

## **OVERVIEW OF BANKRUPTCY**

- a. The parties in a bankruptcy case
  - i. Debtor
  - ii. Creditor
  - iii. Trustee
    - 1. Chapter 7 Trustees
      - a. Come from a panel set up by the local United States Trustee
      - b. A trustee can be elected by creditors if enough will participate in voting. Rare. Bk Code Section 702
      - c. The United States Trustee can act as the Ch. 7 Trustee
    - 2. Duties of a Ch. 7 Trustee
      - a. Bk Code Sec. 704 sets out the basic duties
      - b. Trustee is a fiduciary
      - c. Primary duties:
        - i. Sell assets and hold the funds,
        - ii. Investigate the financial affairs of the debtor,
        - iii. Examine claims and object to defective claims,
        - iv. Furnish information to any party in interest about the case,
        - v. Make a final report and account of funds handled,

- vi. Fulfill the health care business duties
  - d. Trustee presides at the Bk Code Sec. 341 meeting of creditors
  - e. Bk Code Sec. 323: Trustee is the representative of the estate and can sue and be sued
  - f. 28 USC Sec. 959: Trustee can be sued for his actions. Trustee must comport w/ applicable state law as if the owner of the asset involved
  - g. 18 USC Sec. 3057: Trustee must report any known violation of federal law relating to insolvency to the U.S. Attorney
  - h. A trustee can run a business long enough to sell it (Bk Code Sec. 721)
3. Corporate Trustee acquires right to waive Attorney-Client Privilege
- a. Commodity Futures Trading Commission v. Weintraub: Trustee's power to waive debtor's attorney-client privilege
4. Trustee Quasi-Judicial Immunity
- a. Trustees are cloaked in quasi-judicial immunity from suit. Curry v. Castillo, 297 F.3d 940 (9th Cir. 2002)
  - b. This flows from the roles of the trustee as a party exercising quasi-judicial authority
  - c. The U.S. Trustee has the same protection, at minimum
5. Ch. 7 Trustee Compensation
- a. Bk Code Sec. 326 governs
  - b. Up to:

- i. 25% of the first \$5K
  - ii. 10% of the next \$45K
  - iii. 5% of the next \$950K
  - iv. 3% of the next dollars
- c. Bk Code Section 330 authorizes the payment in the Bk Court's discretion
- d. If no funds are handled, the fee awarded is \$60

#### 6. Ch. 7 Trustee Prohibitions

- a. Trustees and everyone else in the bk process are subject to federal criminal statutes. See, 18 USC Sections 151-158
- b. It is illegal to:
  - i. Conceal assets
  - ii. Bribe or embezzle
  - iii. Purchase from an estate where acting as trustee
  - iv. Make any deals to fix fees for work done
- c. Bk Code Sec. 363(n) makes rigging the bidding at a sale grounds to set aside the sale

#### 7. Ch. 7 Trustee Team

- a. Trustee has staff in an office who assist the trustee
- b. Banks offer sophisticated software to assist case and financial management

- c. Trustee can hire professionals. Bk Code Sec. 327. This can include lawyers, accountants, auctioneers, and others
- d. “Professional” is not a defined term. It has localized meaning
- e. The professionals have to be disinterested to qualify for employment. See, Bk Code Sec. 101(14) for definition
- f. Court approval is needed to be employed
- g. Sometimes the trustee’s law firm can act as his counsel. Bk Code Sec. 327(d)
- h. Finally, the trustee can hire “special counsel” for limited purposes who has no conflict on the limited matter
- i. If disinterestedness is absent or court approval is n/obtained, the work may not be compensated

#### 8. Ch. 13 Trustee’s Duties

- a. These are listed in Bk Code Sec. 1302(b)
- b. These include being accountable for funds held, investigating the debtor, examining and objecting to claims, providing information if asked, and filing a final report. These are the same as in Ch. 7
- c. There is no right to liquidate any asset. Ch. 13 does n/contemplate payment via forced liquidation
- d. The Trustee shall:
  - i. Appear at any hearing on the approval of the debtor’s plan, if there are concerns
  - ii. Assist the debtor in performing the plan (some trustees offer financial education classes)

iii. Ensure that the debtor makes plan payments

iv. Give notice to any holder of a domestic support obligation (Bk Code Sec. 101(14a)) of the case and various collection rights

9. Ch. 13 Trustee Compensation and Team

- a. Ch. 13 trustee heads up a large office staff compared to a Ch. 7 trustee
- b. This staff is necessary to collect, manage, pay out and account for the payments of hundreds of active Ch. 13 plans
- c. The compensation of a Ch. 13 trustee is capped by statute
- d. Legal services are provided by on-staff lawyers in the Ch. 13 office
- e. There are regular audits of all the accounts of all bankruptcy trustees

iv. U.S. Bankruptcy Judge

- 1. The judicial officer that presides over a bk case
- 2. Bk judges are not Article III judges with lifetime tenure, but instead serve as judicial officers of the district court
- 3. Appointed for 14-year terms by the court of appeals for the circuit
- 4. Bk judges function as a unit of the Article III district court. They hear and determine cases and proceedings by reference from the district court
- 5. A distinction is made between “core proceedings,” in which a bk judge may enter final orders which are reviewable only on appeal, and non-core proceedings, in which the bk judge must submit

proposed findings of fact and conclusions of law to the district court for de novo review

v. U.S. Trustee

1. Office of the U.S. Trustee

- a. The quality control and oversight agency in the bk world
- b. It is a part of the U.S. Dept. of Justice
- c. Its employees are federal employees
- d. Staff consists of attorneys, accountants, and support personnel
- e. The office typically is small compared to the work it has
- f. U.S. Trustee cooperates w/ the U.S. Attorney's Office in criminal investigations and prosecutions

2. Role of the U.S. Trustee

- a. 28 USC Section 586 gives it duties
- b. It has no single client in a bk case
- c. It has standing to appear in any case and be heard
- d. It oversees the Ch. 7 and 13 trustees
- e. It has a major role in implementing the Means Test

3. U.S. Trustee Guidelines

- a. The local United States Trustee has guidelines dictating the procedures to follow in a variety of situations, including fee applications, the hiring of professionals in bk cases, and numerous Ch. 11 procedures

- b. Bk judges will often treat these guidelines as mandatory local rules
- c. The national and local United States Trustees have a website