
BY CONSIDERCHAPTER13, ON JUNE 14TH, 2015

A continuation of Part 1’s look at the many hats of a Chapter 13 Trustee.

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Litigator

The majority of Chapter 13 trustees are lawyers by training. In the role of Chapter 13 trustee, there are opportunities to use litigation skills in bankruptcy court to right wrongs by pursuing actions that serve the interests of debtors or creditors, or sometimes both. As the U.S. financial collapse of the early 21st Century started to unfold, Chapter 13 trustees were among the first to uncover the magnitude of mortgage fraud stemming largely from sub-prime mortgage loans. Trustees who disbursed large amounts of money monthly for mortgage loans were in an ideal position to track the level of faulty accounting on the part of several large mortgage servicers.

Trustees may pursue problems arising from mortgage servicing errors and abuse. Trustees make paramount efforts to ensure debtors who complete their plans emerge from Chapter 13 bankruptcy after three to five years with their mortgages showing as current, not often an easy task.

Trustees often pursue actions to preserve the bankruptcy system’s integrity. In addition to matters in bankruptcy court, trustees have been known to litigate appeals through United States District Courts, Circuit Courts of Appeals and even the U.S. Supreme Court.

Mediator

The trustee’s pivotal role between debtors and their creditors often puts a trustee in an ideal position to mediate disputes. The trustee often can talk directly to both sides and make recommendations to the parties and to the bankruptcy courts that assist the parties in reaching a compromise. A trustee’s participation in cases prior to a hearing calendar helps to reduce the number of contested matters that courts have to resolve and saves resources of both the parties and the courts.

Manager of Funds, Disbursing Agent and Information Clearinghouse

One of the central roles of Chapter 13 trustees is to ensure that debtors commence payments under their plans. 11 U.S.C. § 1302(b)(5). In addition to the duty of collecting debtors’ plan payments, trustees disburse funds pursuant to plans. During the fiscal year ending September 2013, Chapter 13 trustees disbursed nearly eight billion dollars to creditors, an average of $38.4 million for each trustee. Trustees also maintain information relating to their case administration and generally make the information regarding payments and disbursements available to debtors and creditors through online websites.

Computer Network Administrator

Handling disbursements and safeguarding the distribution of data requires trustees to capably manage computer networks and sophisticated computer systems that are capable of handling hundreds of thousands of records relating to receipts, disbursements and general case statuses. Although many trustees employ information technology specialists, trustees bear the responsibility for managing their computer networks, and maintaining the security and reliability of their systems.

CEO

Some small trustee offices may only handle several hundred cases at a time. Larger offices handle many thousands of cases. On average, trustees manage nearly 20 employees. Depending on the size of the caseload, trustee’s staffs may consist of attorneys, paralegals, bookkeepers, data entry specialists, case managers and accountants. Trustees essentially function as a CEOs of corporations.

Debtor Advisor and Educator

Trustees are keenly aware of the statutory mandate to assist debtors in performing their plans. What form this assistance takes varies widely from district to district, office to office. Generally speaking, debtors, while performing under plans are prohibited from incurring new debt, refinancing loans or selling major assets without the permission of either the standing trustee or the bankruptcy court. This role often requires the trustee to assist a debtor in making choices between their “wants” and “needs.” A vehicle that a debtor desires for replacement of the “old clunker” may not be the same vehicle (and price tag) that will gain the approval or agreement of the trustee. During a five year plan term, a debtor may need to trade and purchase a vehicle, make necessary home repairs, obtain educational loans for dependents as well as meet emergency financial needs ranging from a failed well pump to dental needs. The trustee must review the requests while balancing the need for the debtor’s feasible plan completion.

One way some trustees have provided assistance to debtors during plans is with educational programs for financial management skills. Although there are many factors that contribute to a need for bankruptcy reorganization, limited financial literacy is often a contributing cause. Many trustees have initiated debtor education programs to support debtors’ performances under plans and to help debtors depart bankruptcy with improved money management skills. Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtor education classes are now a requirement for obtaining a discharge in Chapter 13 cases. The novel education invention of some Chapter 13 trustees has evolved into a statutory requirement for every Chapter 13 bankruptcy case.

Various Levels of Debtor Contact

To be sure, whether a trustee manages a large office, medium size office or small office, the role of standing trustee carries rewards and challenges. Trustees with large offices carry the challenge of managing larger and more complex staffs and the attendant challenges of employing many people. On the other end of the spectrum, trustees with smaller caseloads have the challenge of being their own systems manager, investigator, controller and financial advisor, as well as the challenge of keeping up with court hearings and endless requests for information from various parties.

As a trustee who has always managed a comparatively small caseload of less than 1200 cases, one of the rewards that I value is debtor contact. I have the luxury of taking time with debtors at their meeting of creditors sufficient to get a sense of what brought them to the point of filing bankruptcy. I attempt to remember that...
for the most part, that each person on the other side of the table has only gotten there after a fair amount of pain, struggle and stress, and that each person is there looking for some kind of fresh start. I try to be respectful of their struggles and stress to them that part of my job is to help them complete their plan.

In some cases, I hear little from debtors after the meeting of creditors. They make their payments, arrive at the end of their plans and I send them congratulatory letters. In other cases, I receive phone calls about illnesses, job losses, non-functioning well pumps, dead cars, dying spouses, or other difficulties that require debtors and me to figure out what happens next. Sometimes there are lawsuits, insurance proceeds or inheritances that can have any number of impacts on a pending plan. Generally, debtors’ attorneys are part of the discussions.

Occasionally, when a debtor reaches the end of a very difficult plan, after struggle, hardship and finally success, I receive a letter or a card thanking me and my staff for being there when they were in the middle of the struggle. One of the best parts about being a Chapter 13 trustee is that a trustee gets a chance to make a positive difference in peoples lives when they need it the most and to watch the debtors leave on their “fresh start.”


"The economic pathology that leads to bankruptcy is indeed depressing, but bankruptcy itself is the process of healing and restoration. Bankruptcy is an integral part of a free market system that permits individuals and businesses to fail; a strong bankruptcy system undergirds a market-based economy. The bankruptcy lawyer and judge help individuals and businesses to pick up the pieces, right the wrongs, and begin anew when old approaches have failed. Bankruptcy is about the future. The bankruptcy scholar searches for a better treatment of economic wounds that is less painful and more permanent. It is good work, the work of the healer and there is much of it to be done."

The above quote accurately captures a sense of what can happen when Chapter 13 case works and when lawyers and judges make the case work. One additional word is missing in the above quote, however – the word “trustee.” Although the trustee’s administration is integral to a case’s success, a Chapter 13 trustee usually does his or her work efficiently, professionally and with a quiet sense of duty, which when done correctly, receives little thanks. I do believe that in our administration of Chapter 13 cases, we help debtors pick up their financial pieces, allow creditors to maximize their recoveries, preserve the bankruptcy court system, and along the way, right a few wrongs and allow parties to begin anew.

It is not an easy job that we Chapter 13 trustees do, but after doing it for over 23 years, I do believe it is good work. I am honored to be a Chapter 13 trustee — even if no one knows exactly what I do.

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