

STATEMENT OF
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UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you on behalf of the Department of Justice to discuss the work of the United States Trustee Program.

The United States Trustee Program (USTP or Program) is the component of the Department of Justice with responsibility for the oversight of bankruptcy cases and trustees. Our mission is to enhance the efficiency and the integrity of the bankruptcy system. We carry out broad administrative, regulatory, and litigation duties under both title 11 (the Bankruptcy Code) and title 28 of the United States Code.

Our mandate is especially imposing in light of the significant growth in bankruptcy filings which reached more than 1.5 million cases in Fiscal Year 2002. This number reflects an

increase in filings of 58.3 percent over the past ten years. Most of the increase has incurred in consumer cases, but business reorganization cases continue to demand significant time and attention as the size and complexity of business and accounting issues have grown exponentially.

The Program is headed by the Director of the Executive Office for United States Trustees located in Washington, D.C. The Director is appointed by the Attorney General. Among other duties, the Director is responsible for developing national Program policies and supervising field operations. I am assisted by a staff of approximately 70 employees. About one-half of these staff members provide administrative support for regional and field offices. Field operations are organized into 21 regions, with each region headed by a United States Trustee appointed by the Attorney General. Ninety-five field offices carry out the work of the Program in 88 judicial districts in 48 states^{1/} and the territories.^{2/} Field offices are headed by career Assistant United States Trustees and assisted by career attorneys, financial analysts, paraprofessionals, and support staff. There are approximately 1,000 staff in the field, with an average office consisting of ten employees.

Among the specific functions carried out by the United States Trustee Program are the following:

^{1/} By statute, judicial districts in North Carolina and Alabama are not included in the United States Trustee Program. Bankruptcy courts in those districts employ Bankruptcy Administrators to carry out many of the functions otherwise conferred upon the USTP.

^{2/} The USTP has responsibility for bankruptcy cases filed in Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

- We investigate and file enforcement actions to protect the system from fraud and abuse, and to ensure compliance with the Bankruptcy Code.
- We work closely with the United States Attorneys, the FBI, and other law enforcement agencies to help ensure the investigation and prosecution of criminal violations that affect the bankruptcy system.
- We oversee the administration of chapter 11 reorganization cases, which involve some of the nation's leading companies, to ensure financial accountability and regularity, compliance with the Code, and plans for prompt disposition. We review professional employment applications for potential conflicts of interest; review professional fee applications; establish creditors' committees; and file motions to convert or dismiss. If there is misconduct or egregious mismanagement, we appoint private trustees or examiners.
- We appoint and supervise approximately 1,400 private bankruptcy trustees who administer cases filed under chapters 7, 12, and 13 to ensure prompt administration, financial and fiduciary accountability, and maximum potential returns to creditors. The private trustees disbursed over \$5 billion in 2002.

In October 2001, the USTP commenced a National Civil Enforcement Initiative to address bankruptcy fraud and abuse. I described our purposes and activities in testimony delivered last month. .

In summary, we undertook the National Civil Enforcement Initiative because of widespread concerns that the integrity of the bankruptcy system was being undermined by some debtors who received relief to which they were not entitled, as well as by attorneys and others who abused the bankruptcy system for illegitimate personal gain. With more than \$5 billion in assets being distributed by trustees each year, and many billions more in debt discharged by consumers and corporations, the public clearly has a large stake in the proper administration of bankruptcy cases.

The National Civil Enforcement Initiative consists of two major prongs:

- (1) Debtor Misconduct: Under this prong of the Initiative, the Program uncovers such improper conduct as inaccurate financial disclosure, concealment of assets, “substantial abuse,” and misuse of social security numbers by those who seek the discharge of debts despite an ability to repay. The primary civil remedies sought by Program attorneys are dismissal under 11 U.S.C. §§ 707(a) and (b) and denial of discharge under § 727.

- (2) Consumer Protection: The Program also seeks to protect debtors and creditors who are victimized by those who mislead or misinform debtors, file bankruptcy petitions without a debtor's knowledge, make false representations in a bankruptcy case, or commit other wrongful acts in connection with a bankruptcy filing. Primary targets are unscrupulous bankruptcy petition preparers and attorneys. The primary remedies sought are fines and injunctions under 11 U.S.C. § 110, disgorgement of fees under § 329, and other sanctions.

The results of our first year after implementing the National Civil Enforcement Initiative are dramatic. During Fiscal Year 2002, field offices reported taking more than 50,000 civil enforcement and related actions (including cases resolved without resort to litigation) that resulted in an overall potential return to creditors of approximately \$160 million.

The United States Trustee Program is a self-funded agency. The USTP is funded primarily through fees collected from debtors who file bankruptcy. By statute, these fees are deposited into the United States Trustee System Fund. None of the funds can be expended by the Program until they are appropriated by Congress annually, and no general revenues are appropriated to fund the Program.

Revenue in excess of the annually-appropriated amount remains in the System Fund. The monies appropriated typically total less than the monies collected. At the end of Fiscal Year 2002, the System Fund held \$186,345,311 in funds not appropriated for Program use.

For Fiscal Year 2004, the Administration has requested a Program appropriation of \$175.2 million, which represents an increase of \$19.4 million or 12.5 percent over the Fiscal Year 2003 operational level.

Consistent with the President's Management Agenda and statutory mandates, the Program has taken a number of performance-based management reforms. We are committed to improving our ability to identify agency goals and to measure our progress in reaching those goals. These reforms include the following:

- We developed a "Significant Accomplishments Reporting System." This System includes a new data base to measure approximately 100 work elements, including motions filed and informal enforcement actions not leading to litigation, and the results achieved. We are now better able to record and track specific enforcement and case administration activities at the time they occur. To improve the reliability of the System, and to ease the associated administrative burden, the System has been completely automated. The automated System will be fully operational in all field offices by May 1, 2003, having been developed, piloted,

and provided to the field offices in less than one calendar year. The System will continue to be refined and improved in the future.

- We revamped our budget submissions under the Government Performance and Results Act (GPRA) to better reflect the costs and benefits associated with various program activities. We are continuing to review our GPRA and related measures so that we can more fully integrate management and budgeting functions.

That completes my prepared remarks, and I would be happy to answer any questions you and the Subcommittee members may have.