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U.S. TRUSTEE PROGRAM LAUNCHES BANKRUPTCY CIVIL ENFORCEMENT INITIATIVE

WASHINGTON, D.C.--The United States Trustee Program has launched an initiative to more aggressively use existing civil enforcement methods to curb abuse of the bankruptcy system, Martha Davis, Acting Director of the Executive Office for United States Trustees, announced today.

“Effective case administration is vital to ensure the American public that the bankruptcy system provides relief for honest but unfortunate debtors overcome by serious financial difficulties,” Davis stated. “The Civil Enforcement Initiative emanates from the U.S. Trustee Program’s long-standing commitment to enforce the Nation’s bankruptcy laws and explore other meaningful strategies to bolster public confidence in the integrity and effectiveness of the bankruptcy system.”

“The priorities of the initiative will require a concerted effort nationwide to use existing tools in a way that best accomplishes tangible results and improvements for case administration,” Davis continued. “Many of our offices use such strategies today and we hope to build upon their experience. By focusing our resources on these priorities, we also seek to address some of the concerns that have been at the forefront of debate in recent years both before Congress and in other public venues. In the end, this is very much a community effort that will require communication and cooperation with private bankruptcy trustees and with the bankruptcy bench and bar.”

These are the priorities of the Civil Enforcement Initiative:

- **Ensuring that Chapter 7 is not abused and that Chapter 7 debtors are held accountable.** Chapter 7 debtors who do not comply with the law will have their cases converted or dismissed, or their bankruptcy discharges denied or revoked. Enforcement measures include motions to dismiss Chapter 7 cases under 11

U.S.C. §§ 707(a) and 707(b), and complaints to bar or defer discharge under 11 U.S.C. § 727.

- **Protecting consumer debtors, creditors, and others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process.** Attorneys and bankruptcy petition preparers (non-attorneys who prepare bankruptcy documents for a fee) must engage in full disclosure, be free of conflicts of interest, and engage in ethical practices. Enforcement measures include motions for sanctions, contempt of court, and disgorgement under 11 U.S.C. § 329 for misconduct by attorneys, and complaints and motions under 11 U.S.C. § 110 for misconduct by bankruptcy petition preparers.
- **Ensuring that Chapter 11 debtors proceed with their cases promptly, and are informed of and held to account for their obligations under the Bankruptcy Code.** Enforcement measures include Initial Debtor Interviews and motions to convert or dismiss Chapter 11 cases under 11 U.S.C. § 1112.
- **Fighting fraud and abuse by making criminal referrals and assisting United States Attorneys in criminal prosecutions.**

The U.S. Trustee Program is a component of the Justice Department that oversees the administration of bankruptcy cases and intervenes in court to enforce the bankruptcy laws. There are 21 regions in the Program, each headed by a U.S. Trustee appointed by the Attorney General.

The Civil Enforcement Initiative took effect Oct. 1, 2001, with the start of the federal government's 2002 fiscal year. Previous U.S. Trustee Program initiatives have focused on issues such as enhancing the supervision of private trustees who administer Chapter 7 bankruptcy cases, increasing the efficiency and speed of Chapter 7 case administration, and increasing the efficiency and speed of Chapter 11 case administration.

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Civil Enforcement Initiative: **Case Examples**

Here are some examples of civil enforcement actions by the U.S. Trustee Program:

Bankruptcy Petition Preparers –A bankruptcy petition preparer is a non-attorney who, for compensation, prepares bankruptcy documents for filing with the Bankruptcy Court. The conduct of BPPs is governed by 11 U.S.C. §110, which provides penalties for fraudulent acts and is enforced by the U.S. Trustee.

- Five defendants in a complaint filed by the U.S. Trustee in the Middle District of Pennsylvania agreed to a consent decree and order providing for entry of a \$300,000 judgment and permanently enjoining them from acting as bankruptcy petition preparers. The defendants operated a foreclosure scam. They solicited persons who were facing foreclosure, offering to provide assistance in delaying foreclosure and obtaining refinancing, for an initial payment of \$1,000 and additional monthly payments of \$300 to \$700. In reality, the defendants frequently coached clients in the preparation and filing of pro se bankruptcy petitions as a tool to delay foreclosure. The clients failed to file the additional disclosures to the court that are required by law, and their bankruptcy petitions were dismissed.
- The Bankruptcy Court for the Central District of California approved a settlement between a bankruptcy petition preparer and the U.S. Trustee, under which the BPP agreed to sanctions of \$29,000 and a permanent injunction against operating anywhere in the country. The U.S. Trustee alleged that in at least 35 cases the BPP misled clients into believing they were being represented by attorneys by using the names of licensed attorneys without their knowledge or consent.
- The U.S. Trustee instituted civil enforcement actions against a bankruptcy petition preparer who committed perjury before the Bankruptcy Court for the Eastern District of Virginia. In addition to obtaining a disgorgement order and other civil relief, the U.S. Trustee referred the matter to the U.S. Attorney, who prosecuted the BPP on criminal charges. The BPP ultimately pleaded guilty to perjury, mail fraud, wire fraud, and bankruptcy fraud for actions that included: fraudulently obtaining \$19,000 in funds wired from a New York couple seeking his help in saving their home from foreclosure; advising a debtor to overstate income and understate debts in a bankruptcy filing; and misrepresenting himself as an attorney to collect a fee.

Attorney Misconduct-- Sanctions against attorneys include fines, contempt of court orders, temporary suspension from practice, and disbarment.

- The Colorado Supreme Court disbarred an attorney in a consolidated disciplinary proceeding involving five separate claims, 14 different client matters, and a finding of 49 individual rules violations. The U.S. Trustee filed the grievance upon which three of the five claims and 13 of the rules violations were premised. The violations included the failure to file a client's bankruptcy case after receiving

payment from the client, and the failure to adequately represent clients after filing their cases.

- The Texas Commission for Lawyer Discipline ordered the interim suspension of a bankruptcy attorney, based in part upon evidence provided by the U.S. Trustee showing that the attorney made unauthorized charges on clients' credit card accounts and used debtors' vehicles that were intended to be surrendered to secured creditors.
- The Bankruptcy Court for the Eastern District of Louisiana granted the U.S. Trustee's motion to hold an attorney in contempt of court for failure to file required documentation and failure to appear on behalf of clients at statutorily mandated meetings of creditors and bankruptcy court hearings.

Denial of Discharge under 11 U.S.C. §727 –Section 727 states the grounds upon which the Bankruptcy Court shall completely deny a debtor's Chapter 7 discharge.

- The Bankruptcy Court for the Northern District of Georgia denied a Chapter 7 debtor's discharge of more than \$834,570, based on the U.S. Trustee's complaint. The debtor and his corporation failed to disclose on their bankruptcy schedules the pre-bankruptcy sale of vending machines and accounts, and the pre- and post-bankruptcy receipt of payments for the machines and accounts. The debtor also denied under oath that the vending machines and accounts had been sold.
- The Bankruptcy Court for the Eastern District of Virginia revoked a debtor's Chapter 7 discharge based on the U.S. Trustee's complaint alleging that he had removed around \$28,000 from his company's bank account while the company was in bankruptcy, and had failed to report that action along with other required information. The Bankruptcy Court found that the debtor had obtained his personal bankruptcy discharge by committing fraud.
- Based on the U.S. Trustee's filing, the Bankruptcy Court for the Central District of California denied a Chapter 7 discharge where the debtor knowingly and fraudulently listed another person's Social Security number on his bankruptcy petition. The debtor also stated at the meeting of creditors that the information on his bankruptcy petition was correct and that he had two Social Security numbers.

Motions to Dismiss a Case for "Substantial Abuse" under 11 U.S.C. §707(b)– Section 707(b) permits the Bankruptcy Court to dismiss a Chapter 7 consumer case, or to convert the case to a Chapter 13 repayment case, if granting Chapter 7 relief would be a substantial abuse of the Bankruptcy Code.

- The Bankruptcy Court for the Northern District of Georgia granted the U.S. Trustee's motion to dismiss the Chapter 7 case of a debtor whose monthly income exceeded \$9,600. The debtor proposed to reaffirm (agree to repay, in order to avoid losing collateral) two secured debts on his \$270,000 home and a debt secured by his Mercedes Benz, but he proposed to discharge an \$81,000 judgment debt owed to an individual. The U.S. Trustee argued that allowing the debtor to discharge a single unsecured debt while maintaining an extravagant lifestyle would constitute a substantial abuse of the bankruptcy system.
- The Bankruptcy Court for the Western District of Texas granted the U.S. Trustee's motion to dismiss the Chapter 7 case of a couple who earned \$9,000 per month, claimed more than \$500,000 in retirement accounts as exempt, and listed the following among their monthly expenses: \$900 in contributions to various retirement plans; \$870 for transportation other than car payments; and \$250 for recreation.