets. The U.S. Trustee raised the only objection, arguing the bonuses were inequitable and the pending sale undercut the debtor's argument that the employees were crucial to its continued operations.

- The Bankruptcy Appellate Panel for the Eighth Circuit affirmed the Bankruptcy Court for the Western District of Missouri's order that debtor Farmland Industries Inc., the largest agricultural cooperative in the world, reopen bidding in the sale of a fertilizer warehouse. Over the objection of the debtor, two creditors'

committees, and the debtor's lender, the Kansas City office supported United Agri Products Inc., which received no notice of the debtor's auction and appeared before the bankruptcy court the next day to assert its right of first refusal in the sale of the warehouse. The U.S. Trustee successfully argued before the bankruptcy court that the outcome of the auction was not final until the court approved, and that rebidding the sale would better serve due process and likely benefit the estate financially. On rebidding, the sale price was \$1 million more than the highest offer in the previous auction.

- Ruling for the Eugene office in the case of Troutman Investment Co., the Bankruptcy Court for the District of Oregon struck down a provision in the debtor's proposed order approving the disclosure statement. Under the provision, the debtor and the unsecured creditors' committee sought to modify the state law statute of limitations for certain causes of actions, thus severely limiting the ability of the debtor and third parties to assert claims against numerous parties. The plan confirmation date would become the new date by which all actions must be filed against the debtor's officers and directors, all professionals retained by the debtor pre- and post-petition, and agents of the debtor. The modified statute of limitations would also apply to the debtor's claims against its professionals, including actions for malpractice, negligence, fraud, or criminal conduct. Most entities would receive approximately 30 days notice of the modified limitations period. In striking down the provision, the court found that the disclosure statement process should not be used to modify parties' substantive rights.

"We often visit a Chapter 11 debtor's business location to conduct the Initial Debtor Interview. We also take steps to protect estate assets. In a case filed by an individual who owned a jewelry store, I arrived for the IDI early and took digital pictures of the inventory—jewelry, chess sets, and so forth. A few months later, a Chapter 11 trustee was appointed on our motion. The debtor told the trustee the store had no assets. We emailed the inventory photos to the trustee, who collected the property from the debtor, sold it, and distributed the proceeds to creditors."

*Marilyn Sorensen,
Bankruptcy Analyst,
Santa Ana*

CHAPTER 6

TRUSTEE OVERSIGHT



Photo 1: Richard Wieland; Linda Parks, Chapter 7 Trustee

Photo 2: James Farley; Sonya Payne; Darrel Bender

Photo 3: Rebecca Plesic

Bankruptcy cases in Chapters 7, 12, and 13 are administered by private bankruptcy trustees appointed and supervised by the U.S. Trustee. The private trustee administers assets for the benefit of creditors and has the legal duty to act in the best interest of creditors and the estate.

The U.S. Trustee Program promotes the effectiveness of the bankruptcy system by appointing and supervising private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors. The Program trains trustees and evaluates their overall performance, reviews their financial operations, ensures the effective administration of estate assets, and intervenes to prevent loss of estate assets when embezzlement, mismanagement, or other improper activity is discovered. In such cases, the Program organizes a team of professionals to reconstruct financial records and assist in any civil and criminal enforcement actions.

Chapter 7 Trustees

Trustees administering Chapter 7 cases closed more than 40,000 asset cases during FY 2003, generating \$1.5 billion in funds. This is the largest number of asset cases closed in one year since the Program began keeping these records in 1992.

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Appointment

Chapter 7 trustees are often referred to as “panel trustees” because they are appointed by the U.S. Trustee to a panel in each judicial district. Once the trustees are appointed to the panel, Chapter 7 cases generally are assigned to each

trustee through a blind rotation process to prevent the debtor or debtor’s attorney from “trustee shopping”—attempting to have a case assigned to a particular trustee. The Chapter 7 trustee collects the debtor’s assets that are not exempt from creditors, liquidates them, and distributes the proceeds to creditors.

The U.S. Trustee appoints panel trustees for a one-year renewable term. The qualifications for appointment are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58; additional eligibility requirements and qualifications are set forth in 11 U.S.C. §§ 321 and 322. Panel trustees are not government employees, and many of them have a separate business or profession such as a law or accounting practice. A trustee’s appointment to the panel is conditioned upon the successful completion of a background investigation, and trustees are subject to re-investigation every five years.

The number of Chapter 7 panel trustees has remained relatively constant over the past decade, ranging from a high of 1,294 in 1992 to a low of 1,108 in 1994. As of September 30, 2003, 1,222 trustees served on Chapter 7 panels throughout the United States and its territories (excluding North Carolina and Alabama). Chapter 7 trustees were assigned 1,137,723 cases to administer in FY 2003.

Oversight Duties

In FY 2003 the Program continued to streamline its panel trustee oversight activities, as well as its review for cost- and time-saving opportunities, while retaining effective supervision.

For example, changes in the U.S. Trustee field exam cut in half the average time that U.S. Trustee staff spent performing this oversight function in FY 2003. U.S. Trustee staff alternate with external auditors to perform field exams of Chapter 7 trustee accounting and case administration procedures. As of October 1, 2002, the procedures for the U.S. Trustee field exam were simplified to become more targeted and flexible,

and less time-intensive.

Similarly, changes in the procedure for independent audits of Chapter 7 trustees were made to improve audit quality while potentially reducing costs. Chapter 7 trustees are audited by an independent auditor at least once every eight years, with approximately 150 audits conducted each year. In the past, these audits were performed by the Department of Justice's Office of the Inspector General. In FY 2002, the Program conducted a pilot project under which it contracted with two independent certified public accounting firms to conduct 14 Chapter 7 trustee audits. Based in part on the results of the pilot project, the Program expanded its use of private accounting firms in FY 2003.

In FY 2003, the Program also continued its oversight activities aimed at ensuring the prompt administration of assets and closure of cases. As of October 15, 2003, out of 307,945 open Chapter 7 cases, only 2 percent—6,702 cases—had been open for three or more years.

Chapter 12 and Chapter 13 Trustees

Nationwide, the standing trustees collected almost \$4.5 billion in FY 2003, averaging almost \$24 million per trustee, with the largest trustee operations administering over \$100 million.

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Appointment

Chapter 12 and Chapter 13 cases are filed by debtors who are, respectively, family farmers and individuals with regular income. Chapter 12 and Chapter 13 trustees are called “standing trustees” because, pursuant to statute, they have a standing

appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

Standing trustees are not government employees. The qualifications for appointment as a standing trustee are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58. A standing trustee appointment may result from the departure of a prior trustee or the need for an additional trustee in a geographic area. The appointment of a standing trustee is conditioned upon the successful completion of a background investigation, and standing trustees are subject to re-investigations every five years. During FY 2003, there were 189 Chapter 13 standing trustees and 53 Chapter 12 standing trustees.

Standing trustee operations vary from place to place. For example, some operations cover entire states, while others handle cases in a single metropolitan area; staff sizes range from two employees to 48. Differences are often the result of caseloads or the need to provide service in large geographic areas.

Oversight Duties

The Program is responsible for maintaining the integrity of the bankruptcy system, and thus its standing trustee oversight activities emphasize the control of trust funds as well as the administration of cases.

Given the volume of money that flows through a standing trustee operation, the Program ensures that trust funds are adequately protected from theft and from incorrect disbursement caused by inadequate or faulty procedures. The Program uses several mechanisms to review case administration, financial controls, and other

aspects of trust activity.

Chapter 13 trustees are audited annually by independent auditing firms; Chapter 12 trustees, who administer a significantly lower volume of receipts, are audited every three years. These audits cover not only financial issues but also management issues such as compliance with Program policies and internal processes. Program staff work with standing trustees to resolve deficiencies disclosed in the audits. During FY 2003, audits were conducted on all Chapter 13 trustees.

In addition to being audited, the standing trustees are periodically evaluated on several key areas and provided with a written evaluation report. All Chapter 13 trustees were evaluated in FY 2003.

Moreover, local Program staff visit trustee offices to review and report upon case administration and financial controls. In addition, in special circumstances the Program may send a team of attorneys and analysts with expertise in Chapter 13 oversight to review a standing trustee's practices and procedures and make recommendations. Two such reviews were conducted in FY 2003.

The principles set forth in the Standing Trustee Pledge of Excellence, adopted by the standing trustees in FY 2002, continue to guide the standing trustees in the administration of cases. The principles identify core themes in terms of a Chapter 13 trustee's commitment to service. They make clear that the standing trustees agree to provide creditors, debtors, attorneys, judges, and others with service that adheres to the highest standards of professional, moral, and ethical conduct.

Computer Security

In FY 2003, after nearly two years of planning and study, the National Association of Chapter Thirteen Trustees (NACTT), with the assistance of the Program, launched a new information technology security initiative, the Standing Trustee

Alliance for Computer Security or STACS. STACS is run by an independent contractor selected by NACTT after a competitive bid process.

STACS features include annual security assessments of all information technology services, including Internet and telecommunications services; security awareness training and materials; assistance with implementation and maintenance of security tools such as firewalls and intrusion detection systems; computer virus noticing and remedies; and a unique set of best practices for the standing trustees.

Trustee Training


In FY 2003 the Program developed and conducted its first national training sessions for private trustees.

The Program developed and conducted its first national training sessions for private trustees.

For many years, the Program has conducted and participated in local and regional training sessions and has helped establish mentoring relationships between experienced and "newer" trustees. Program staff regularly coordinate with the trustees' professional organizations, such as the National Association of Bankruptcy Trustees and NACTT, to provide programs with a national perspective during their conferences.

For the first time, however, the Program also presented a training session for newer Chapter 13 trustees at the National Bankruptcy Training Institute, which is located at the National Advocacy Center, a Department of Justice training facility on the campus of the University of South Carolina in Columbia, S.C.

The training session was designed to help newer Chapter 13 trustees better understand their responsibilities, how to carry out those



responsibilities, and the standard of performance to which they will be held. It provided a forum for newer trustees to learn from the experiences of seasoned trustees, while sharing their own experiences and posing questions and concerns. Taking into account the various roles fulfilled by the Chapter 13 trustee—including fiduciary, business person, purchasing agent, disbursing agent, manager, and legal reviewer—the agenda offered sessions on case administration, including case set-up, claims administration, and case monitoring and closing; office administration, including personnel issues and the trustee’s roles as manager and fiduciary; internal controls; civil and criminal enforcement; emerging issues in Chapter 13; and the standing trustee standards of excellence.

In addition to conducting the first national training for newer Chapter 13 trustees, the Program began planning a national training session for newer Chapter 7 trustees, to be held in FY 2004.

CHAPTER 7

TRAINING AND OUTREACH



Photo 1: Stephen Goldring; Walter Theus

Photo 2: Ernest F. Hollings National Advocacy Center, Columbia, S.C.

Photo 3: Keith Manikowski; Anthony Ciccone; Debera Conlon; Donald Walton

National Bankruptcy Training Institute

Employee training sessions are held at the National Bankruptcy Training Institute, where the Program offers a full range of courses to enhance professional, technical, and management skills. The Institute, which opened in February 1999, is a part of the National Advocacy Center (NAC) located on the campus of the University of South Carolina in Columbia. The NAC, which is a cooperative partnership of the U.S. Attorney's Office of Legal Education, the Institute, and the National District Attorneys Association, offers training to federal, state, and local prosecutors and their staffs. Its state-of-the-art training facilities include five lecture halls, multi-purpose assembly and class rooms, mock trial court rooms, five computer labs, a video production studio, and other specialized spaces.

Employee training sessions are held at the National Bankruptcy Training Institute, where the Program offers a full range of courses to enhance professional, technical, and management skills.

The Institute offers courses for all Program employees, including secretaries, legal clerks, legal data technicians, case management specialists, computer specialists, standing trustee coordinators, paralegals, administrative assistants, financial analysts, and attorneys. During FY 2003, the Institute hosted more than 600 attendees at 13 training courses. It continued to provide civil enforcement training courses developed during the previous year and introduced several new courses to enhance participants' litigation skills, including courses on Litigation Support, Civil Trial Practice, and Oral and Written Communications.

These employee training sessions were offered at the Institute in FY 2003:

- Civil Enforcement
- Advanced Civil Enforcement

- Support Staff Development
- Negotiation Skills
- Administrative Officers Conference
- Case Manager/Computer Specialists Conference
- Oral and Written Communications Seminar
- Attorney Management Training
- Basic Business Finance
- Civil Trial Practice
- Litigation Support Training

In addition, the Institute expanded its training programs in FY 2003 to include its first course for non-Program personnel—the three-day seminar for recently appointed Chapter 13 trustees, designed to enhance their skill levels, promote uniform standards, and supplement training on civil and criminal enforcement. Attendees included recently appointed trustees, experienced Chapter 13 trustees, and Program staff involved in Chapter 13 supervision. The seminar allowed Program employees and Chapter 13 trustees not only to train together, but also to become acquainted and develop a greater appreciation of one another's responsibilities.

Further, the Institute sponsored its first bankruptcy symposium, where experts discussed claims trading in Chapter 11 and Chapter 13 cases. Symposium participants included bankruptcy judges, standing and panel trustees, creditors, bankruptcy practitioners, and Program personnel.

Public Outreach

In addition to its various training activities at the NAC, the Program engages in training and public outreach to inform and educate about the bankruptcy system, Program activities, and consumer issues.



“We have seen a significant number of bankruptcy debtors who made bad consumer decisions or were taken advantage of by scam operators, so we decided to be proactive and provide education on consumer rights and responsibilities. Luckily, there are numerous government agencies and non-profit groups that produce excellent printed materials for free distribution. The Black Business Expo is our largest venue, and we have been fortunate to attract thousands of people who express sincere appreciation for the materials. It’s exciting to help people find their way to accurate information that will help them make wise decisions.”

Linda Bailey, Trial Attorney, Los Angeles

In addition to its various training activities at the National Advocacy Center, the Program engages in training and public outreach to inform and educate about the bankruptcy system, Program activities, and consumer issues.

Events and Public Appearances

The Program provides information about bankruptcy-related civil and criminal enforcement by, for example, presenting educational programs for law enforcement personnel. The Program also engages in public outreach to inform and educate citizens. U.S. Trustees and Program staff are often invited by bar associations, professional organizations, law schools, other government agencies, and other groups to speak about the bankruptcy system and the Program’s activities. In addition, Program employees attend job fairs to talk about employment opportunities in the bankruptcy system—not only within the Program, but also as private trustees, bankruptcy attorneys, accountants, auctioneers, real estate appraisers, and related professionals.

Examples of the Program’s training and outreach activities in FY 2003 include the following:

- The Los Angeles office participated in the 15th Annual Black Business Expo and Trade Show at the Los Angeles Convention Center by distributing pamphlets, brochures, and booklets on a variety of consumer education subjects to thousands of attendees. The materials included educational literature from federal and state governmental agencies and nonprofit consumer organizations on consumer issues such as credit reports, insurance, pension rights, and financial literacy education. Many school teachers, junior college professors, speakers, and organization leaders picked up materials to facilitate discussions with their groups and students.

- Attorneys from the Philadelphia office spoke to lawyers and paralegals at the Department of Housing and Urban Development on the fundamentals of bankruptcy and the intersection of bankruptcy with HUD matters.

- Officials from Thailand’s Ministry of Justice visited the Houston office as part of an International Visitor project sponsored by the State Department. Topics of discussion included bankruptcy administration, the mission and responsibilities of the U.S. Trustee Program, civil and criminal enforcement, trustee supervision, and Chapter 11 reorganization and fee review.

- The Albany and Brooklyn offices participated in an all-day program on “Bankruptcy Law for State Government Attorneys” coordinated by the New York Office of the Attorney General.

- The Shreveport office hosted two seminars on the Soldiers’ and Sailors’ Civil Relief Act and its impact upon bankruptcy debtors and creditors.

- The Cleveland office hosted the Senior Judge and Chief Judge of the Sichuan Provincial High People’s Court of the People’s Republic of China. U.S. Trustee personnel provided an overview of bankruptcy law and bankruptcy court proceedings to the senior judge, who was participating in the State Department’s International Visitor Program.

- The Sioux Falls office and a North Dakota Chapter 7 trustee conducted four seminars for bankruptcy attorneys and their paralegal staff in Fargo, Grand Forks, Minot, and Bismarck, N.D. The training, which focused on basic bankruptcy procedures, was designed to help bankruptcy practitioners file more complete and accurate schedules and statements for their clients.

- An attorney from the Sacramento office received a commendation from the U.S. Department of Labor for her discovery that a debtor’s employee savings matching program was not fully funded although funds were withheld from



DONNA TAMANAHA

employees' paychecks. Her referral and assistance led to criminal charges against the plan administrator, who ultimately pleaded guilty. The Sacramento office participates in Labor's REACT program, under which all business debtors are questioned about their employee benefit plans.

Web Site

The Program's web site at www.usdoj.gov/ust makes a wealth of information easily accessible to bankruptcy practitioners, consumers, the media, and other site visitors. The site's contents include: contact information for every Program office and every private Chapter 7, 12, and 13 trustee; links to U.S. Trustee regional web sites, which contain information on local procedures and issues; a library of bankruptcy-related articles written by Program staff; press releases and fact sheets; Program manuals, handbooks, forms, and similar materials; and regulations promulgated by the Program, as well as administrative rulings issued under those regulations.

The Program's web site at www.usdoj.gov/ust makes information easily accessible to bankruptcy practitioners, consumers, the media, and other site visitors.

Articles

To increase public understanding about bankruptcy and the U.S. Trustees' responsibilities and policies, the Program serves as a resource for media inquiries about bankruptcy and publishes regular columns in several publications. Program employees also write articles for bar association journals, accountancy journals, and other professional publications.

"While the Labor Department gave me a commendation, I was just as grateful to its employees for their outreach and assistance. Attorney Merry Adams and her colleagues had given a presentation about the REACT program, explaining labor law violations and their impact on the bankruptcy system. When I contacted her about this case, Merry provided assistance such as attending a Section 341 meeting and questioning the debtor. By combining her expertise in pension law with my knowledge of bankruptcy law, we were able to obtain favorable results that included restoring the plan participants' pension rights."

Donna Tamanaha, Trial Attorney, Sacramento

CHAPTER 8

INFORMATION TECHNOLOGY AND DATA COLLECTION



Photo 1: Terri Bevan; Mike Waite; Jack Kuhn; Keith Manikowski

Photo 2: Front to back: Terry Hayes; Diane Coffman; Carol Porter; LaDonna Ralph; LaSharion McClellan; Sandra Nixon; Monique Bourque; Keith Manikowski; David Matras; David Hastings; Linda Johnson

The sustained growth in bankruptcy case filings, the federal court system's migration to electronic case filing, and the Program's increased focus upon civil and criminal enforcement require continued enhancement of information technology systems. During FY 2003, the Program proceeded with modernizing its automated case management system and completed the nationwide rollout of its Significant Accomplishments Reporting System, while launching several new automation efforts. The Program also maintained the automated systems it uses to perform core functions that include managing more than one million new cases each year, supervising private trustees, appearing as a party in court, and collecting statutorily imposed fees.

The sustained growth in bankruptcy case filings, the federal court system's migration to electronic case filing, and the Program's increased focus upon civil and criminal enforcement require continued enhancement of information technology systems.

Significant Accomplishments Reporting System

Starting in FY 2001, U.S. Trustees were asked to report the significant accomplishments of each of their offices in order to enable the Program to aggregate its accomplishments, identify trends and best practices, and measure its success in key areas of civil enforcement, criminal enforcement, case administration, and special litigation activities. Significant accomplishments reporting reflects the Justice Department's emphasis on performance-based management and budgeting, and helps Program managers allocate resources and devise strategies to address local problems. It also stresses the importance of accountability at all levels and provides a vehicle for managers to

measure and reward success. Moreover, the information obtained through significant accomplishments reporting enhances the Program's ability to report regularly and accurately to Congress and to the Department.

During FY 2002, the Significant Accomplishments Reporting System was transformed from a manual reporting system to an automated web browser-based system designed to simplify data entry and streamline data collection. This system allows staff to record enforcement actions in a standard format as they occur; allows managers to track case status and adjust enforcement priorities as appropriate; and allows the Program to run various new statistical reports. The automated system was pilot-tested in six Program offices in FY 2002, and rolled out nationwide in FY 2003.

Much of the information contained in this annual report is derived from the Significant Accomplishments Reporting System. As such, the annual report reflects a snapshot in time and therefore not all figures may balance. For example, the numbers of motions filed and motions decided in a given period may not match because some cases remain pending.

Automated Case Management System

The Program's work has long been supported by a decentralized case management system called the Automated Case Management System (ACMS), designed to support the U.S. Trustees' role in managing bankruptcy cases and monitoring the work of private trustees. In FY 2001, the Program began modernizing ACMS to improve user access, integrate multiple data bases, and meet the long-term goal of a centralized computing system.

The first step in this process involved rewriting the original code to allow ACMS data to be combined with information in other data bases and applications. In FY 2003, the Program proceeded with the next step in the ACMS modern-



“I help review the data collected by the Program’s field offices to ensure that our semi-annual reports on civil enforcement activity are complete and accurate. We are continually making technical improvements and refining our protocols so our data collection system is user-friendly and meaningful.”

*Dan Casamatta,
Assistant U.S. Trustee,
Grand Rapids*

ization by copying or “replicating” daily data from three pilot regions to a central data base. Once all regions are replicating daily, the Program will have a central data base of all ACMS data.

Electronic Case Filing

Over the past several years, the federal courts have moved toward the use of an Internet-based electronic case filing system (ECF or e-filing) for the electronic submission of documents to, from, and within the courts. The bankruptcy courts are at the forefront of this move. By the end of FY 2003, 19 more bankruptcy courts had implemented ECF, for a total of 57 out of 94.

ECF offers many advantages, including the ability of parties to file pleadings and retrieve electronically filed documents from any location at any time. Further, ECF reduces the delay between the time a document is electronically filed with the court and the time it is available to the public for review.

Nevertheless, ECF also creates some difficulties that Department and Program officials continue to address. For example, because of the large volume of bankruptcy filings, Program offices must manage thousands of e-mail messages they receive as a result of electronic service. Other issues include the use of electronic signatures and authentication of documents, e-fraud, privacy concerns, and new case management and archiving techniques. The Program also faces new costs for its basic operations, including court-imposed access fees, and costs for required software and hardware such as scanners, personal computers, and printers.

In FY 2003, senior Program officials continued to work with representatives of the Department and the Judiciary to address these matters and recommend policy changes. In addition, technical Program personnel met regularly with an ECF technical group from the Administrative Office of the U.S. Courts and participated in an

ECF working group within the Department. The technical group devised a procedure that streamlines the daily exchange of case management data between the courts and the Program. A long-term goal of the Program is to enhance the data exchange process with the courts by developing national standards for “data enabling” portable document format (PDF) documents. To that end, during FY 2003 the Program continued to research and test data tags that can be embedded within a PDF document before it is filed with the court, so data can be easily located and extracted later.

Criminal Enforcement Tracking System

In FY 2003, the Program developed a prototype Criminal Enforcement Tracking System (CETS) to track preliminary allegations, the Program’s criminal referrals, and the Program’s assistance in investigations by law enforcement agencies. CETS allows a user to initiate a file on a preliminary allegation or assistance with an investigation; enter basic information concerning the allegation or assistance; enter actions and events such as referral, assignment of case number, indictment, disposition, and sentencing; and record comments.

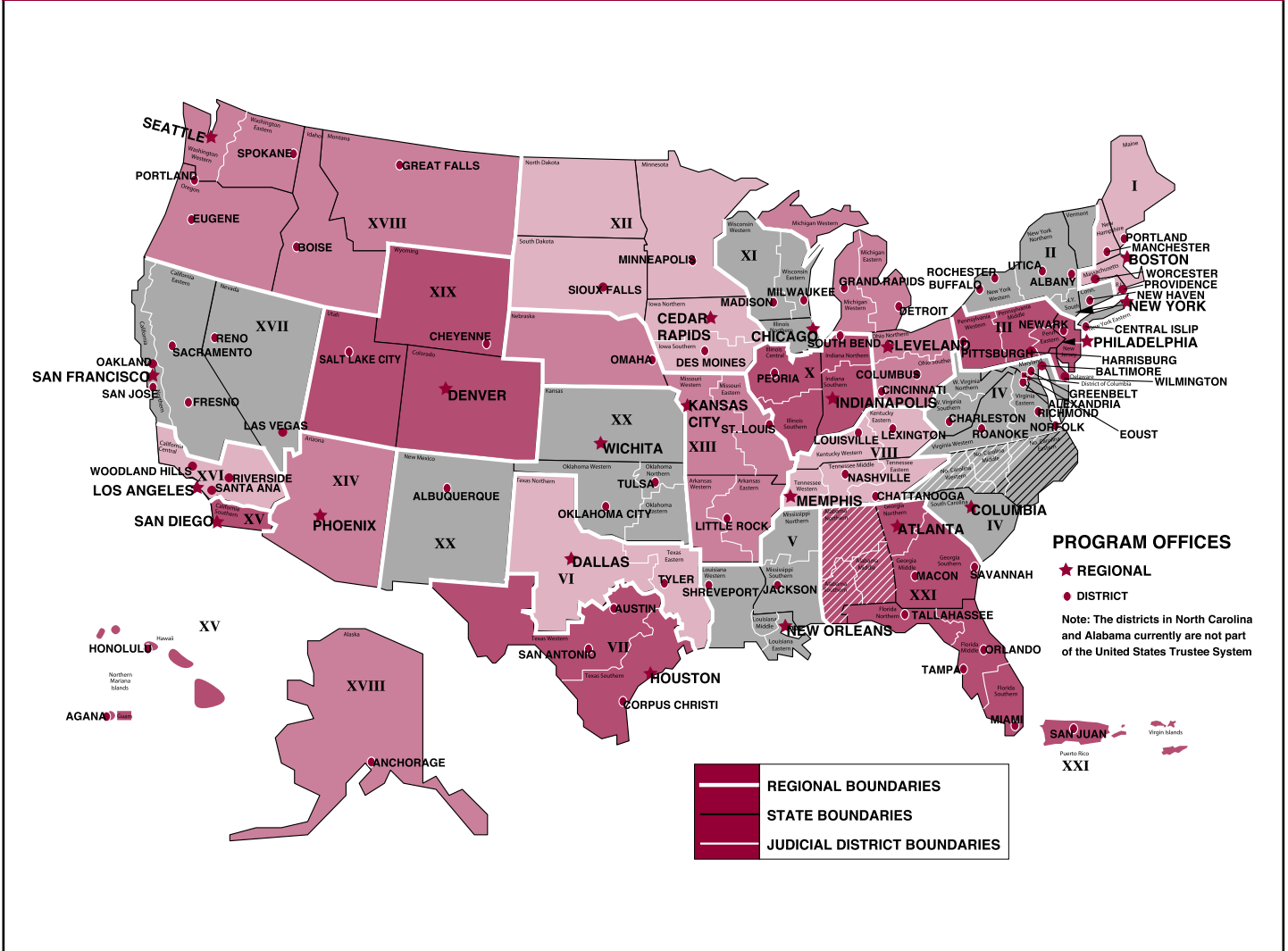
In FY 2003, the Program developed a prototype Criminal Enforcement Tracking System (CETS) to track preliminary allegations, the Program’s criminal referrals, and the Program’s assistance in investigations by law enforcement agencies.

CETS will help the Program track criminal enforcement efforts and provide more accurate and timely information to the Justice Department, Congress, and others concerned about the investigation and prosecution of bankruptcy fraud.

CHAPTER 9

APPENDIX

United States Trustee Program Map of Regions and Offices



Please visit our web site
at www.usdoj.gov/ust
for office phone numbers
and addresses.

U.S. Trustee Program Nationwide Office Locator

Executive Office for U.S. Trustees Washington, D.C.	HAWAII Honolulu	MISSOURI Kansas City St. Louis	PUERTO RICO San Juan
<u>Regional and Field Offices (BY STATE)</u>	IDAHO Boise	MONTANA Great Falls	RHODE ISLAND Providence
Alaska Anchorage	ILLINOIS Chicago Peoria	NEBRASKA Omaha	SOUTH CAROLINA Columbia
Arizona Phoenix	INDIANA Indianapolis South Bend	NEVADA Las Vegas Reno	SOUTH DAKOTA Sioux Falls
Arkansas Little Rock	IOWA Cedar Rapids Des Moines	NEW HAMPSHIRE Manchester	TENNESSEE Chattanooga Memphis Nashville
CALIFORNIA Fresno Los Angeles Oakland Riverside Sacramento San Diego San Francisco San Jose Santa Ana Woodland Hills	KANSAS Wichita	NEW JERSEY Newark	TEXAS Austin Corpus Christi Dallas Houston San Antonio Tyler
COLORADO Denver	KENTUCKY Lexington Louisville	NEW MEXICO Albuquerque	UTAH Salt Lake City
CONNECTICUT New Haven	LOUISIANA New Orleans Shreveport	NEW YORK Albany Brooklyn Buffalo Central Islip New York City Rochester Utica	VIRGINIA Alexandria Norfolk Richmond Roanoke
DELAWARE Wilmington	MAINE Portland	OHIO Cincinnati Cleveland Columbus	WASHINGTON Seattle Spokane
FLORIDA Miami Orlando Tallahassee Tampa	MARYLAND Baltimore Greenbelt	OKLAHOMA Oklahoma City Tulsa	WEST VIRGINIA Charleston
GEORGIA Atlanta Macon Savannah	MASSACHUSETTS Boston Worcester	OREGON Eugene Portland	WISCONSIN Madison Milwaukee
	MICHIGAN Detroit Grand Rapids	PENNSYLVANIA Harrisburg Philadelphia Pittsburgh	WYOMING Cheyenne
	MINNESOTA Minneapolis		
	MISSISSIPPI Jackson		

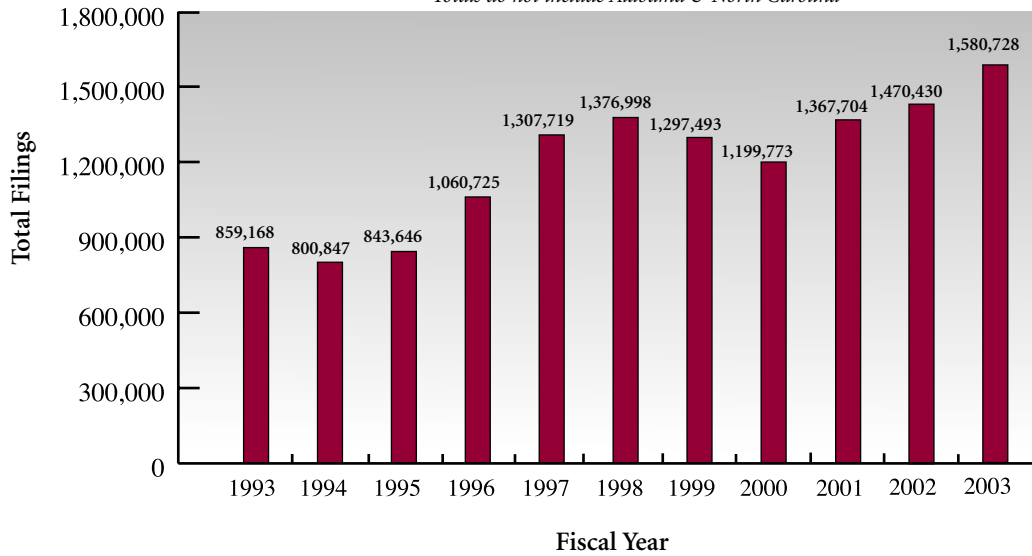
U.S. Trustee Program Civil Enforcement Actions—Fiscal Year 2003

Type of Action	Number of Inquiries and Formal Actions	Estimated Financial Impact
11 U.S.C. § 707(a) Dismissal for Cause	9,173	N/A
11 U.S.C. § 707(b) Dismissal for Substantial Abuse	26,219	\$192,542,212
11 U.S.C. § 727 Denial or Revocation of Discharge	3,303	\$406,111,718
11 U.S.C. § 110 Actions Against Bankruptcy Petition Preparers	3,245	\$641,073
11 U.S.C. § 329 Disgorgement of Attorneys' Fees	2,163	\$4,781,574
11 U.S.C. § 1104 Appointment of Trustee or Examiner	300	N/A
Actions for Attorney Misconduct	785	N/A
Total	45,188	\$604,076,577

Total Bankruptcy Filings Nationwide

Fiscal Years 1993-2003

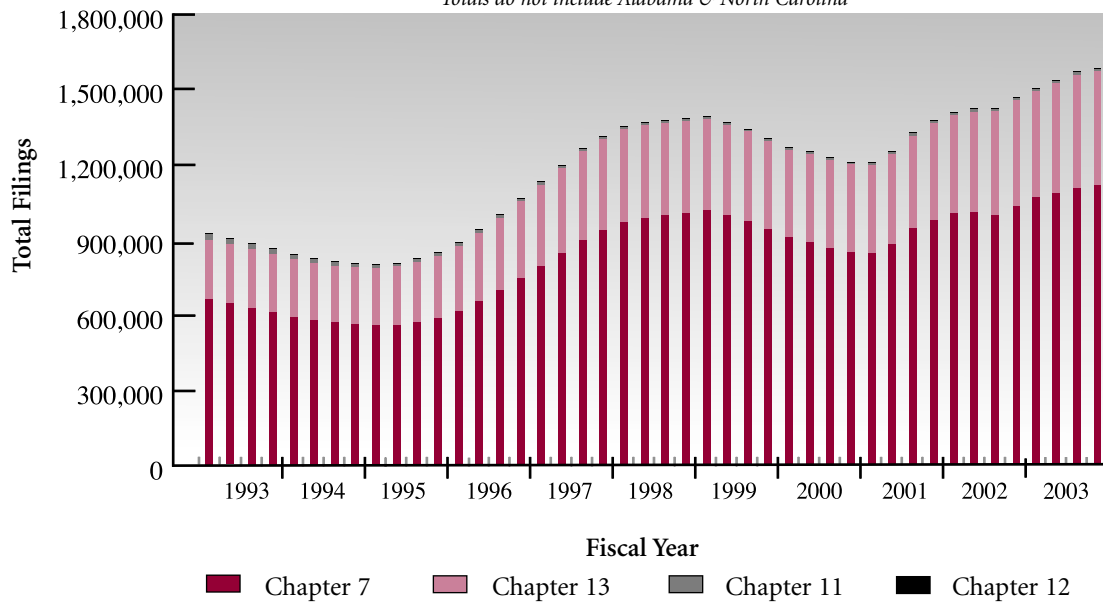
Totals do not include Alabama & North Carolina



Total Bankruptcy Filings by Chapter

Fiscal Years 1993-2003

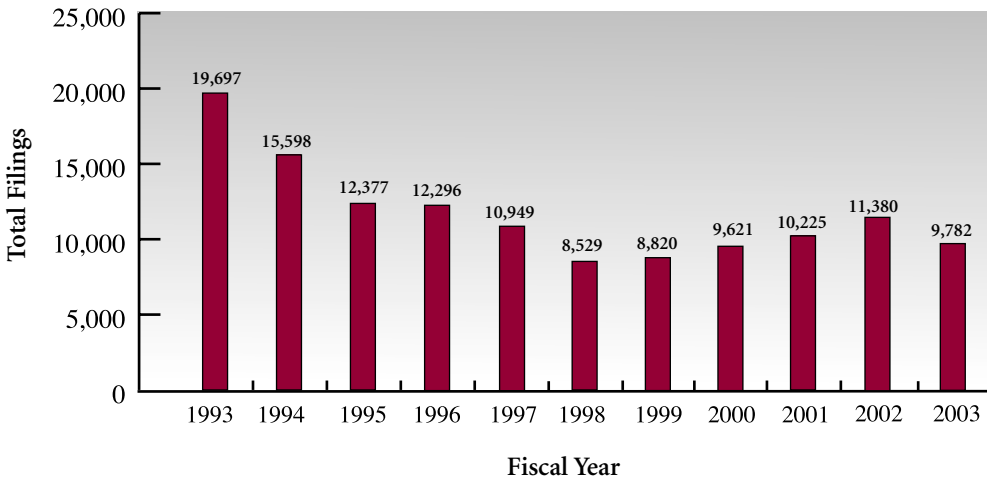
Totals do not include Alabama & North Carolina



Chapter 11 Filings Nationwide

Fiscal Years 1993-2003

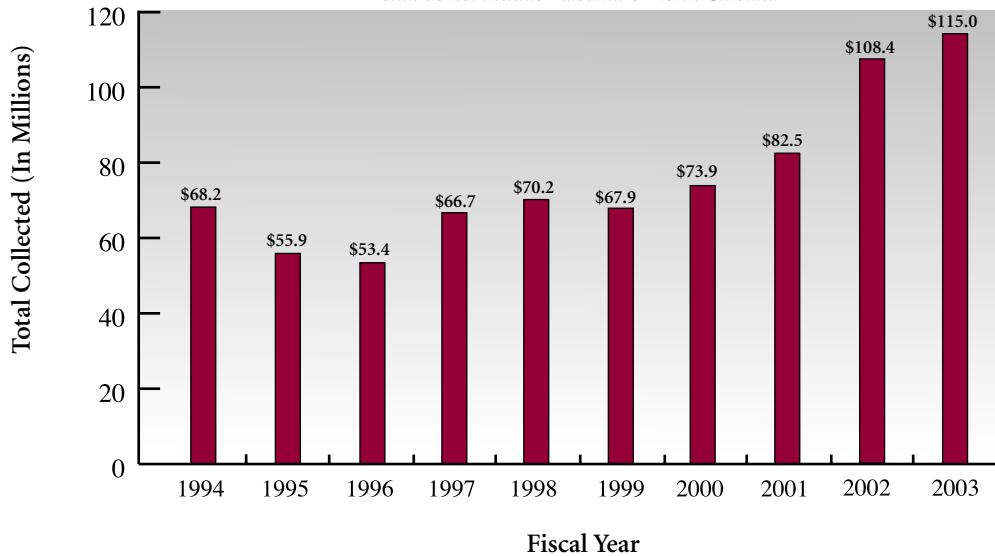
Totals do not include Alabama & North Carolina



Chapter 11 Quarterly Fee Collections

Total Collected Fiscal Years 1994-2003

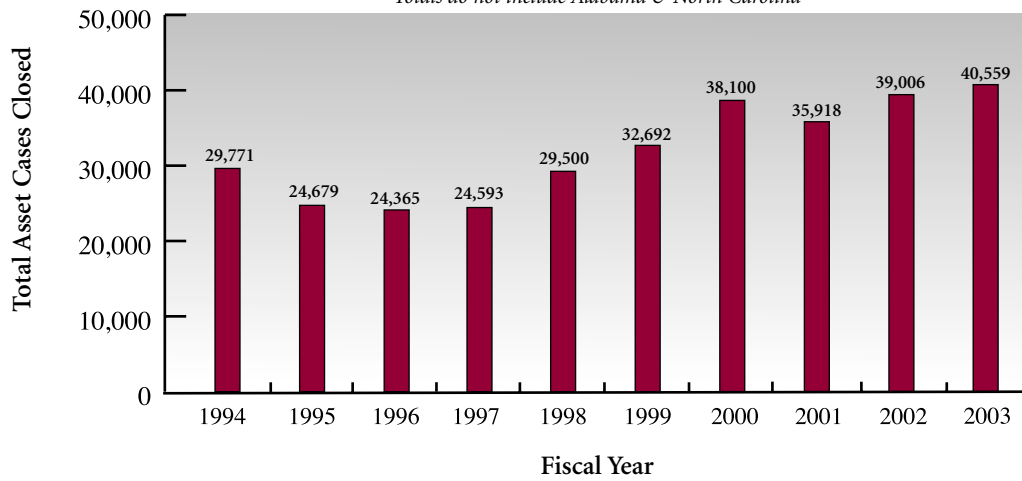
Totals do not include Alabama & North Carolina



Chapter 7 Asset Cases Closed

Fiscal Years 1994-2003

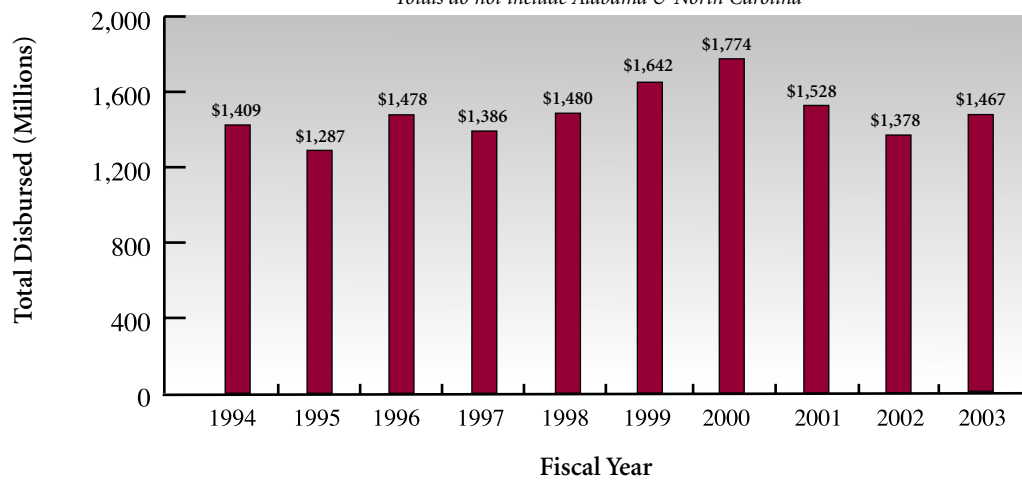
Totals do not include Alabama & North Carolina



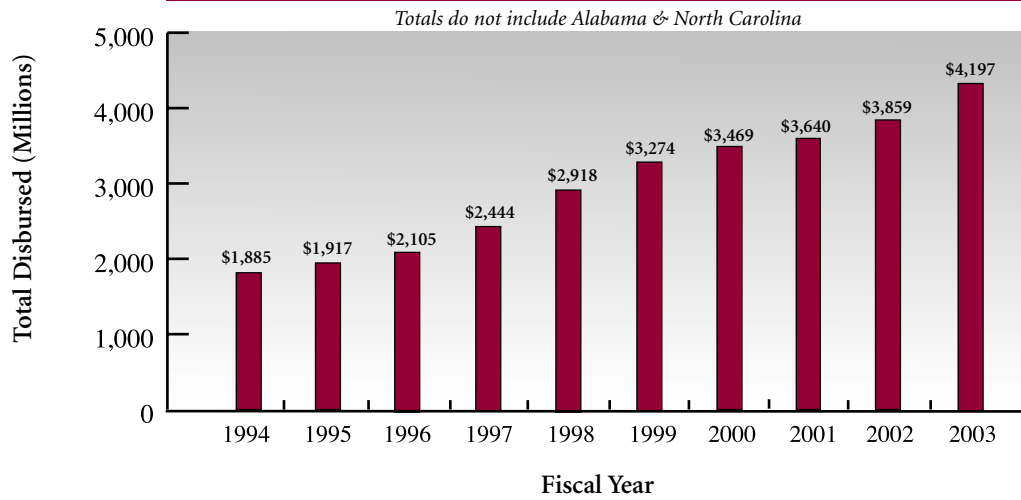
Chapter 7 Cases - Total Disbursements

Fiscal Years 1994-2003

Totals do not include Alabama & North Carolina

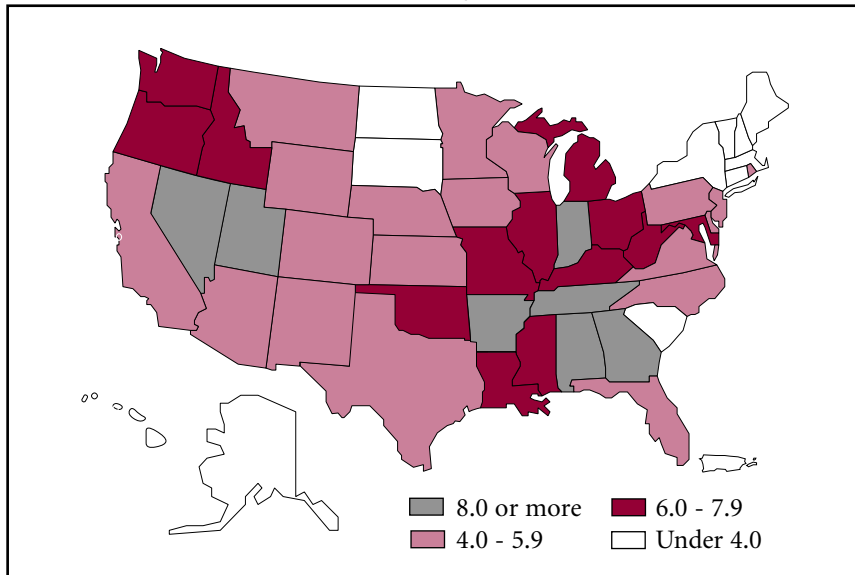


Chapter 13 Cases - Total Disbursements Fiscal Years 1994-2003

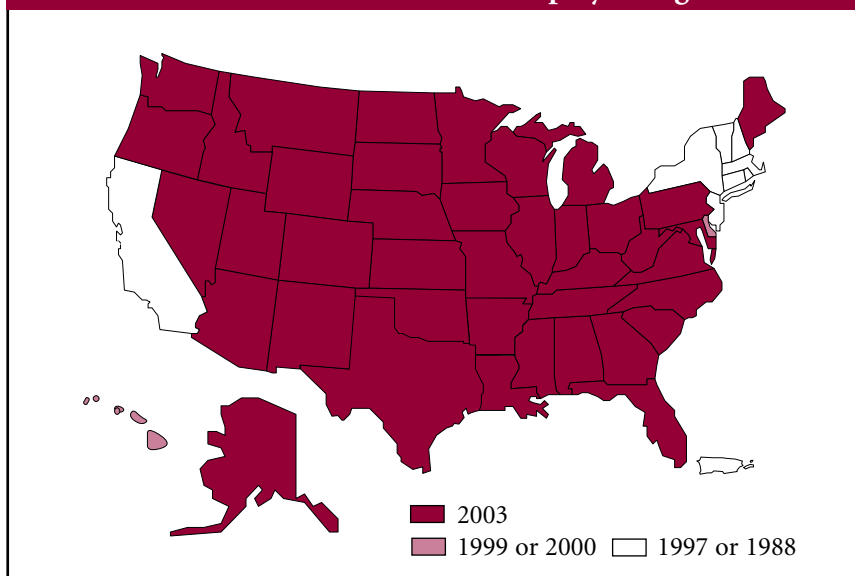


Bankruptcy Filings Relative to Population (Cases Filed Per 1,000 Population Fiscal Year 2003)

National Average = 5.64



Peak Fiscal Years for Bankruptcy Filings



Standing Trustee Pledge of Excellence

Standing Trustees are committed to excellence and to providing a high level of trust and service to chapter 13 debtors and creditors. Creditors, debtors, attorneys, judges and others who come into contact with Standing Trustees are entitled to service which adheres to the highest standards of professional, moral and ethical conduct.

1. The trustee's office should be open and operating Monday through Friday during regular business hours.
2. The trustee should have a system in place to promptly respond in a meaningful manner to inquiries from debtors, creditors, attorneys, and other interested parties.
3. If the trustee is not personally available, the trustee should have competent staff available to assist or to respond to inquiries.
4. The trustee should work to ensure that debtors comply with their obligations under the Bankruptcy Code and Rules.
5. The trustee should work to ensure that debtors comply with the provisions of their plan and should take appropriate action if the debtor fails to commence plan payments when required or if there is a subsequent default in plan performance.
6. The trustee should maintain a system which efficiently tracks the progress and the receipts and disbursements in every chapter 13 case, from the time it is filed until the case is closed.
7. The trustee should have a system to timely and accurately record all receipts and disbursements on the appropriate debtor ledger.
8. The trustee should disburse plan payments to creditors on a monthly basis, and should have procedures in place to properly classify and pay creditors' claims and to detect and recover any erroneous payments.
9. The trustee should ensure that all trust account ledgers and accounts are balanced on a monthly basis and should have a procedure to regularly review all cases with significantly large balances on hand or other fund irregularities.
10. The trustee should maintain a reasonably comprehensive system of internal controls over accounting and office operations, both paper and electronic, to safeguard estate assets and trust funds.