

**Statement of Robert Furr President**  
**The National Association of Bankruptcy Trustees**  
**September 16, 2008**

Madam Chair Sanchez, Ranking Member Cannon, and other distinguished Members of the Subcommittee, let me thank you for the opportunity to provide the views of the National Association of Bankruptcy Trustees to your Subcommittee on the important subject of compensation for bankruptcy Trustees.

By way of introduction, my name is Robert Furr and I am the current President of the National Association of Bankruptcy Trustees (NABT). NABT is an organization of panel trustees, independent fiduciaries, appointed in every Chapter 7 bankruptcy case. Of the approximate 1,100 such Trustees nationwide, the vast majority are members of our organization.

Chapter 7 bankruptcy cases include typical consumer bankruptcy cases where debtors discharge all of their debts plus complex individual and business cases. Most bankruptcies are Chapter 7. In FY 2007, nearly 500,000 Chapter 7 cases were filed in the U.S. bankruptcy courts. Due to recent economic circumstances, this number is rising. Members of our organization carry out the major work involved in the bankruptcy system, handling 500 to 1,000 cases each year. In our work, as a trustee, we protect both debtors and creditors from abuse of the system.

Importantly, we carry out important public policy priorities as directed by the Congress, such as insuring that child support orders are enforced, safeguarding patient health care needs and records, and protecting pension obligations. We even help federal, state and local governments by being one of the largest collectors of unpaid taxes in the U.S.

The Honorable Joseph Patchan, a former Bankruptcy Judge and former Executive Director of the Office of the United States Trustee wrote in an article entitled "The Office of Bankruptcy Trustee" the following:

Bankruptcy trustees in our nation today not only have the duty to address with fidelity the estates to which they are appointed, they also have a broad responsibility, as a vital and official part of our bankruptcy system, to sustain the quality and the public regard for that system, by the way they do their work, and by the way they professionally fulfill their role as trustees. That responsibility requires sensitivity to and support of the ongoing creditable working of an entire legal structure. That feeling of being part of and responsible to a national bankruptcy system, I submit, has to be part of the professional service provided by you as bankruptcy trustees, especially so in these times when our bankruptcy structure is so readily questioned, and our bankruptcy processes often so critically examined.

Bankruptcy cases and bankruptcy processes are no longer “below the radar” either in Washington or in our hometowns. The number of cases, the amount of money involved, the number of debtors, creditors, parties, and others affected by the cases, the media attention often given to cases, all underscore a valid public concern in the bankruptcy process, how it looks, how it performs, what it cost, and what it produces. For bankruptcy law and its workings are now recognized as an important part of our economy and of the society in which we live.

Most people probably do not know that in the vast majority of Chapter 7 cases, debtors never appear before a judge, but are examined by the Trustees beginning with a review of the petitions filed, and a hearing conducted by the Trustees to which creditors may appear and participate. Many functions and required performance duties are contained in the Bankruptcy Code and Bankruptcy Rules. The Office of the United States Trustee, which is part of the Department of Justice, oversees the carrying out of such duties.

The particular activities that we carry out are mandated by the many provisions of the law, rules and regulations, and are necessary and crucial to the operation of bankruptcy. The Bankruptcy Abuse and Consumer Protection Act, passed in 2005, added many new and different duties for the Trustees.

In June 2008, the GAO conducted a study of the bankruptcy system. In their report, they stated

“The Bankruptcy Reform Act has affected the responsibilities and caseloads of Chapter 7 and Chapter 13 private trustees. As a result of new provisions in the act, trustees must collect, track, store, and safeguard additional documents such as tax returns; notify appropriate parties of domestic support obligations; check

calculations and review the accuracy of information in forms associated with the means test; and, once finalized, will be required to comply with new requirements for uniform final reports. Private trustees told us that these new responsibilities have significantly increased the time and resources required to administer a bankruptcy case.”

As Trustees, we have an obligation to secure relief for honest but unfortunate debtors and to investigate filings for abuse, criminal activity, fraud, mortgage fraud, fraudulent scams involving homeowners, fraudulent foreclosure rescue operations, fraudulent schemes targeting homeowners, as well as protecting the interests of all parties. In fiscal year 2007, the Office of the United States Trustee made 1,163 criminal referrals—most resulting from information provided by Ch. 7 Panel Trustees. In fiscal year 2007, Ch. 7 Trustees distributed \$2.86 billion to creditors in Ch. 7 cases.

A major problem, however, has been our compensation. Under the present law, Trustees receive \$60 for administering Chapter 7 cases in which “no assets” are liquidated. The last increase in this Trustee compensation occurred in 1994, when the fee was raised from \$45 to \$60. Let me emphasize that this is a flat fee per case. A case could take a hour, a few hours, days, weeks, or in some unique circumstances, years, to bring to closure. Trustees essentially work on a “contingent” basis because if their efforts do not result in a dividend to creditors, they receive only the \$60 no asset fee. Every trustee can tell about cases in which he or she devoted many, many hours and much money and did not recover any assets. In other cases, Trustees are obligated by their statutory duties to spend the time and money to fulfill their duty without additional compensation. That happens on a daily basis in my practice.

We are proceeding on 14 years with the no increase in our compensation. As I mentioned, our duties have increased. It is taking us longer to process cases, yet we remain stuck at a level from the mid 1990s.

Many trustees are considering leaving the system. Fewer younger lawyers, accountants, and other individuals are interested in becoming a Trustee. It takes years for a new trustee to begin making a profit because the new trustee must build up a pipeline of cases and most asset cases take more than a year to administer. Without an increase in the “no asset” fee as an income base,

the new Trustee will have to struggle to make his or her practice economically viable. We want new individuals to join the Trustee program and stay with it, otherwise, we will eventually have a lack of seasoned Trustees administering the bankruptcy system.

Just to clarify, Trustees can earn more than \$60 per case from Chapter 7 cases where there are assets, however, only five percent of Chapter 7 cases have assets. Most are small cases, and our compensation is minimal from those cases. . Chapter 7 cases with significant assets are rare, and mostly in large metropolitan areas. This is why the lack of decent compensation in no asset cases is particularly difficult for Trustees in small or rural areas.

I should also note that Congress has allowed debtors to waive the filing fee altogether if they can demonstrate a lack of funds – a so called “informa pauperis” filing. While we think a waiver policy is appropriate for those truly in need, in these cases, a Trustee receives no income. We expect that this type of filing may also be on the increase.

The Congress has looked at increasing our compensation, but for one reason or another, our raise has gotten entangled in other legislative battles and nothing has happened. Increasing our compensation has always enjoyed bi-partisan support. It has passed the House a number of times, usually, as part of a larger legislative package. Most recently, in 2006, the House passed H.R. 5585, a bill to improve the netting of financial obligations in bankruptcy. The bill was co-sponsored on a bi-partisan basis by Congresswoman Debbie Wasserman Schulz and Congressman Patrick McHenry. While it was primarily a financial services bill, Section 7 of that bill provided a \$55 per case raise for Trustees. It passed the House by Voice Vote. Regrettably, our provision was stripped in the Senate, reportedly by some Senators that did not want an increase in the bankruptcy filing fee. The Deficit Reduction Act of 2005 (P.L. 109-171) was also another missed opportunity for Trustees. The filing fee for Chapter 7 was raised significantly, but none of the increased funds were used to compensate Trustees.

In early 2008, the Senate Judiciary Committee reported out S. 1638, a bill to increase compensation for federal judges. Senators Richard Durbin (D-IL) and John Kyl (R-AZ) added an amendment increasing our compensation by an additional \$60 per case. We are hopeful that

the Senate can pass this bill, but time may be running out again. For your reference, I have attached that particular section of the bill.

We would urge the House of Representatives to take up our per case compensation increase in a free standing bill, based on Section 12 of S. 1638, and act on it quickly.

Thank you again for this opportunity to testify, and I would be pleased to answer any questions.

## **S. 1638 (as reported in the Senate)**

### **SEC. 12. BANKRUPTCY TRUSTEES.**

(a) Fees- Section 330(b)(2) of title 11, United States Code, is amended, in the undesignated matter following subparagraph (B), by striking ` \$15' in each place it appears and inserting ` \$75'.

(b) No Additional Fees or Costs for Individual Debtors- No additional fee or cost charged to individual debtors or their attorneys shall be assessed to directly or indirectly provide funding for any of the \$60 increase in trustee payments provided for by the amendments made under subsection (a).

(c) Effective Date and Application-

(1) EFFECTIVE DATE- This section shall take effect 180 days after the date of enactment of this Act.

(2) APPLICATION- The amendments made by this section shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this section.