AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

BANKRUPTCY TRUSTEE COMPENSATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SEPTEMBER 16, 2008

Serial No. 110–207

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

44–493 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SÁNCHEZ, California
STEVE COHEN, Tennessee
HANK JOHNSON, Georgia
BETTY SUTTON, Ohio
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

PERRY APELBAUM, *Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

LINDA T. SÁNCHEZ, California, *Chairwoman*

JOHN CONYERS, JR., Michigan
HANK JOHNSON, Georgia
ZOE LOFGREN, California
WILLIAM D. DELAHUNT, Massachusetts
MELVIN L. WATT, North Carolina
STEVE COHEN, Tennessee

CHRIS CANNON, Utah
JIM JORDAN, Ohio
RIC KELLER, Florida
TOM FEENEY, Florida
TRENT FRANKS, Arizona

MICHONE JOHNSON, *Chief Counsel*
DANIEL FLORES, *Minority Counsel*

CONTENTS

SEPTEMBER 16, 2008

Page

OPENING STATEMENTS

The Honorable Linda T. Sánchez, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Commercial and Administrative Law 1
The Honorable Chris Cannon, a Representative in Congress from the State of Utah, and Ranking Member, Subcommittee on Commercial and Administrative Law 2

WITNESSES

Robert Furr, Esq., Furr and Cohen, P.A., Boca Raton, FL
Oral Testimony 5
Prepared Statement 6
Eugene Crane, Esq., Crane, Heyman, Simon, Welch & Clar, Chicago, IL
Oral Testimony 10
Prepared Statement 13
The Honorable Margaret Dee McGarity, United States Bankruptcy Court, Eastern District of Wisconsin, Milwaukee, WI
Oral Testimony 18
Prepared Statement 20
Jack F. Williams, Esq., Professor, American Bankruptcy Institute, Alexandria, VA
Oral Testimony 23
Prepared Statement 25

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Chairman, Committee on the Judiciary, and Member, Subcommittee on Commercial and Administrative Law 3

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Response to Post-Hearing Questions from Robert Furr, Esq., Furr and Cohen, P.A., Boca Raton, FL 40
Response to Post-Hearing Questions from Jack F. Williams, Professor, American Bankruptcy Institute, Alexandria, VA 42

BANKRUPTCY TRUSTEE COMPENSATION

TUESDAY, SEPTEMBER 16, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:07 p.m., in Room 2141, Rayburn House Office Building, the Honorable Linda T. Sánchez (Chairwoman of the Subcommittee) presiding.

Present: Representatives Sánchez, Johnson, Delahunt, Cohen, and Cannon.

Staff present: Matthew Wiener, Majority Counsel; Zachary Somers, Minority Counsel; Adam Russell, Majority Professional Staff Member.

Ms. SÁNCHEZ. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, will now come to order.

Without objection, the Chair will be authorized to declare a recess of the hearing.

I will now recognize myself for a short statement.

The thousand-plus private trustees who administer Chapter 7 bankruptcy cases are indispensible to the effective functioning of our bankruptcy system. They do much of the heavy lifting required in Chapter 7 cases, including reviewing the debtor's filings with the court, investigating the debtor's financial affairs and filing reports with the court.

These skillful women and men make what is often an emotion-filled and daunting process run smoothly.

Despite the importance of Chapter 7 trustees, they are paid only $60 for their services. That $60 per case fee provided for in the Bankruptcy Code has not been increased since 1994. While trustees are also entitled under the code to recover commissions on the assets they distribute to creditors, they receive commissions in less than 10 percent of the cases they administer. That is because in over 90 percent of Chapter 7 bankruptcy cases, there are no assets to distribute. And when the bankruptcy filing fee is waived because the debtor cannot afford it, the trustee does not even receive the $60 fee.

Today's hearing will address whether trustee compensation should be increased and what the consequences will be for the bankruptcy system if it is not. We will also hear testimony about

specific proposals our witnesses may have to increase trustee compensation.

I would like to point out in this regard that earlier this year the Senate Committee on the Judiciary favorably reported a bill that provides for a $60 increase in the per-case trustee fee. I wholeheartedly support this increase and am encouraged by the fact that the increase was approved without increasing the already significant bankruptcy filing fee of the debtor.

To help us address the issues surrounding bankruptcy trustee compensation, we have invited four witnesses to testify today. We are pleased to welcome Robert Furr, the current president of the National Association of Bankruptcy Trustees and himself a bankruptcy trustee; Eugene Crane, a bankruptcy trustee and the former president of the National Association of Bankruptcy Trustees; Margaret Dee McGarity, a judge on the U.S. Bankruptcy Court for the Eastern District of Wisconsin; and Jack Williams, professor of law at Georgia State University College of Law and scholar in residence at the American Bankruptcy Institute.

Accordingly, I will look forward to the testimony of our witnesses.

I will now recognize my colleague, Mr. Cannon, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. CANNON. Madam Chairwoman, thank you for holding this hearing on the compensation of bankruptcy trustees.

The fee paid to trustees in non-asset bankruptcies has not increased since 1994, yet the work required of the trustees has become more complicated and time consuming since that last increase. Hopefully this hearing can highlight the need for an increase in the fee and provide some answers as to how much of an increase is needed and how we should pay for the increase.

In the last Congress, the House passed a $55 fee increase for trustees in Chapter 7 cases by voice vote as part of the Financial Netting Improvements Act. Unfortunately, that fee was taken out of the bill when it reached the Senate. The Senate dropped the increase provision because, although there seems to be a consensus that the trustee's fee should increased, that consensus breaks down over the source of the funding.

The approach taken in the Financial Netting Improvements Act was to fund the increase in Chapter 7 trustee fees by increasing the filing fee for Chapter 7 bankruptcy. Some object to this approach, even though the act provided an exception for the cases in which the Chapter 7 debtor could not afford the fee.

In the Senate, Senator Kyl has proposed increasing the trustee fee as part of the Senate's version of the Judicial Compensation Bill. The proposal would have the courts fund the increase through the fees the Judicial Conference of the United States already collects. The Judicial Conference objects to this approach because it may strain its budget.

In short, everyone seems to recognize the Chapter 7 trustee fees must be increased, but the difficulty arises when it comes to how we provide the funding. Bankruptcy trustees play an important role in the bankruptcy system. Among their responsibilities are identifying fraud abuse and error in personal bankruptcy filings.

For this important work, we need to ensure that they are adequately compensated.

I look forward to the witness' testimony and I hope that they can help us address how much of an increase is needed and how we should fund such an increase.

Thank you, Madam Chair, and I yield back the balance of my time.

Ms. SÁNCHEZ. I thank the gentleman for his statement.

Without objection, other Members' opening statements will be included in the record.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Let me just make three brief introductory points before we hear from today's witnesses.

First, as Chairwoman Sánchez has reminded us, private trustees perform a critical—and, I would add, often underappreciated—role in administering chapter 7 bankruptcy cases. They are fiduciaries who must ensure that all assets are properly administered and that the debtor warrants a discharge.

Second, our bankruptcy system should ensure that it continues to attract and retain competent, experienced, and qualified private trustees in light of the critical role they play in the system. To that end, trustees should be properly compensated like other professionals in bankruptcy cases.

Serious questions have been raised as to whether the bankruptcy system can continue to attract competent and experienced trustees when they currently receive only $60 per case in so-called "no asset cases." In fact, in those cases where the filing fee has been waived, trustees receive no compensation at all.

And, third, I do not believe debtors should be forced to shoulder this additional expense. As many of you know, the bankruptcy filing fee has substantially increased in the last few years.

In addition, debtors must pay for mandatory pre-bankruptcy counseling *and* for post-bankruptcy financial management training.

Bankruptcy debtors are among the poorest of the poor. So it just seems blatantly unfair that they should have to pay so much for bankruptcy relief.

Accordingly, I look very much forward to hearing our witnesses' views on the issue of trustee compensation and their suggestions as to how Congress should proceed.

This is a very important challenge and I commend Chairwoman Sánchez for holding this hearing.

Ms. SÁNCHEZ. I am now pleased to introduce the witnesses on our panel for today's hearing. Our first witness is Mr. Robert Furr. Mr. Furr has represented creditors, debtors and trustees in bankruptcy proceedings for over 30 years. He serves as a panel trustee for the United States Department of Justice in the Southern District of Florida and is appointed as trustee in approximately 2,000 cases per year.

Mr. Furr is regularly appointed as a Chapter 11 trustee and has been designated as a Chapter 12 trustee in the Southern District. Mr. Furr has represented numerous businesses in Chapter 7 liquidation and in Chapter 11 reorganization and individuals in complex Chapter 7 and Chapter 11 proceedings. He lectures frequently on issues of bankruptcy, creditors' rights and remedies before national organizations.

He has been on the board of NABT since 2000 and is currently serving as president. Mr. Furr has also been president of the Bankruptcy Trustees Association for the Southern District of Florida for 15 years.

I want to welcome you to our panel today, Mr. Furr.

Our second witness is Mr. Eugene Crane. Mr. Crane is a former president of the National Association of Bankruptcy Trustees. He has spent his career trying to even the odds, if only a little, by helping the have-nots take on the haves of the world. Heeding a call from the National Lawyers Guild, Mr. Crane volunteered for the 1964 Mississippi Summer Project of the Committee for Legal Assistance and represented improperly arrested civil rights workers.

He became a partner in Savage, Frazin, Crane & Spencer and developed a bankruptcy law practice in which he could help individuals in small business, debtors, improve their lives and livelihood. He is currently a partner at Crane, Heyman, Simon, Welch & Clar in Chicago.

We want to welcome you, Mr. Crane.

Our third witness is Judge Margaret Dee McGarity. Judge McGarity has been a United States bankruptcy judge for the Eastern District of Wisconsin since 1987, having been appointed for a second 14-year term in 2001. She was appointed chief judge in 2003. Judge McGarity was in private practice before her appointment, concentrating primarily in the areas of bankruptcy, family law and marital property. And she serves on the Panel of Chapter 7 Trustees.

Judge McGarity is a frequent lecturer on various marital property and bankruptcy-related topics. She is a member of the National Association of Bankruptcy Judges, American Bankruptcy Institute, National Association of Women Judges and the American College of Bankruptcy.

I want to welcome you, Ms. McGarity.

Our final witness is Professor Jack Williams. Professor Williams is a professor at Georgia State University College of Law and in the Middle East Institute in Atlanta, Georgia, where he teaches and conducts research in the areas of bankruptcy and business reorganizations, mergers and acquisitions, corporate finance, taxation, Islamic commercial law and law and terrorism.

Professor Williams has served as the inaugural Robert M. Zinman American Bankruptcy Institute ABI scholar in residence for 2001 and has returned to the post a second time for 2008.

Since 2004, he has also been the Association of Insolvency and Restructuring Advisors' scholar in residence. Professor Williams is also managing director at BDO Consulting, a division of BDO Seidman in the New York and Atlanta offices. His areas of focus include restructuring and financial advisory services, financial fraud and fraudulent transfers, distressed business valuations, restructuring and insolvency taxation, forensic accounting, commercial damages modeling, investigation, litigation, consulting and the Foreign Corrupt Practices Act.

Professor Williams has served as a tax advisor to the National Bankruptcy Review Commission and as chair of the Tax Advisory Committee to the NBRC. He has taught bankruptcy taxation to attorneys in the Office of Chief Counsel, Internal Revenue Service, as part of the New York University School of Law IRS Continuing Professional Educational Program; to attorneys in the United States Department of Justice; attorneys and other professionals in

the Office of the United States Trustee; and to bankruptcy judges as part of the U.S. Federal Judicial Center Education Programming.

I want to thank you for being here today.

Without objection, all of your written statements will be placed into the record in their entirety, and we are going to ask that today you limit your oral remarks to 5 minutes. We have a light system which I am sure you may be familiar with, but I will just review that quickly. When your time starts, you will see a green light. When you have 1 minute of testimony remaining, you will get the yellow right warning you that you have a minute remaining. And of course, when your time expires you will see the red light come on.

If you are caught in mid-sentence or mid-thought, we will of course allow you to complete that sentence or final thought before we move on to the next witness.

After each witness has presented her or his testimony, Subcommittee Members will be permitted to ask questions subject to the 5-minute limit.

So with that understanding, I am going to invite Mr. Furr to please begin his oral testimony.

TESTIMONY OF ROBERT FURR, ESQ., FURR AND COHEN, P.A., BOCA RATON, FL

Mr. FURR. Thank you, Madam Chair Sánchez, and thank you, Member Cannon, for your very kind remarks, and other distinguished Members of the Subcommittee. I appreciate you being here today and listening to our cause. Let me thank you for the opportunity to provide the views of the National Association of Bankruptcy Trustees, which we refer to as the NABT.

By way of introduction, my name is Robert Furr and I am the current president of NABT. It is an organization of panel trustees who are independent fiduciaries appointed in every Chapter 7 bankruptcy case. Of the approximately 1,100 trustees nationwide, the vast majority are members of our association.

Chapter 7 bankruptcy cases typically include consumer cases where debtors discharge all their debts, but also include complex individual and business bankruptcy cases. Members of our organization carry out the major work involved in the bankruptcy system, handling 500 to 1,000 cases per year on average. Panel trustees carry out important public policy priorities as directed by Congress, such as ensuring 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 United States.

In the vast majority of Chapter 7 cases, debtors never appear before a judge but are examined by trustees, beginning with a review of the bankruptcy petitions filed, and then a hearing conducted by the trustee, to which others creditors may appear and participate.

The Bankruptcy Abuse and Consumer Protection Act passed in 2005, added many new and different duties for trustees. The GAO studied the effect of that act, and in the report they issued in June 2008 wrote, "The Bankruptcy Reform Act has affected the respon-

sibilities and caseloads of Chapter 7 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."

As trustees, we have an obligation to secure relief for honest but unfortunate debtors. And we also have an obligation to investigate bankruptcy filings for abuse, criminal activity, fraud, mortgage fraud and today fraudulent scams involving homeowners, which we are seeing more and more.

In fiscal year 2007, the Office of the United States Trustee made 1,163 criminal referrals, most resulting from information provided by Chapter 7 panel trustees. Chapter 7 trustees in 2007 distributed $2.86 billion to creditors, a lot of money.

A major problem, however, has been our compensation. Trustees receive $60 for administering Chapter 7 cases in which no assets are liquidated. The last increase was in 1994. This is a flat fee per case. A case can take a long time or a short time, depending upon the case. We basically work on a contingency fee basis.

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 and a 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 won't have seasoned trustees.

Chapter 7 cases with significant assets are rare and trustees in small and rural areas are very much hurt by the current situation. In addition, we have in forma pauperis filings, which means we don't get any no assets fees. In an in forma pauperis case, the debtor doesn't have to pay a filing fee and we don't get any fees in the case. We have to handle it for free.

Congress has looked at our compensation but for one reason or another our raise has gotten entangled. We are asking the Committee, the Senate and the House to increase our no assets fee by $60. There is a bill pending in the Senate right now that does that. It is tied to the judge's bill, Senate Judicial Committee Bill S1638. We are hopeful the Senate can pass this bill, but time may be running out. I have attached a copy of that bill to the papers that we have submitted.

We urge the House of Representatives to take up our per case compensation increase in a freestanding bill based on the $60 increase. We hope that you can act on it quickly.

Thank you again for the opportunity to testify and I am pleased to answer any questions.

[The prepared statement of Mr. Furr follows:]

PREPARED STATEMENT OF ROBERT FURR

Madam Chair Sánchez, 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 is 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.

ATTACHMENT

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.

Ms. SÁNCHEZ. Thank you, Mr. Furr. We appreciate your testimony. You came in under the 5-minute mark, so well done.

At this time I would invite Mr. Crane to give his oral testimony.

TESTIMONY OF EUGENE CRANE, ESQ., CRANE, HEYMAN, SIMON, WELCH & CLAR, CHICAGO, IL

Mr. CRANE. Good afternoon, Madam Chair, senators, Ranking Member Cannon, distinguished counsel. Again, we thank you for the opportunity to address you on this issue, which we think is crucial not only to the finances in existence of the trustee but the integrity of the bankruptcy system.

The 1978 Bankruptcy Code changed the law and where in the past referees in bankruptcy, who will now be our judges, conducted examinations into the affairs of the debtor in open court hearings. That was passed for the trustee to separate the administrator from the judicial function.

As such, we have assumed that quasi-judicial function of examining the debtors. As Mr. Furr stated, approximately 95 or 96 percent of all the bankruptcy cases, individual no asset cases, are heard by trustees. These people never see a court. We represent the court, and I take seriously the fact that we represent what I consider the bankruptcy code and judicial system. And that is a responsibility we bear.

Under the case law, we were considered independent fiduciaries to represent the law, recover assets, represent the parties. As case law developed, we began to be responsible not only for dividends to creditors, but for the interest of the debtor. You may wonder where we have an adversarial position toward debtors, but for example if a debtor has a personal injury case and they are severely injured, loss of life, limb, whatever, and there is only $200,000 in a bankruptcy estate, if we recover $200,000, pay the creditors in full and costs of administration, that is not the end of our job. We may have some debtor who is permanently impaired, whose interests we have to be aware of at that point, and see that they are compensated beyond that.

To that extent, we represent debtor's interest. If creditors have violated truth in lending laws, we bring actions on behalf of the estate and the debtor. If mortgages or security documents are improper, we bring actions to set those aside and recover the funds for the estate.

And in a bankruptcy estate, if there are excess funds after the creditors are paid, that is surplus that the debtors recover and helps them go on with their life. I consider this an extremely important function, have spent most of my 50-some years in practice and 45 years as a trustee, building up whatever expertise and knowledge I have in the bankruptcy field. I would hate to leave it.

Our duties include, as has been suggested, objecting to a debtor's discharge if a debtor has done something wrong, report of a violation that is a violation of Title 8 of the criminal code.

Now in today's climate, the chaotic climate of the financial industry, we are seeing countless motions by lenders to modify these things or annul the injunction to allow them to proceed against the debtor and foreclose on their houses and other property. This has occasioned a great deal more time, more effort on our part. We

have to evaluate the houses before we go to the hearing. We have to go to a hearing. We have to appear and testify. And all of that is covered by the $60 fee.

Of course, we could at that point come up with a no asset estate anyway, which usually is the case. But that is a serious obligation that we take very seriously and feel very strongly about. We are committed under the code, under the new requirements to review the debtor's income tax returns and make sure there is no abuse of the system. Abuse is a term of art in the act that provides for a creditor having more than $271 in excess funds after paying all their obligations that are allowed under the code. I wonder if that is really such an abuse. But, anyway, that happens to be the law and we have to enforce the law and we try.

I am required to report support obligations to the agencies that handle them for every debtor that has such a thing. In forma pauperis filings were mentioned before. We don't get paid on those because our fee comes from the filing fee, but there is a more important issue. People who file in forma pauperis petitions would qualify for legal aid and for help. They don't get that. By the time we see them or the court sees them, it is too late and they are mired. The creditors take advantage of them. Nobody is there to help them but the trustee.

Inadvertently, we have become part of the debtors defense system or advisory system. You can't turn these people down. They call up, "What do I do? My forms are no good. I can't afford a lawyer. It is too late to get a lawyer." We send them to various legal aide agencies and try to work it out for them. This is a function that the trustees assume because we feel it is in the nature of the justice of the system and the integrity of bankruptcy to provide complete relief.

But we don't just represent creditors. We represent, we believe, the court. We represent the debtors. We represent the entire system. And I think the system sits pretty much on our shoulders at this point, and they are getting a little weak at the moment because of the lack of funds that are available to us. Obviously, I am sure you all know that $60 per case isn't going to carry us very far. If we have an asset case, there is a percentage thing, but they are getting more and more rare these days, except for mega-bankruptcy cases.

The trustee system is one that allows for an independent party, which we think we are, to administer an estate, regardless of what the creditors want, regardless of what the debtor wants, and sometimes in spite of what our overseers in the U.S. Trustees Office want, because independence to us means independence and we have to do what we think is appropriate as fiduciaries handling the money and property and lives of the debtors in a bankruptcy proceeding. I would hate to give it up. I have been doing it for 45 years—doing other things, too. Our office does handle many different kinds of bankruptcy. We represent trustees, we represent debtors, we represent creditors, which provide income for us and allow us to continue.

But the trustee work is kind of the spot, the work that goes closest to my heart, in performing something that is of value to the people who file it. All the other laws in the country provide pur-

suing and collecting money and putting people in jail. The bankruptcy law is the only law that works retroactively and says we are going to give you relief for what you did in the past, and I think that is probably one of the noblest relief valves we have in this country. And I want to continue to be a part of that. And I want to continue to be able to afford to be a part of that.

Thank you very much for allowing me to address the Subcommittee.

[The prepared statement of Mr. Crane follows:]

PREPARED STATEMENT OF EUGENE CRANE

STATEMENT OF EUGENE CRANE
BANKRUPTCY TRUSTEE FOR OVER 45 YEARS

Madam Chair Sanchez, Ranking Member Cannon, and other distinguished members of the Sub-Committee, let me thank you for the opportunity to provide the views and position of the Panel Bankruptcy Trustee on this very important and crucial subject.

I have served as a Bankruptcy Trustee for over 45 years and have practiced law for over 54 years with emphasis on representation of debtors, creditors, other Trustees, and creditor committees in bankruptcy cases.

The 1978 Bankruptcy Code changed the proceedings so that judges no longer conduct bankruptcy hearings called 341 meetings or creditors meetings. The function of conducting an examination into the finances and activities of a debtor passed from the court to the Trustee. As a result, the vast majority of debtors never appear before a judge, but in the 95% (maybe 96%) of all chapter seven cases, they appear before and are examined under oath by a Panel Trustee and occasionally by creditors who are allowed to question the debtor at the hearing (or meeting) conducted by the Trustee. Having assumed the former judicial function and charged with investigating into the financial affairs of the debtor, the valid functioning of chapter 7 proceedings rests squarely on the shoulders of the Trustee.

Over the years the responsibilities of the Trustee have been expanded so that Trustees are responsible for rights and interests of all parties; creditor, debtor, court and interested parties. These duties have been mandated by the courts to apply to the Trustee's activities as "Independent Fiduciary responsibility," to preserve the integrity of the system.

As Trustee, I assumed the former judicial function, but did not have the power and authority of a judge. Without such power, the Trustee must prepare pleadings and have hearings before the judge to secure court orders to enforce the provisions of the law. (To require corrected pleadings, turnover of records and documents and assets, and enforce compliance with the law.)

The vast majority of bankruptcies (over 90-95 percent) are "no asset" cases of individual debtors. These people rarely go before a judge, and the Trustee is the "court" in their perspective.

As Trustee, I must review the bankruptcy schedules and filed documents prior to my conducting the meeting, including review of their income tax returns. I contact the secured creditors seeking proof of their secured position. I contact any banks listed asking for balances and statements. If applicable, I acquire judgments for divorce to determine assets disclosed to the divorce court, and I answer the calls and questions of debtors and creditors seeking information.

In today's chaotic economy, I am served with motions of mortgage lenders to modify the automatic stay and be allowed to foreclose their mortgages, all requiring appearances in court. I must value the real properties covered to see if there is any equity for the estate (or for the debtor). These motions could average as many as six per week, each requiring a court appearance or pleading (non compensable).

The number of "no assets" cases of former businesses, usually end in a treasure hunt for records, continued hearings, requests for document production and even filing law suits to enforce the duties under the Code or to recover property. More often than not resulting in a "no asset" estate.

Trustees' duties include filing objections to a debtor's discharge, if warranted. These objections represent a non-compensable trial in court because no assets are involved or generally recovered.

I am required, under Title 18, to report any conceived violations of the criminal bankruptcy provisions to initiate an investigation by the Justice Department, and prepare backup reports, for which there is no compensation.

The bankruptcy process was sufficiently complicated without the passage of BACPA, but now the duties of the trustee are further enlarged and expanded, creating substantive new burdens without compensation.

In addition to the requirement already mentioned of having the debtor supply tax returns and pay advices (stubs) to ensure compliance with the means test obligations, anywhere from 5% to 30% of cases require time and effort to secure compliance with such demands. Additional or continued hearings are necessary when the debtor does not follow the rules and the Trustee must schedule another hearing just to get and review the tax returns and financial information. As Trustee, I am committed to communicating a presumption of "abuse" to the United States Trustee after reviewing the income revealing documents.

"Abuse" is defined as a consumer debtor having more than $271.00 per month left over after deducting all qualified and allowed deductions.

I am required under Section 704(a)(10) of the Act to report all debtors who have child support obligations to notify all agencies and persons to whom such obligations are due upon filing of the case and again upon discharge of the debtor.

In a case involving medical records of a supplier of such services, the patient records must be stored and protected. In a no asset case where will the Trustee get the funds to store and preserve such records, publish in newspapers and notify every patient and appropriate insurance carrier? Illinois requires maintaining such records for at least ten years.

In Forma Pauperis filings are now allowed, in appropriate cases, which permit nonpayment of a filing fee. This is admirable, but the Trustee's $60.00 comes from the filing fee, so that we have a further reduction in compensation for these cases estimated (by survey across the country) to range from 2% to 11% of no asset cases filed in a particular district.

Trustees protect interests of debtors as well as creditors. If a personal injury case value exceeds the total debt and cost of administering the estate, there is still the interest of the debtor to protect. If creditors have been guilty of a violation of Truth in Lending laws, the Trustee must prosecute such claims for benefit of the estate and benefit of the debtor. Trustees do <u>not</u> get paid on funds distributed to the debtor from any surplus recovery, but have a duty to see that there are such funds, if possible.

An Independent Fiduciary is needed to protect the system, the creditors, the debtor and the law. I consider it not only a duty as Trustee, but a privilege to support this law and all affected by it.

Trustee payment is set at $60.00 per case, and has not been increased in over 14 years. A cost of living increase has been built into the Code mandating an increase every three years in line with the cost of living index, but not for Trustees. Waiver of filing fees

for *In Forma Pauperis* debtors has eliminated fees for Trustees from those cases, resulting in a corresponding decrease in income for Trustees.

Thank you for the opportunity to address you and express my views regarding compensation for Trustees.

Respectfully submitted,

Eugene Crane

Ms. SÁNCHEZ. Thank you, Mr. Crane. We appreciate your testimony.

At this time I would invite Judge McGarity to give her testimony.

TESTIMONY OF THE HONORABLE MARGARET DEE McGARITY, UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF WISCONSIN, MILWAUKEE, WI

Judge MCGARITY. Thank you.

I would like to thank the Members and the staff for allowing me to address the Subcommittee on the current issue of the terribly antiquated level of trustee compensation.

I wholeheartedly support just compensation for the men and women who are a vital part of the bankruptcy system.

My name is Margaret Dee McGarity. I am chief judge of the United States Bankruptcy Court for the Eastern District of Wisconsin.

I have been a bankruptcy judge for slightly over 20 years. And before that I practiced law in Milwaukee, which included serving as a Chapter 7 trustee in bankruptcy, the first time in 1978, which was under the former Bankruptcy Act.

Thirty years ago, trustees received $10 per case. However, all that was necessary to be a trustee was a legal pad, a telephone and the Federal Building Law Library. There were no audits, no U.S. Trustee meetings, no means test analysis, no mandatory electronic filing, no PACER court records access, no notices to special creditors. Someone from the clerk's office even ran the tape recording at the meeting of creditors. There was no specialized overhead in being a bankruptcy trustee and no unproductive time of any significance.

Other trustees in my district were experienced and generous with their knowledge and expertise. My best research tool was my telephone.

My experience as a trustee bears no resemblance to what it means to be a trustee today. Offices require regular updates of hardware and software to manage their cases and to interface with the court system. This is the electronic age. We can't go back, and I am not suggesting that we do.

There is additional oversight now, with reports and audits. Accountability is good, but it is not compensable. The 2005 act requires considerable additional duties for trustees, such as notifying domestic support obligation claimants about state agency services.

These duties have nothing to do with the bankruptcy or the adjudicative process and they are not compensated. They should be. But not at the expense of the courts.

The trustees I worked with long ago were at the top of our profession, and many are today. But as time has gone by, these experienced trustees have often told me, "I can't afford to do this anymore."

With the changes in technology and the law since 1994, no one should be surprised at this. I have heard that non-trustee law practice or other business, or non-lawyer trustees, has had to support the trustee portion of the business. They can do this for a while, and they do these because there are many dedicated trustees who

enjoy the work and believe it is valuable. Many experienced trustees are still working within the system and are sitting at the table here today. And the courts and creditors depend on them, but this situation cannot continue.

What happens when service to the courts becomes so unproductive that a good attorney or accountant reluctantly gives it up for more lucrative pursuits? Sometimes, unfortunately, people who can't make more money at other pursuits move in to fill the void in trustee positions. Or if the trustees don't quit, more energy is spent on whatever makes money. And the trustee duties move to the back burner.

Recently I received a letter from a wage claimant of a defunct corporation who told me that the trustee was not answering phone calls. She had waited 2 years for wages owed by the former employer. I don't know what this trustee must have to do to administer the case, but I understand that the trustee is more motivated to work on something that will pay the bills as opposed to trustee work that doesn't pay the bills. This causes more work for the courts and the legitimacy of the system in the eyes of the public suffers.

Bankruptcy is the only exposure many ordinary people have to the Federal justice system. The trustees are in the frontlines of contact with creditors and debtors. Failure to provide just compensation for those who represent the system means that dedicated trustees may prop up the system for a while, but soon only the mediocre or worse will work for us. This is not what I want for the system of justice that I have served for my entire career.

The current proposal is that filing fee will fund the increase in trustee compensation, but what about the 2005 provision for waiver of the fee? The trustee still has all the duties prescribed by statute, but he or she is required to work for nothing. We don't do this to attorneys who represent the indigent accused. We don't do this to jurors. But we do it to bankruptcy trustees. This is deplorable treatment of people who render a very valuable service to the courts and the creditors, and who are the face of the Federal Government to many citizens who have no other exposure to courts.

I urge you to recognize the importance of bankruptcy trustees to the court system and to modify their compensation so that talented, skilled and experienced individuals will continue to serve it and make it work.

Thank you for your kind attention and consideration. I would be happy to answer any questions that you have.

[The prepared statement of Judge McGarity follows:]

PREPARED STATEMENT OF THE HONORABLE MARGARET DEE MCGARITY

STATEMENT OF MARGARET DEE McGARITY
CHIEF JUDGE, UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
September 16, 2008

I would like to thank the members and staff for allowing me to address this subcommittee on the issue of the current antiquated level of trustee compensation. I wholeheartedly support just compensation for the men and women who are a vital part of the bankruptcy system, and I am here at my own expense because of my commitment to the court system I work for.

My name is Margaret Dee McGarity. I am the chief judge of the United States Bankruptcy Court for the Eastern District of Wisconsin. I have been a bankruptcy judge for slightly over twenty years, and before that I practiced law in Milwaukee, which included serving as a chapter 7 trustee in bankruptcy, the first time in January of 1978 under the former Bankruptcy Act.

Thirty years ago, trustees received $10 per case. However, all that was necessary to be a trustee was a legal pad, a telephone, and the federal building law library. There were no audits, no U.S. Trustee meetings, no means test analysis, no mandatory electronic filing, no PACER court records access, and no notices to special claimants. Someone from the clerk's office ran the tape recorder at meetings of creditors. There was no specialized overhead, no unproductive time of significance. Other trustees in my district were experienced and generous with their knowledge and expertise. My best research tool was my telephone.

My experience as a trustee has no resemblance to what it means to be a trustee today. Offices require regular updates of hardware and software to manage their cases and to interface with the court system. This is the electronic age - we can't go back, and I am not suggesting we do. There is additional oversight now, with reports and audits - accountability is good, but it is not compensable. The 2005 Act requires additional duties for trustees, such as notifying domestic support obligation claimants about state agency services. These duties not only have nothing to do with the bankruptcy or adjudicative process, they are not compensated. They should be, but not at the expense of the courts.

The trustees I worked with long ago were at the top of our profession. Many are today. But as time has gone on, these experienced trustees have often told me, "I can't afford to do this anymore." With the changes in technology and the law since 1994, no one should be surprised at this. I have heard that nontrustee law practice, or other business for nonlawyer trustees, has had to support the trustee portion of the business. They can do this for a while, and they do because there are many very dedicated trustees who enjoy the work and believe it is valuable. Many experienced trustees are still working in the system, and the courts and creditors depend on them, but this situation cannot continue.

What happens when service to the courts becomes so unproductive that a good attorney or accountant reluctantly gives it up for more lucrative pursuits? Sometimes unfortunately, people who can't make more money at other pursuits move in to fill the void in trustee positions. Or if the trustees don't quit, more energy is spent on whatever makes money, and the trustee duties move to the back burner. Recently I received a letter from a wage claimant of a defunct corporation, who told me that the trustee was not answering phone calls. She had waited two years for wages owed by the former employer. I do not know what this trustee must do to administer this case, but I do understand that the trustee is more motivated to work on something that will pay the bills, as opposed to the trustee work that doesn't, but it causes work for the courts, and the legitimacy of the system in the eyes of the public suffers.

Bankruptcy is the only exposure many ordinary people have to the federal justice system. The trustees are on the front lines of contact with creditors and debtors. Failure to provide just compensation for those who represent the system means that dedicated trustees may prop up the system for a while, but soon only the mediocre - and worse - will work for us. This is not what I want for a system of justice that I have served for my entire career.

The current proposal is that filing fees will fund the increase in trustee compensation. But what about the 2005 provision for waiver of the fee? The trustee still has all of the duties prescribed by statute, but he or she is required to work for nothing. We do not do that to attorneys for the indigent accused, and we do not do that to jurors. But we do it to bankruptcy trustees. This is deplorable treatment of people who render a very valuable service to the courts and to creditors, and who are the face of the federal government to many citizens who have no other exposure to the courts.

I urge you to recognize the importance of bankruptcy trustees to the court system and to modify their compensation so talented, skilled, and experienced individuals will continue to serve it and make it work.

Thank you for your kind attention and consideration. I would be happy to answer any questions the subcommittee might have.

Ms. SÁNCHEZ. Thank you, Judge McGarity.

At this time I will invite our last business to give his oral remarks.

Mr. Williams?

TESTIMONY OF JACK F. WILLIAMS, ESQ., PROFESSOR, AMERICAN BANKRUPTCY INSTITUTE, ALEXANDRIA, VA

Mr. WILLIAMS. Thank you very much, madam Chairwoman, and Members of the Subcommittee.

Good afternoon, and thank you very much for inviting me to visit with you over proposed legislation that would increase compensation for Chapter 7 bankruptcy trustees in no asset cases.

In this country, we ask much of our bankruptcy system, yet no system is any better than the people who operate within it. Therefore, it is incumbent that we retain and attract competent, honest and committed trustees. As designed, our present system simply will not work effectively without them.

The legislation proposed today seeks to increase the no asset Chapter 7 trustee fee from $60 to $120. At the $60 level, we are talking about at a low end of billable hour somewhere between 10 and 14 minutes per file before the trustee starts to eat into his own human capital. This is an increase that is immodest in nature, yet funds what is absolutely one of the most effective components of our bankruptcy system.

In other systems in other countries, this function that is shouldered by the Chapter 7 bankruptcy trustee, is usually done by a government official. But here what we see is a privatization, if you will, of oversight, monitoring and investigation, which has been very, very effective, not withstanding the fact that a fee increase has not taken place for some 14 years, yet the scope of responsibility has increased substantially.

Bankruptcy trustees handle—about nine out of every ten or more of their cases are no asset cases. But no asset does not mean no work. There is still plenty of work to be done from an investigation of the schedules that are filed with the bankruptcy petition. Follow-on work, including investigatory work at the request of the U.S. trustee, and the implementation of the new means testing since the 2005 act, conducting the Section 341 meeting and examination, a determination of potential misconduct on the part of the debtor, the debtor's attorneys, the debt relief agencies and bankruptcy petition preparers, and of course, abuse itself.

Those debtors that seek to gain are rooted out by the Chapter 7 bankruptcy trustee who has a fiduciary duty to the estate, notwithstanding sometimes the lack of funds or the insufficiency of funds, who nonetheless investigates debtors who have engaged in misconduct and bring actions that are checked to their discharge. All of which are absolutely essential for the bankruptcy system to work the way we have crafted it.

Along with expanding the scope of duties while at the same time not increasing the compensation, we ask something else of the Chapter 7 bankruptcy trustee. We ask that they be the face of government and the face of the judiciary.

This year at the American Bankruptcy Institute we predict about 1.2 million bankruptcy filings. We are still very far away from the

records that we saw not too long ago, but nonetheless a tremendous amount, a significant number of bankruptcy filings. Most Americans, when they interface, when they deal with the Federal judiciary, will do so through this window. That is through their interface with the bankruptcy system, and they will make a determination about all of us and all aspects of government and governmental function based on that interaction.

What we want to make sure from an institutional perspective is that we continue to attract competent, thoughtful and dedicated trustees to serve this important function, not only from an investigatory purpose, but also from a public service perspective as well. It is absolutely important, again, for our system to function effectively.

Thank you very much for the opportunity to share my thoughts.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF JACK F. WILLIAMS

Statement of Professor Jack F. Williams

Before the House Judiciary Subcommittee on Commercial and Administrative Law

To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to increase compensation for chapter 7 trustees in "no-asset" bankruptcy cases

September 16, 2008

Madam Chairwoman and members of the Subcommittee, my name is Jack Williams. I am a Professor of Law at Georgia State University College of Law in Atlanta, Georgia, and currently the Robert M. Zinman Resident Scholar at the American Bankruptcy Institute (ABI). I am pleased to appear today to speak about pending legislation that would amend the Bankruptcy Code (the "Code") to increase compensation for bankruptcy trustees in bankruptcy cases.

Founded on Capitol Hill in 1982, the ABI is a non-partisan, non-profit association of over 11,000 professionals involved in bankruptcy and insolvency, representing both debtors and creditors in consumer and business cases. The ABI is not an advocacy group and does not take lobbying positions on legislation before Congress or advocate any particular result in matters pending before the courts. Rather, the ABI is a neutral source for information about the bankruptcy system (such as how courts are interpreting provisions of the Bankruptcy Code) and a resource for members of Congress and their staff considering changes to the Code. As an academic, and as the ABI Resident Scholar, I am permitted to give my personal views on legislation, but those views should not be taken as the views of the ABI.

At Georgia State, I teach and write primarily in the areas of bankruptcy law (including business and consumer bankruptcies), taxation, homeland security, and military law. My C.V. is

Attachment 1 to this written statement, but let me briefly say that after graduating from George Washington University Law School, clerking for Judge William J. Holloway, Jr., of the U.S Court of Appeals for the Tenth Circuit, and working for four years in the Dallas, Texas office of Hughes and Luce, I joined the faculty of Georgia State University College of Law, where I have taught for the past seventeen years. For calendar year 2008, I am serving as the Resident Scholar at the ABI in Alexandria, Virginia.

My testimony today will focus on the need to increase the compensation for bankruptcy trustees in typical "no asset" bankruptcy cases. A "no-asset" case is a consumer chapter 7 bankruptcy case in which there are no assets available to satisfy any portion of the unsecured claims of the creditors, or a case in which all of the individual debtor's property is exempt. While the overwhelming majority (perhaps in excess of 95%) of chapter 7 cases are "no asset," the bankruptcy trustee must still perform a variety of time-consuming duties, such as preparing for and conducting the meeting of creditors (commonly known as the 341 meeting (11 U.S.C. §341)), verifying information sought by the U.S. Trustee, ensuring that tax returns are filed, and examining the documents filed by the debtor. In the rare "asset" case, the chapter 7 bankruptcy trustee receives a commission on the assets administered.

Presently, bankruptcy trustees are compensated just $60 for each bankruptcy case they handle (except for those cases in which the 2005 Amendments have waived a fee). The proposed legislation seeks to increase the fee to approximately $120 per case. This fee increase would be the first in about 14 years.

During the time from the last fee increase, a bankruptcy trustee's duties and responsibilities have increased substantially. Typically, a bankruptcy trustee is charged with a large number of important duties, among them the administration, investigation, and oversight of a bankruptcy case. Bankruptcy trustees undertake various investigatory and audit functions and prepare reports of their findings. In many districts, the bankruptcy trustee engages in follow-up investigations regarding the new means testing, a requirement added by the 2005 amendments and generally administered by the U.S. Trustee. For example, the bankruptcy trustee may be tasked with assisting the U.S. Trustee by gathering and/or verifying information and or documentation for the U.S. Trustee's implementation of the new means test (including Current Monthly Income (CMI) data, tax returns, and documentation of certain expenses on Form 22A), additional section 341 meeting questioning imposed by the 2005 amendments, domestic support obligations (DSO) noticing, confirming credit counseling, and monitoring misconduct issues concerning attorneys, petition preparers, debt relief agencies (DRA). Many, but not all of these trustee duties, are found in Bankruptcy Code section 704 (11 U.S.C. §704). These duties are not only important for the orderly administration of a bankruptcy case, but absolutely essential to preserve the integrity of the bankruptcy system.

The bankruptcy trustee also serves as the "face" of the bankruptcy process, meeting with each debtor that files a chapter 7 bankruptcy case. For the vast majority of Americans, this is the "face" that they assign to the federal judicial process. It is essentially that we continue to attract highly competent, honest, and fair-minded individuals to serve as bankruptcy trustees. To be sure, no one becomes a bankruptcy trustee to get rich; their's is a calling of public service.

However, it serves no one to deny them reasonable compensation for the public service they provide.

Thank you again for the opportunity to appear today. Please do not hesitate to call upon me or the ABI if we can be of further assistance on this or any other bankruptcy policy issue.

Ms. SÁNCHEZ. Thank you, Professor Williams. We appreciate your testimony.

We are now going to begin our rounds of questioning, and I will begin by recognizing myself for 5 minutes of questions. And I am going to sort of go in reverse order. Usually I go this way, but I am going to start with Professor Williams first.

I am curious to know what amount you think would be fair to set for the trustee fee and why.

Mr. WILLIAMS. The proposal is an increase from $60 to $120. I think that is a reasonable increase from an institutional perspective, absolutely necessary.

I think many of the cases are handled quite effectively with the trustee and their assistants, and I think that that fee should permit the trustee to continue to discharge his or her duties, along with the assistants that they use. And therefore, the institution itself would operate effectively.

So I think an increase to $120 is a reasonable amount. I would not object to an increase to $150.

Ms. SÁNCHEZ. That is what I am trying to get at. Do you think that the $120 even sort of begins to put the real, you know, to compensate in a real way the amount of time that goes into it?

Mr. WILLIAMS. It begins to.

Again, what we are talking about is moving from about 14 minutes of compensable time to about half an hour of compensable time, and trustees are—those who are efficient and experienced, seasoned, can work through very quickly many of their cases. Of course, there are cases that require additional investigatory work, and they will be outside the profile.

Ms. SÁNCHEZ. Thank you.

In your written statement that you submitted for the record, you noted that the 2005 act requires certain "additional duties of trustees unrelated to the bankruptcy or adjudicative process that should be compensated, but not at the expense of the court," and I think you said that in your oral testimony as well.

Would you please explain what you mean when you say not at the expense of the court?

Judge MCGARITY. Well, as I understand it, the filing fees that are paid by debtors go into the unappropriated judiciary budget. In the past—and of course it has varied a lot because of the new law—the fees that come in through the bankruptcy system are 80 to 90 percent, maybe, I have heard as high as 92 percent, of the income that comes into the judicial system, through other filing fees and what have you. And of course the rest of the courts run on appropriated funds.

If you deduct a portion of those unappropriated funds, then I don't know. I didn't multiply a million two, but it is by the $60 increase over what they have now, it would mean that the budget of the judiciary would take a hit of, I don't know, $60 million, $70 million?

Our court system is running pretty lean right now, particularly when it comes to funding in clerks offices and the people who run the administration of the system. To take that amount of money out of the funds that run the court system means that it would,

if you want justice, have to be made up elsewhere, which would mean from appropriated funds.

A lot of what trustees do, I think, too, is more in the investigation nature. Now, investigation in the executive branch is done by the FBI or the U.S. Attorneys, and the U.S. Trustee also does some. But when it falls upon the panel trustees, then it seems to me it is a quasi-prosecutorial process. They are the ones who look for money that is hidden. They make referrals for prosecutions. That is the sort of thing that should be funded by the executive branch, because it is in the nature of prosecution. It is in the nature of investigation.

Now, the $60 filing fee that already comes out of the unappropriated funds that the judiciary runs on, much of what trustees do of course is part of the judicial process. And so I think it is appropriate that that be shared. How? I don't know.

Ms. SÁNCHEZ. Okay. I was just getting at the point.

Judge MCGARITY. That is the point.

Ms. SÁNCHEZ. Would a hit to the courts, trying to run the way that they are running, if they were the ones that had to provide the $60 increase, would be——

Judge MCGARITY. And the legislation that I read doesn't allow an increase in the filing fee to make up the difference. So what are the courts going to have to do? They are going to have to lay off people.

Ms. SÁNCHEZ. Okay. Thank you.

Mr. Crane, why do the trustee services go uncompensated when the bankruptcy—or, I am sorry. Let me rephrase that. I know why, because you said why the trustee services go uncompensated when the filing fee is waived. But how do you think Congress should address that problem?

Mr. CRANE. I am sorry?

Ms. SÁNCHEZ. When the filing fee is waived, the trustees don't get compensated because they are——

Mr. CRANE. That is correct.

Ms. SÁNCHEZ. So how do you think Congress could fix that problem of the trustee not getting compensated when the filing fee is waived?

Mr. CRANE. I have no objection to the in forma pauperis fees. People can't afford it, and they are entitled to relief. That is not our objection.

The fact that we don't get paid from that $60, hopefully, has to be offset by the additional funds of any increase we get in the asset cases we may get. And that is okay. I think statistically the forma pauperis cases are—an NABT trustee did a survey which was published in our journal and shows that may occur anywhere from 2 to 11 percent of all cases that they handle in any given state. And that could turn out to be a sizeable amount of money.

But that is something that we can't argue with. If there were a provision to pass or if there were additional funds collected in some way or appropriated to cover the in forma pauperis, that would be great. But, you know, we accept that and if we can make up our fees appropriately that percentage can probably be covered so that we are not filing our own bankruptcy——

Ms. SÁNCHEZ. Okay.

Mr. CRANE [continuing]. Because we would have to hire other counsel and, you know.

Ms. SÁNCHEZ. It gets expensive. Thank you, Mr. Crane.

And last question for Mr. Furr. Have you observed trustees leaving the bankruptcy system because they find that the compensation just isn't keeping up with the amount of time and effort they are putting in?

Mr. FURR. It has happened to a certain extent. It hasn't happened to a big extent so far. I know of at least one trustee in my area who retired rather than take on the duties under BACPA, the law that passed a couple of years ago, because he didn't want to have to do the additional duties. And I have heard of other instances around the country. People are leaving; I know people are considering it. And we are hoping to stop that.

Ms. SÁNCHEZ. Thank you.

My time is expired. At this time, I would like to recognize Mr. Cannon for 5 minutes of questions.

Mr. CANNON. Thank you, Madam Chair.

May I just follow up with Mr. Furr?

How much more time are trustees spending under—give the new duties under BACPA? Do you have any sense of that?

Mr. FURR. It would depend upon the case, but I would suggest it is about twice as much time as was spent before.

Mr. CANNON. On average it is twice as much per case?

Mr. FURR. Yes, sir.

Mr. CANNON. Or just on those cases where——

Mr. FURR. No. All cases are those cases. All cases are now covered by BACPA, bankruptcy reform act. So we have to spend that additional time on every case.

Mr. CANNON. And so you think it has doubled your time?

Mr. FURR. I do.

Mr. CANNON. But we haven't raised the compensation?

Mr. FURR. We have not. The only thing, Congressman, that has really enabled us to keep up with it is electronic equipment and computerization, which has helped us quite a lot, to try to keep up with it. But it still takes a great deal more of my time than it did before.

Mr. CANNON. Are lawyers and their clients coming up with better documentation, electronic documentation, as part of that process?

Mr. FURR. No really. It has not particularly improved that much. It is still upon us to go out and search out the information.

The electronic age has helped us a great deal, because now we can access governmental records, deed records, lien records, tax records, much easier than we could before, and that has helped us quite a lot. But, really, the debtor's bars, standard of practice, has not really improved that much in my opinion.

Mr. CANNON. Have magistrates established rules, either by district or otherwise, that would require the debtor's bar to be more aggressive in how they provide information?

Mr. FURR. Well, the bankruptcy law that was passed does do that, and local rules do too. And it is really up to us to enforce that, because we are the ones that don't get the information, so we have to in essence stay on top of our debtor's attorneys to make sure they do provide the information that we need to do our job.

And if we do that, they do. But it is still an adversarial process, don't forget. They are representing a client, and they are trying to not give you the money, and you are trying to, you know, recover the assets that may be there or may be hidden. And so it is an adversarial process.

Mr. CANNON. Well, I had an interesting experience on an airplane, sitting next to a magistrate in bankruptcy who walked me through what he thought—how his court had operated and was going to operate under the new act, before we had actually passed it here. And he convinced me in 4 hours of flying that there is a lot you can do with rules, local rules, as well as the BACPA, that create a system that makes it easier on trustees.

What I am hearing you say is that that is not—at least in your experience, that hasn't been the case.

Mr. FURR. Not necessarily. Understand, again, we can't always trust the information we are given. We have to look behind it. We have to have a sense that this person is not being honest. When you look at someone and they are dressed in clothes that don't go with the income they say they are reporting, or they are wearing jewelry that doesn't go with that, just their demeanor doesn't go with the image they are trying to project, you may realize there is something going on here, and you look beyond that.

So it is a lot of experience and instinct that goes with what we do, not just rules.

Mr. CANNON. When a wise, old state judge told me when I was a young practicing lawyer, due process is in the paperwork, but once you get these people with their filings and the attached electronic files, that is the paperwork that ultimately nails them if they have committed a crime, even if you miss it.

Has it been easier because of the requirements that have been made or not? It sounds to me like you are talking about your job is easier because you can go Google somebody and find out other information about them. But have we improved our rules so submissions are easier for you to deal with?

Mr. FURR. Yes, there has been improvement.

Mr. CANNON. So given the improvement that you have had there, is it still twice as much time per case, do you think?

Mr. FURR. Yes, sir, because we have to read all these papers. The typical bankruptcy petition is about 35 pages long in a very simple case.

Mr. CANNON. Right. I am not adversarial here.

Mr. FURR. And they added about ten additional pages that weren't there before. All those pages need to be reviewed.

Mr. CANNON. I don't mean to be adversarial, just to develop the record. The fact is, we are demanding a great deal more. There are some processes that help out, but it is taking a great deal more time, and unless we want to lower the quality of people doing the work, we are going to have to raise the pay to those folks. I think that is——

Mr. FURR. That is correct, sir.

Mr. CANNON. Thank you, Madam Chair. I yield back.

Ms. SÁNCHEZ. The gentleman yields back his time.

At this time I would like to recognize the gentleman from Georgia, Mr. Johnson, for 5 minutes of questions.

Mr. JOHNSON. Thank you, Madam Chair.

Mr. Furr, would you please briefly walk us through the typical Chapter 7 no asset case from the trustee's perspective, and tell us what the trustee's duties would be and how much time they consume.

Mr. FURR. Yes, sir.

On a typical Chapter 7 no asset case, I would normally receive a court download by email of the petition being filed and myself being appointed trustee. I would open that email up and take a look at the bankruptcy petition schedule and financial affairs and all the other documents filed with the bankruptcy petition, and I might print it off or I might just store it electronically.

But normally we would print it off, and we would have on those papers all the information that the debtor submitted to the court as to what their assets, liabilities and affairs were. We would then take a look at that. I would look at that and my assistants would look at that. I have people in my office who would go through and look at all of the cars listed. We go through the latest black book that used car dealers use to value each car, and we would write down that value on the schedules.

We would look at the mortgage, the liens on the cars, and we actually go to the State of Florida's Web site for the Department of Motor Vehicles and look up each VIN number on the cars to make sure the VIN numbers match, because occasionally the VIN numbers don't match. And we also occasionally find that there are cars listed with the State of Florida belonging to this particular debtor that aren't on the schedules, and we uncover assets that way.

We take a look at the mortgages that are recorded against the debtor's property to make sure they are in fact recorded mortgages and make sure they have the proper legal descriptions.

Now, this can be done looking through electronic records, and generally speaking it can be done fairly rapidly. It is either done by myself or someone else in my office.

WE also then have to take a look at the debtor's means test, which is the test that Congress enacted a couple of years ago to see if any consumer debtor could in debt be eligible for Chapter 7 bankruptcy. In order to test that, we have to look at the debtor's tax returns for 2 years and we have to look at the debtor's payment advices, which are the last several months of their payments, to make sure that their pay is matching what they have placed on the means test.

Now, for many people who have low incomes, that is a very quick process. In some cases, it can be a longer process in someone who has a higher income. But that does take time, to look at all those issues.

We then get that information and put it together, and if there is anything else on the schedules that raises an issue, like is there child support issues, is there a divorce pending, we may have to take a look at that. We get calls from debtors, from creditors occasionally. We always get contacted from car finance companies or mortgage companies, asking for relief from stay, particularly today when people aren't able to keep their houses.

So all of that is packaged together, put into a file. I review it. It is prepared by someone in my office. And we go to a first meet-

ing of creditors. Those occurs three or four times a month for me, at which time the debtor comes in. I bring the debtor, usually perhaps their spouse, in. They are sworn in under oath. We examine them on the information in those schedules. That can take anywhere from 5 minutes to about 10 minutes in my case. In a large case, it could take a lot longer. But typically in a no asset case, 5 to 7 minutes, pretty quickly, to go through it, look at their tax returns.

I will also look at their credit card bills and ask them to bring those in so I can see if they have in fact bought appliances or other things that may have value that we could recover for the creditors. We take a look at the value of all their assets. We take a look at their jewelry, other things, to see if there is anything for the creditors.

At the end of the examination, we ask them if they understand the effect of bankruptcy on their credit, the effect of a discharge in bankruptcy, to make sure they understand what is going on. We make sure their attorney has properly informed them.

Creditors have an opportunity to appear at the hearings, and sometimes they do, and ask questions. And then we typically conclude the hearing.

If that is determined to be a no asset case by me, then I have to go back to my office. I have to then log into the U.S. Trustee, the court clerk Web site, and electronically file a report of no asset. And that is my conclusion of the case.

Now, that time period I just spoke of, in a no asset case, can be anywhere from an hour to a couple of hours, depending upon the number of items involved.

Mr. JOHNSON. Yeah, that is quite a bit of time for you and your staff.

How much would you say that you—how much would that time be actually worth as a trustee? What would you consider to be a fair trustee fee?

Mr. FURR. I would say that a fair fee, if you were going to pay it by the hour, which it would never occur that way, a fair fee would probably be $250 to $300 per case. But there is no way that could be justified in the current bankruptcy system.

I think increasing this fee to $120 would give us a chance to compensate us somewhat fairly. Don't forget, Congressman, there are also cases we get where we retain assets, and we make a larger fee on those. And some of what we do is really—we do the no asset cases hoping that we will get some asset cases that will counterbalance the base of the no asset fee.

The no asset fee really is designed I think to give us some base of income that we can then do the rest of the practice.

Mr. JOHNSON. Of the Chapter 7 cases, what percentage are no asset cases?

Mr. FURR. About 95 percent

Mr. JOHNSON. About 95 percent. And what percent of those are in forma pauperis cases?

Mr. FURR. In my district, probably about 1 percent. In other parts of the country, I know for instance Vermont has a very high rate. I have heard from trustees in Vermont it can be as much as 7 to 10 percent there.

Mr. JOHNSON. Thank you.

Ms. SÁNCHEZ. The time of the gentleman has expired.

At this time I would like to recognize the gentleman from Massachusetts, Mr. Delahunt, for 5 minutes.

Mr. DELAHUNT. Thank you, Madam Chair.

What does the data show in terms of annual compensation to a trustee?

Mr. CRANE. I don't think there are any statistics that are specific to trustee's compensation. There is a——

Mr. DELAHUNT. No, I am just saying nationally, okay.

Mr. CRANE. Nationally?

Mr. FURR. I don't know the answer to that question.

Mr. DELAHUNT. I would like to see that.

Mr. CRANE. That is kind of—Congressman, that has to include a balance of people who do trustee work, let's say, on the coast, who handle mega-bankruptcy cases, and then mass of trustees in middle America and the southwest and the south who really don't get that type of asset cases, who would bring the average way, way down. So it is kind of difficult to compute an average.

Mr. DELAHUNT. That is a very good point. And maybe I think for our consideration, if the trustees, the U.S. Trustee, could maybe break down the numbers with some kind of formula that would make adjustments.

I mean, I am interested. I have never been to a bankruptcy hearing, although I was very much, as Mr. Cannon would remember, very much engaged in the Bankruptcy Reform Act. And I attended simply because I am friendly with a lawyer who was seeking a fee, and it is an asset case. And the bill is now around $40,000. I know you have got to make it up—$60, $120, you know, $200, I mean, this is silly. Even if it is a no asset case, you know, you pick the phone up and that is probably worth $50 in terms of time.

But there has got to be a better system, and I think you need to present—because I tell you, I haven't—I was not impressed with this particular trustee, because, you know, obviously I am not going to identify him, but it was in Boston, and I am kind of monitoring the case as a case study for myself in terms of the realities on the ground. You walk into the, you know, courtroom. I am an attorney. I was the elected prosecutor in the Greater Boston area and served in that role for 22 years, so I have tried a number of cases myself. It is a nice, little, quiet practice. Everybody knows everybody else.

It is clear the trustee, at least this particular trustee, you know, was taking this on. It was an effort. And I am sure part of that is reflected in the frustration in these other cases that you are talking about that are a $60 filing fee.

Judge MCGARITY. Well, Congressman, it is not really a quiet little practice. When I was a trustee, you know, some of my best information came from former spouses and employees who were familiar with some shenanigans, and so it can be quite lively sometimes.

Mr. DELAHUNT. I am not—and again, this is anecdotal and this is unfair, but this is my interface.

Judge MCGARITY. Right. Really, this is what—the asset cases are just plain different from the no asset cases.

Mr. DELAHUNT. Right.

Judge MCGARITY. And since most of them are no asset cases, someone who serves as a trustee in Oshkosh, Wisconsin may not get a lot of huge asset cases, but serves a very valuable service to that constituency. And we have to compensate people for both the no asset cases and the asset cases.

Mr. DELAHUNT. I recognize that, and that is why I suggested that the U.S. Trustee, using a formula that is reflective of common sense, could provide the Committee, you know, with some guidance in terms of annual compensation. Maybe a break down between nonasset cases and asset cases. Are there, you know, favorite trustees that are earning very large amounts of money in asset cases?

Judge MCGARITY. No, not really, because it is on a random draw. And I think that is pretty much everywhere. It certainly is where I am. It is quite random. And I am not sure that the U.S. Trustee keeps those statistics. I obviously cannot speak for the U.S. Trustee. I don't have anything to do with that. But I would question whether they even keep those statistics.

Mr. DELAHUNT. I guess what I am suggesting is those statistics ought to be developed if they are not retained.

Could I have an additional 2 minutes, Madam Chair?

Ms. SÁNCHEZ. Without objection, the gentleman is given 2 extra minutes.

Mr. DELAHUNT. And I think it would be very informative and enlightening to come before the Committee, and I am sure you could provide that information to the Chair and the Ranking Member, to educate us.

Judge MCGARITY. I think it might take years to put together those sorts of statistics, and the system is in real crisis right now that we need to keep the trustees that we have, we need to keep the quality of the trustees that we have, because we encounter real problems when we are not able to do that. So I don't know that——

Mr. DELAHUNT. Let me then reframe it. I understand that it will take years. I think it would behoove the bankruptcy trustees to begin to develop the software to compile that data so that years from now when none of us are here but there is another set of witnesses before a similar Committee, that the data is available, because I think we need to make an informed decision.

I am for people earning money, and I know that being a trustee in bankruptcy can be very frustrating. I would like to see, you know—and I oppose the so-called Bankruptcy Reform Act that I think was clearly skewered toward the credit card issuers. Wait 'til that bubble bursts. We will have more than $500 or 500-point declines on the Dow.

But the reality is there has to be, I think, a legitimate effort to do even more work to identify those that are inclined to game the system.

I think you could be—you should be well compensated for doing I think a very tedious chore of compiling and analyzing and reaching conclusions. But, I mean, I have no problem saying $60 to $120. I could do $200. I could do $250. But you have got to, I think, make your case, is what I am suggesting to you.

I mean, there is data out there. And I go one time to a bankruptcy court in Boston saying—we are unfamiliar with it. We are not practitioners. We are not in there every day. I mean, the people

on this panel are intelligent, they can understand concepts. They have some data available. You are here in a very discreet issue. If you don't have the data now, and you can't get it in timely fashion because there is a crisis, I think you will find the Chair and the Ranking Member very sympathetic to your cause.

But what I am suggesting is as time goes on there should be that data available so that you can come in here and you can reel off those answers, not in anecdotal fashion, but with some empirical evidence, because somebody might say, you know, $60 for 5 hours work? No, that is wrong. Maybe we have to go to an hourly system. Let's think outside the box. Let's not just imagine ourselves beholden to what we have always done.

You have got, what 1.2 million filings this year? Is that the projected? Think of what it is going to be like next year.

Mr. FURR. Sir, I hope not.

Mr. DELAHUNT. Well, you know, we had a good day on the Dow, it only went down 50 points.

Ms. SÁNCHEZ. The time of the gentleman has expired.

And I have been asked for unanimous consent to submit Mr. Conyers' opening statement into the record, and without objection it will be so ordered.

I want to thank all of the witnesses for their testimony today.

Without objection, Members will have 5 legislative days to submit any additional written questions, which we will then forward to the witnesses and ask that you answer as soon as you can, so that they can be made a part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

Again, I want to thank everybody for their time and patience.

And this hearing of the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 3:07 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

RESPONSE TO POST-HEARING QUESTIONS FROM ROBERT FURR, ESQ.,
FURR AND COHEN, P.A., BOCA RATON, FL

House Committee on the Judiciary
Subcommittee on Commercial and Administrative Law

Hearing on Bankruptcy Trustee Compensation
Tuesday, September 16, 2008, at 2:00 p.m.

ANSWER OF THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES TO QUESTION POSED FROM LINDA T. SANCHEZ, CHAIR

The Trustees carry out important public policy priorities as directed by Congress. Those priorities include the following:

a. insuring that the debtor perform his/her intentions as specified in § 521(a)(2)(B) which requires that the debtor, with respect to encumbered property, specify that such property is either claimed as exempt or that the debtor intends to redeem the property or intends to reaffirm the debt secured by the property.

b. insuring that the debtor has filed his/her Federal Income Tax Returns and receive and review the most recent Federal Income Tax Return for the most recent tax year.

c. reviewing the debtors' means test to see if the debtor is eligible for a Chapter 7 bankrutpcy.

d. providing notice to the holder of a claim for a domestic support obligation of the Chapter 7 bankruptcy. 11 U.S.C. § 704(c). This includes notifying the former spouse or parent of a child and/or the particular State Child Support Agency of the bankruptcy. The Trustee must include in the notice the address and telephone of the State Child Support enforcement agency and include in such notice an explanation of the rights of the holder of payment of such claim under Chapter 7. The Trustee must also give the same notice to the child support agency with the same information. At the time the debtor is granted a discharge, the Trustee is required to provide this particular domestic support claim holder or the child support enforcement agency written notice of the granting of the discharge, the last recent known address of the debtor, the last recent known name and address of the debtor's employer and the name of each creditor that held a claim that is not discharged or was reaffirmed by the debtor.

e. § 704(a)(11) provides that if at the time of the commencement the case, the debtor served as an administrator to an employee benefit plan, the Chapter 7 Trustee must continue to perform the obligations required of the administrator.

f. § 704(a) (12) requires the Chapter 7 Trustee to use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care facility that is in the vicinity of the health care business that is closing, provides the patient with services that are substantially similar to those provide by the health care business that is in the process of being closed and maintains a reasonable quality of care. Even if the case has no assets with which to pay a Trustee for these duties, this is a duty the Trustee must undertake. Bankruptcy Rule 2015.2 mandates that the Trustee may not transfer a patient into another health care business unless the Trustee gives at least ten (10) days of the notice of the transfer to the patient care omnibus man, if appointed the case, and to the patient, and to any family member or other contact person whose name and address have been given to the Trustee

or the debtor for the purpose of providing information regarding the patient's health care subject to applicable non-bankruptcy law relating to patient privacy.

f. The Trustee has a duty to safeguard patient privacy.

g. The Trustee has a duty to safeguard patient health records.

h. The Trustee has an obligation to investigate criminal activity on behalf of debtors, creditors and other parties in bankruptcy and to report them to the United States Trustee's Office for referral to the United States Attorney.

i. The Trustee has a duty to monitor that all taxes are paid to governmental entities and to insure that all tax returns have been timely filed, and if they are not, to file them.

In addition to these Public Policy Priorities as directed by Congress, the Trustees have very explicit duties as provided in the Code. A noted treatise for Trustees is the *2008 Collier Handbook For Trustees and Debtors In Possession* published by LexisNexis. Practice Aid No. 38 of that book has a checklist of explicit Trustee Duties. The checklist references 72 sections of the Bankruptcy Code and Rules which detail these duties. Many of these sections have numerous subsections.

Sincerely,

Robert C. Furr, President
National Association of Bankruptcy Trustees

RESPONSE TO POST-HEARING QUESTIONS FROM JACK F. WILLIAMS, PROFESSOR, AMERICAN BANKRUPTCY INSTITUTE, ALEXANDRIA, VA

House Committee on the Judiciary
Subcommittee on Commercial and Administrative Law

Hearing on Bankruptcy Trustee Compensation
Tuesday, September 16, 2008, at 2 p.m.

RESPONSE OF PROFESSOR JACK F. WILLIAMS
POST-HEARING WRITTEN QUESTIONS
FROM LINDA T. SÀNCHEZ, CHAIR

Question:

In your written statement you note that "a bankruptcy trustee's duties and responsibilities have increased substantially" since the last fee increase. In what respects have they increased? Why have they increased?

Response:

The chapter 7 bankruptcy trustee has seen an already busy schedule of tasks get busier. Among serving as the administrator of a chapter 7 bankruptcy case, a chapter 7 trustee must also undertake an aggressive assessment of compliance with many new provisions of the Bankruptcy Code, including the application and potential violation of the credit counseling requirement as a precondition to seeking bankruptcy relief, the means test standards designed to channel certain financially able consumer debtors to chapter 13 relief, and federal tax reporting and compliance assurances. These new and additional duties were imposed by the 2005 Amendments to the Bankruptcy Code.

As more and more data suggests a long period of financial distress, we can expect bankruptcy filing rates to increase. At the American Bankruptcy Institute, we predict about 1.1 million bankruptcy filings for calendar year 2008, with that number increasing to 1.4 million for 2009. With these increases come additional duties imposed on the chapter 7 trustee as the representative of the bankruptcy system. As we have expanded the chapter 7 trustee's duties, we have failed to provide an adequate compensation. We ask much but pay so little. It is for these reasons an increase in chapter 7 trustee compensation is long over due.

○