

REMARKS OF
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BEFORE THE
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Introduction

Thank you for the opportunity to speak to you again at your important annual meeting. There have been a lot of developments in the bankruptcy world since I spoke with you at last year's meeting. I would like to share the United States Trustee Program's (USTP) perspectives on some of these developments and how they may change bankruptcy practice for all of us.

Although it has been a year since I saw you in a collective gathering, it has been my pleasure to see some of you as I have visited USTP field offices. And, of course, I appreciate the opportunity to meet regularly with the NABT liaison committee. I continue to find those meetings extremely useful.

I thank your President Neil Gordon for his accomplishments during his term. And I congratulate Tamara Ogier on becoming the new NABT President. I know we will have much business to do together over the next twelve months.

One of the major reasons the USTP and NABT have worked so well together in recent years has been the outstanding liaison members designated by both of our organizations. On the USTP side, United States Trustees Clarkson McDow, Jake Miller, and Don Walton have worked tirelessly to solve common issues of interest to chapter 7 trustees and to the Program. They have been in the forefront of major projects involving not only chapter 7, but also many other issues within the Program's wide swath of responsibility. I have relied upon them and leaned upon them more than you will ever know.

I am here to report to you that, in a coincidence of timing, Clarkson, Jake, and Don all will be retiring from Government service in the early part of next year. Each of them represents the very best in public service. They are my mentors, confidantes, and good friends. I will miss them greatly, and I expect you will too. Let me embarrass Clarkson, Jake, and Don by asking them to stand as all of us join in a round of applause for their wonderful service to the bankruptcy system. Clarkson, Jake, and Don are remarkable and will be hard to replace, but I will appoint new USTP members to the liaison group whom I am certain will do a terrific job in their own right.

Let me move on to some other important matters of mutual interest.

Mortgage Servicer Enforcement

I am certain all of you are familiar with the National Mortgage Settlement entered into by the Justice Department, the Department of Housing and Urban Development, and 49 state Attorneys General with the five largest mortgage servicers in the country – Bank of America, Chase, Citibank, GMAC Mortgage, and Wells Fargo.

As the Attorney General said at the news conference announcing the settlement, the work of the United States Trustee Program in investigating mortgage servicer abuse was instrumental

in the Government's successful resolution of allegations that these servicers failed to play by the rules and harmed distressed homeowners.

The settlement provides for the payment of \$25 billion, with most of that amount credited against loan modifications and principal write-downs, as well as the establishment of new servicing standards backed by district court order. Importantly, the agreement also provides for an independent monitor to review bank compliance for the next three and a half years.

Of perhaps most significance in the bankruptcy arena, especially in chapter 13, are the new servicing standards. The standards address every type of inadequacy we uncovered in mortgage servicer practices, including the accuracy of proofs of claims and motions for relief from stay, documentation of default service fees, and oversight of third party providers. In many respects, the standards go further than the recently revised Bankruptcy Rules and Official Forms, such as by requiring the waiver of fees that are not properly presented in bankruptcy court.

The settlement also established special points of contact for debtors, chapter 13 trustees, and United States Trustees. The contacts for debtors and chapter 13 trustees must be specially trained in bankruptcy, and the United States Trustee contacts must be management level staff.

The Settlement Monitor, who is former North Carolina Banking Commissioner Joseph Smith, is up and running. All settling banks are expected to implement the standards by October 2nd.

On August 29th, the Monitor released a progress report outlining details about the settlement, steps his office has taken to implement it, and progress made by the five settling banks. Overall, he discloses that, between March 1st and June 30th, the servicers reported that about 140,000 borrowers had received some type of consumer relief totaling \$10.56 billion. These data are yet to be verified by the Monitor.

The Monitor is overseen by a Monitoring Committee comprised of representatives from the Justice Department, the Department of Housing and Urban Development, and several state Attorneys General. The USTP serves as the Justice Department's representative, and we are a very active participant in the Committee's activities.

I ask you to assist us in getting the word out about the settlement by making sure that the one-page handout we developed is available in section 341 meeting rooms. That paper provides telephone numbers and Web addresses that may assist debtors in seeking the homeowner relief that is expanded under the terms of the agreement. Please also report continuing violations by contacting your local United States Trustee and by informing the Monitor directly at www.mortgageoversight.com. The Monitor will not seek direct relief for individual consumers, but he does want to know about errors and abuse that may constitute a breach of the settlement agreement.

In addition to our ongoing work to monitor compliance of the five settling servicers with the National Mortgage Settlement, we continue to be vigilant with respect to other servicers who

are not parties to the servicing standards. We believe that the standards reflect sound practices that should be followed in substantial measure by all in the mortgage servicing industry.

In fact, the need for adoption of the standards by other servicers has been reinforced by recent experience. Even though the industry has been on notice now for years about bad practices and the harm to distressed homeowners that results from such practices, at least some non-settling servicers continue to commit errors at unacceptable rates. When the Judicial Conference promulgated the new Bankruptcy Rules and Official Forms governing mortgage proofs of claim that went into effect in December 2011, the industry was required to comply. Even though they are less far-reaching than the standards, the Rules and Forms do mandate additional disclosures that necessarily require the servicers to improve their internal practices and self-identify inaccurate representations prior to making a filing in bankruptcy court.

The USTP's preliminary investigation of practices suggests that at least some of the non-settling servicers have not adopted adequate systems to ensure accurate and complete disclosures in accordance with the law. Furthermore, their oversight of foreclosure attorneys and other third-party providers remains suspect. As we already know from painful experience, these kinds of defective practices are an affront to the integrity of the bankruptcy system and inflict real harm on homeowners.

As much as we would expect the mortgage servicing industry to self-police and avoid future scandal and sanctions, it is difficult to discern marked improvement by some in the industry. We will continue to review mortgage servicer conduct and, if necessary, take increasingly stronger enforcement actions, including by seeking broad discovery into the internal practices that are at the core of the systemic abuses and by seeking appropriate remedies to ensure compliance with the Rules.

Unsecured Creditor Oversight

Even though our concentration of efforts on mortgage servicer abuse of the bankruptcy system is far from complete, I want to share with you another initiative that is on the drawing board. It is enforcement of the bankruptcy law and rules governing complete and accurate disclosures in unsecured proofs of claim.

As you know, in December 2011, significant changes to Rule 3001 and Official Form 10 were adopted that impact proofs of claim filed by both mortgage and unsecured creditors. For example, creditors now must itemize on a claim any interest, fees, expenses, or other charges that are included. Additional amendments to Rule 3001 that primarily impact bulk debt buyers who purchase large amounts of open-ended consumer debt also have been proposed and are anticipated to go into effect on December 1, 2012. Included among them is a requirement that the proof of claim disclose the name of the entity from whom the account was purchased, the date of the debtor's last transaction and the creditor's name at that time, the date of the debtor's last payment, and the date the creditor charged off the account. These disclosures can help to ensure that only valid claims are paid from estate funds.

Perhaps more than any other judicial rules, the Bankruptcy Rules impact the financial industry. That is not surprising because the bankruptcy system has a profound impact on the financial industry and reflects many underlying economic policies that simply play out in the bankruptcy system. Recently promulgated mortgage rules that govern itemization of default service fees and evidentiary limitations on proving up fees hidden from the debtor, for example, affect business processes in a very significant way.

Unlike Executive Branch regulations that affect business practices, however, Bankruptcy Rules are not enforced by any single agency. Instead, the Rules necessarily are applied by more than 300 independent bankruptcy judges. Understandably, business craves consistency because that allows for planning and minimizes the risk of violations.

Building upon our experience in the enforcement area, the USTP can play a constructive role in ensuring consistent enforcement of the Rules. Much like we did with administration of the means test, for example, we can post our enforcement positions on relevant Bankruptcy Rules, and we can take enforcement actions and intervene in appeals to promote the coherent development of case law. This benefits the industry by providing consistency, and benefits consumers by providing a check on systemic violations.

Subject to very real resource constraints, the USTP plans to undertake a robust enforcement program to ensure that unsecured claimants follow the rules on disclosure embodied in new Rule 3001 and the accompanying Official Form. With the prevalence of trading in consumer claims, it is vital that debtors, the courts, the United States Trustees, private trustees, and other parties have the information to determine whether creditor claims are valid. This enforcement activity also should reach related aspects of the Rules, such as the protection of personally identifiable information and the prohibition against collection on discharged debt.

We in the USTP are not new to this endeavor insofar as we have taken thousands of consumer protection actions in the past five years. We also have entered into four nationwide settlements governing creditor abuse of the bankruptcy system. In fact, our first nationwide settlement was with a national bank that erroneously filed more than 15,000 proofs of claim in bankruptcy attempting to collect on discharged debt.

Stay tuned as we refine our plans and marshal available resources. If the credit industry is doing its job, then the number of enforcement actions need not be nearly as high as it has been in policing mortgage servicer violations.

USTP Budget Issues and Efficiency Measures

Before turning to some specific issues pertaining to United States Trustee oversight of chapter 7 trustees, I wanted to fill you in on some budget constraints we are facing. Strict budget limitations have required us to take a new look at ways to achieve cost savings through attrition and the smart management of real estate and other costs. It also has put an absolute premium on efficiency in everything we do, including in choosing the enforcement issues we address.

Over the past two years, the Program's onboard staff has decreased by five percent to about 1,200 employees. With limited exceptions, a hiring freeze has prohibited us from backfilling vacated positions. That increases the challenges for our 95 field offices to cope with the day-to-day stresses of accomplishing their broad mission.

There are two significant efficiency projects we are advancing. Some aspects of these projects are of direct relevance to chapter 7 trustees.

Consolidation of Functions

The first project is a consolidation of functions. It involves identifying the tasks performed in all offices and consolidating those tasks among designated Program staff in the regions. Fewer people doing the same tasks will promote consistency, high quality, and economies of scale. It also will allow us to reallocate staff resources to other Program priorities.

To date, we have piloted the consolidation of functions in select Program offices with respect to data extraction from the courts to our automated case management system, the review of trustee interim reports and trustee distribution reports, the completion of trustee field exams, and quarterly fee verification and collection activities. Nearly 40 offices have been involved in the various pilots and, based on very positive results, we are ready to consolidate the court data extraction process in all regions. We also expect to rollout the review of trustee distribution reports shortly thereafter.

Although interaction with trustees will continue to be mainly through the local field office, some financial and case administration work can be conducted centrally. It is my hope and expectation that we will continue to pilot innovative work processes that will assist us in achieving meaningful efficiencies.

Consolidation of Field Offices

One other area we are exploring to help address our budget issues relates to space. This is in line with the Government-wide effort to reduce real estate costs. With 95 field offices and more than 400 section 341 meeting sites, real estate expenses are the second highest cost category in the USTP budget behind only personnel costs.

The Justice Department is working to reduce its footprint in offices in Washington, DC, and nationwide. When the Executive Office for U.S. Trustees moves to a nearby Government building early next year, we will utilize significantly less space through design innovation. In addition, based on a cost study to determine if it would be efficient and effective to consolidate field offices with expiring leases that were in close proximity to another office, we have notified Congress of our intent to consolidate the Woodland Hills office into Los Angeles, the Oakland office into San Francisco, and the Brooklyn office into Manhattan.

The planned office consolidations will not be completed until many months into the future, but are estimated to save the Program about \$1 million per year. Even though

consolidated field offices will be co-located, each office will retain its separate status and identity as a field office. In addition, we will retain section 341 meeting space and a small work area for staff covering court and hearings.

As each office move draws closer, the United States Trustees in those districts will provide further details and work closely with the trustees, courts, and other parties to minimize any inconvenience.

Chapter 7 Trustee Oversight Issues

Let me spend my remaining time on some matters of chapter 7 trustee oversight and administration.

Chapter 7 Bank Fees

First, I want to commend those here and your other chapter 7 trustee colleagues who have been carefully weighing the cost and benefits of selecting one depository institution and software provider over another. When economic conditions required the USTP to lift the prohibition on banking fees, that created a new duty on trustees to carefully scrutinize their choice of bank and software vendor.

Although two banks have withdrawn from participation in the authorized depository system, 20 banks – mostly regional – have joined. I hope that our new policy, while reluctantly borne of economic necessity because the old cost structure of charging fees through the opaque system of interest rate differentials no longer worked, has added transparency and an opportunity for a more competitive market to develop.

In light of the continuing environment of historically low interest rates, we have changed the Uniform Depository Agreement to remove the fee prohibition entirely. You may recall that we initially lifted the prohibition only through the end of 2012. With a lack of change in relevant economic conditions, and with many trustees and providers telling us that greater certainty would assist in longer term planning, we decided to remove the temporal limitation. As with any policy, however, we reserve the right to alter the policy again if economic or other conditions militate in favor of another adjustment. Given current circumstances, however, there just does not seem to be any advantage to imposing an arbitrary time limit on the policy of permitting the imposition of charges and fees.

Chapter 7 Handbook

On another important matter, I am grateful to the leadership of the NABT and the many members of the liaison committee for working with the Program on the latest revisions to the *Handbook for Chapter 7 Panel Trustees* that becomes effective on October 1st. Although the project took much longer than any of us anticipated, the revised Handbook is a helpful product that makes many needed changes. I encourage you to attend the session on Saturday in which our expert panel will highlight the major changes to the Handbook.

Best Practices for Document Production

Now, for my next to last point, I wanted to talk about the recently released “Best Practices for Document Production Requests by Trustees in Consumer Bankruptcy Cases.” We undertook the project with the goal of identifying best practices that both reduce unnecessary paperwork burdens and educate private lawyers on the kinds of information they should make readily available without costly formal or informal discovery.

The Best Practices are designed to serve as a training tool to help trustees and debtor’s counsel realize maximum efficiency. Importantly, they do not purport to override any requirements in law or local rules. They also do not override a trustee’s fiduciary judgments since we know that no two cases are exactly alike and particularized needs arise frequently. But the Best Practices can be useful in setting reasonable expectations between debtors and trustees and thereby reduce costly and inefficient disputes in many cases.

The USTP was fortunate to obtain the cooperation of the NABT, the NACTT, and the National Association of Consumer Bankruptcy Attorneys in developing these practices. But the final product is the USTP’s responsibility. I know that some debtor’s counsel think the Best Practices are too deferential to trustees and some trustees think the guidelines are insufficiently demanding of debtor’s counsel. To the best of my knowledge, neither trustees nor consumer lawyers can afford wasteful practices. Trustees ought to demand the information they need and debtor’s counsel ought to provide that information with alacrity. If these Best Practices promote common expectations, then we will have achieved our goal.

Chapter 7 Trustee Compensation

It seems like no speech to a gathering of chapter 7 trustees would be complete without some discussion of compensation challenges. First, we know that trustees still have not received a much needed and well deserved increase in the no-asset case fee for 18 years. On a positive note, though, I am able to report that preliminary numbers indicate that, after three years of declining compensation, total trustee compensation rose by approximately 16 percent last calendar year. Some of that increase may relate to the significant progress we have made regarding section 330 compensation. A few of you may recall that when I first addressed the NABT annual meeting in 2005 in New York City, I announced that it was the USTP’s legal policy to uphold strongly the 2005 amendment to section 330 to treat trustee compensation as a commission.

In our reviews of case closing reports and fee applications, we have respected the commission concept. And we have intervened in cases in which some bankruptcy judges have interpreted the law differently and less favorably to trustees. This has been a matter of frequent consultation between the USTP and NABT.

I am pleased to report what is now perhaps old news to you. In *In re Salgado-Nava*, the USTP, along with the NABT, participated as amicus curiae in support of appellant – your colleague Sam Hopkins. The 9th Circuit Bankruptcy Appellate Panel overruled a bankruptcy

court and declared that “absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12, and 13 trustee fees without any significant additional review.” The court’s ruling is consistent with USTP legal policy and, in fact, the court referred to our established policy of not routinely requiring time records. Congratulations to Sam, to NABT, and to all of us for that legal victory.

As I have said to the NABT before, we stand willing and able to advance our interpretation of section 330. It is our job to uphold the law and to prosecute appeals where we believe a ruling of the court is inconsistent with the law.

Conclusion

I have covered a lot of topics during my time with you this afternoon. I am grateful for your patience. But there is a lot happening in the United States Trustee world and in the chapter 7 world that I wanted to discuss with you.

Let me thank you and the NABT leadership again for your service to the bankruptcy system. We in the USTP are your regulators, but we also are your partners in developing sound solutions to the challenges facing the bankruptcy system. Your perseverance and your commitment to serving all stakeholders in the bankruptcy system is gratifying and not taken for granted. You are true professionals and you perform essential services that benefit the American economy and the American people.

I thank you for your time and I salute you for your service.

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