

VBA BANKRUPTCY LAW SECTION
Bench-Bar Brown Bag Lunch Meeting
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Rutland
Friday, April 10, 2015 ~ 12:00 - 1:00 PM

AGENDA

- | | |
|--|-----------------|
| 1. <u>VBA Bankruptcy, Business Law & International Law Seminar</u> | Judge Brown |
| <ul style="list-style-type: none">➤ US/ Canada Cross-Border Bankruptcy & Enforcement of Judgments➤ May 4, 2015 at Sheraton Hotel in South Burlington, Vt➤ Speakers: Bankruptcy Judges Colleen Brown and Allan Gropper, Justice Frank Newbould of Toronto Commercial Court, and attorneys Marc Bouchard, Mark Oettinger, and Jon Eggleston. | |
| 2. <u>Compliance with the Debtor Audit Program / 2014 EOUST Audit Report</u> | Lisa Penpraze |
| 3. <u>A 5-Minute Tax Tip for Bankruptcy Practice</u> | Melissa Ranaldo |
| 4. <u>Best Practice Tip: Attorneys Need to Use VTB Model Motions & Orders</u> | Kathleen Ford |
| <ul style="list-style-type: none">➤ they are available on the Bankruptcy Court Website➤ is particularly important for lien stripping and lien avoidance➤ attorney can draft own motion and orders but they must contain required information as set forth in the form motions and order | |
| 5. <u>Free Electronic Noticing of Orders and Court Notice</u> | Kathleen Ford |
| <ul style="list-style-type: none">➤ Clerk's Announcements | |
| 6. <u>New Standing Order #15-04 re Redaction</u> (copy attached) | Kathleen Ford |
| <ul style="list-style-type: none">➤ this is a new procedure,➤ any questions? | |
| 7. <u>Best Practices Discussion re Bankruptcy Rules 4001(a)(3), 6004(h)</u> | Judge Brown |
| <ul style="list-style-type: none">➤ Reminder: there is a 10-day stay on sale and stay relief orders➤ It may only be waived upon a showing of cause | |
| 8. <u>Update re Clerk's Office Move to Burlington and Consolidation</u> | Judge Brown |
| 9. <u>Any Other Topics for Today?</u> | |
| 10. <u>Suggested Topics for our Next Meeting?</u> | |

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court
Have a question about them?
Contact Kathy Ford at 802-776-2003 or kathleen_ford@vtb.uscourts.gov

No fee and no pre-registration required.
Bottled water will be provided.



United States Department of Justice Executive Office for United States Trustees

Public Report:

Debtor Audits by the United States Trustee Program Fiscal Year 2014

*(As required by Section 603(a)(2)(D) of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8)*

March 2015

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EXECUTIVE SUMMARY

The United States Trustee Program (USTP) is authorized to audit individual chapter 7 and chapter 13 bankruptcy cases under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) (BAPCPA). Section 603(a)(2)(D) of the BAPCPA states that the Attorney General must:^{1/}

(D) Establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

In Fiscal Year 2014, the USTP designated 1,627 cases for audit. Of the cases designated for audit, 33 were dismissed before the case was assigned to an audit firm and 20 audits were still in process as of January 29, 2015. Of the remaining 1,594 cases, 824 were random audits and 770 were exception audits (audits of cases with income or expenditures above a statistical norm). Reports of Audit were filed in 1,498 of the completed audits, and at least one material misstatement was reported in 23 percent of these cases. There were 76 Reports of No Audit filed. A Report of No Audit is filed when a case selected for audit is closed without completion either because the debtor failed to provide sufficient information to complete the audit or the case was dismissed while the audit was in process.

INTRODUCTION

The United States Trustee Program is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program consists of 21 regions with 93 field office locations nationwide and an Executive Office in Washington, DC. Each field office

^{1/} Authority to implement provisions of the BAPCPA was delegated from the Attorney General to the Director of the Executive Office for United States Trustees (Attorney General Order No. 2785-2005 dated October 14, 2005).

is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.^{2/}

The USTP is authorized to contract with independent firms to perform audits of individual chapter 7 and chapter 13 cases designated by the USTP. The purpose of the audit is to determine the accuracy, veracity, and completeness of petitions, schedules, and other information required to be provided by the debtor under sections 521 and 1322 of title 11. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the USTP in identifying cases of fraud, abuse, and error; and to enhance deterrence.

The USTP selects independent audit firms through a competitive procurement process to perform the audits using certified public accountants or independent licensed public accountants.^{3/} The debtor audits are conducted in accordance with audit standards promulgated by the USTP and published in the *Federal Register*.^{4/}

The USTP is authorized to randomly designate for audit 1 out of every 250 consumer bankruptcy cases per federal judicial district and to designate cases for exception audit in which the income or expenditures of a debtor deviate from the statistical norm of the district in which the case was filed. Due to budgetary constraints, the designation of audits was suspended on March 18, 2013, and did not resume until March 10, 2014. For the remainder of Fiscal Year 2014, the USTP designated cases for random audit at the rate of approximately one out of every 600 consumer cases filed.

^{2/} The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

^{3/} BAPCPA Section 603(a)(2).

^{4/} BAPCPA Section 603(a)(1); *Federal Register*, Vol. 71, No. 190 (October 2, 2006).

I. CASE DESIGNATION PROCESS AND TERMINOLOGY

Random audits are selected randomly from all consumer bankruptcy cases within a federal judicial district. In contrast, cases designated for exception audit must meet specific criteria established by the USTP. These criteria are based on income or expenditures greater than a statistical norm for the district where the case was filed, as specified under uncodified section 603(a)(2)(C) of the BAPCPA.

An audit consists of a comparison between selected items on a debtor's originally filed bankruptcy papers and documents produced by the debtor at the request of the audit firm. Audit firms also conduct at least two searches using commercially and publicly available database services to look for unreported assets and to verify the market value of assets.

After an audit has been completed, a Report of Audit is filed with the court by the audit firm and a copy is transmitted to the United States Trustee. The Report of Audit identifies any material misstatement that is reported by the audit firm. The report is not a legal determination and the legal effect of the audit firm's finding of a material misstatement, if any, is a question for the court. Prior to filing a Report of Audit with the court noting a material misstatement, the audit firm contacts the debtor, through counsel if represented, to provide the debtor an opportunity to offer an explanation or supply additional information that may negate the finding. A material misstatement indicates the audit produced information that challenged the accuracy, veracity, or completeness of a debtor's petition, schedules, or other filed bankruptcy documentation. Inaccurate or incomplete information deprives the court, the United States Trustee, the private trustee, and creditors of adequate information to decide whether to conduct further investigation, recover assets, or seek relief against the debtor.

While specific criteria for reporting a material misstatement are not released to the public to preserve the integrity of the audit process, in general, material misstatements relate to the understatement or omission of the debtor's assets, income, or pre-petition transfer of property. If a material misstatement is identified in a Report of Audit, the bankruptcy court gives notice to all creditors in the case. In addition, the United States Trustee determines what action is appropriate based on the material misstatement(s) and may pursue a variety of actions depending on the

circumstances of the case, including seeking denial or revocation of discharge, or reporting the material misstatement to the U.S. Attorney.^{5/} In many instances, the United States Trustee may take no action on a material misstatement identified in a Report of Audit based on a number of factors, including whether the debtor corrected the error (e.g., filed amended schedules) or whether the material misstatement was intentional.

If the audit firm cannot complete the audit because the debtor did not produce documents requested in connection with the audit or because the case was dismissed while the audit was in process, a Report of No Audit is filed with the court by the audit firm and a copy is transmitted to the United States Trustee. The United States Trustee may take appropriate enforcement action when a Report of No Audit is filed, including seeking revocation of discharge, if the debtor fails to satisfactorily explain the failure to make available the documentation requested for the audit.^{6/}

II. OUTCOMES

Outcomes are presented in this report both as aggregate national numbers from all judicial districts within the jurisdiction of the USTP, as well as separately by judicial district.

Aggregate Audit Outcomes

Table 1 shows the total number of cases designated for audit, broken down between cases with no report (i.e., cases that were dismissed prior to assignment to an audit firm or cases with audits still in process as of January 29, 2015) and cases where either a Report of Audit or a Report of No Audit was filed with the court. For Reports of Audit filed with the court, the table also identifies the number of cases with at least one material misstatement and the number of cases with no material misstatements. Further, for all cases designated for audit, the table shows the distribution between random audits and exception audits.

^{5/} See 11 U.S.C. §§ 707, 727(a), 727(d)(4)(A).

^{6/} See 11 U.S.C. § 727(d)(4)(B).

In Fiscal Year 2014, the USTP designated 1,627 cases for audit. Of the cases designated for audit, 33 were dismissed before the case was assigned to an audit firm and 20 audits were still in process as of January 29, 2015. Of the remaining 1,594 cases, 824 were random audits and 770 were exception audits. Reports of Audit were filed in 1,498 of the completed audits, and at least one material misstatement was reported in 23 percent (341) of these cases. Thirty-one percent of exception audits identified at least one material misstatement, compared to 16 percent of random audits. There were 76 Reports of No Audit filed.

Table 1: USTP Debtor Audits for Fiscal Year 2014 (Nationwide Aggregate)				
	Total	Random	Exception	% of Cases Designated
Cases Designated for Audit	1,627	857	770	
Cases with No Report (As of January 29, 2015)	53	39	14	3
Cases with Report	1,574	818	756	97
Report of Audit Filed	1,498	777	721	92
No Material Misstatements	1,157	656	501	
% of Reports of Audit	77	84	69	
At Least One Material Misstatement	341	121	220	
% of Reports of Audit	23	16	31	
Report of No Audit Filed	76	41	35	5

* Percentages are rounded.

More than one material misstatement may be reported in a single case. For Fiscal Year 2014, income related material misstatements were reported in nearly two-thirds of the cases with material misstatements, while just under half of cases with material misstatements had asset or transfer-related material misstatements.

Outcomes by Judicial District

Table 2 shows the distribution of cases by judicial district in which either a Report of Audit or a Report of No Audit was filed. For cases with a Report of Audit, a breakdown of the number and percentage of cases with at least one material misstatement is provided. This table combines information from both random and exception audits. Due to differences in the number of case filings per judicial district, there is wide variation among districts in the number of Reports of Audit; districts with fewer filings will have fewer reports. For districts with 10 or more Reports of Audit, the percentage of audits with material misstatements ranged from 0 percent to 50 percent.

Table 2: Outcomes by Judicial District for Fiscal Year 2014				
District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Alaska	0	1	0	0
Arizona	0	35	10	29
Arkansas Eastern	1	12	2	17
Arkansas Western	0	6	0	0
California Central	7	83	21	25
California Eastern	1	40	6	15
California Northern	1	23	3	13
California Southern	1	18	3	17
Colorado	1	31	6	19
Connecticut	1	9	2	22
DC	0	2	0	0
Delaware	1	4	1	25
Florida Middle	2	62	10	16
Florida Northern	0	6	1	17
Florida Southern	1	38	7	18
Georgia Middle	1	16	2	13
Georgia Northern	2	62	14	23
Georgia Southern	0	16	4	25
Guam	0	1	0	0
Hawaii	0	3	1	33

Table 2 (continued): Outcomes by Judicial District for Fiscal Year 2014				
District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Idaho	0	9	3	33
Illinois Central	1	12	2	17
Illinois Northern	7	79	26	33
Illinois Southern	0	8	1	13
Indiana Northern	0	21	2	10
Indiana Southern	2	30	7	23
Iowa Northern	0	6	1	17
Iowa Southern	0	5	1	20
Kansas	0	14	3	21
Kentucky Eastern	0	15	4	27
Kentucky Western	0	20	4	20
Louisiana Eastern	0	6	0	0
Louisiana Middle	0	3	0	0
Louisiana Western	2	19	2	11
Maine	0	4	1	25
Maryland	3	29	10	34
Massachusetts	1	16	3	19
Michigan Eastern	2	40	8	20
Michigan Western	1	17	4	24
Minnesota	0	28	9	32
Mississippi Northern	1	8	0	0
Mississippi Southern	0	11	4	36
Missouri Eastern	1	23	5	22
Missouri Western	0	15	5	33
Montana	0	2	1	50
Nebraska	0	7	4	57
Nevada	1	17	1	6
New Hampshire	0	5	1	20
New Jersey	4	48	15	31
New Mexico	0	7	2	29
New York Eastern	2	20	6	30
New York Northern	0	14	2	14
New York Southern	2	10	0	0
New York Western	1	7	3	43
North Dakota	0	2	0	0

Table 2 (continued): Outcomes by Judicial District for Fiscal Year 2014				
District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Northern Mariana Islands	0	0	0	N/A
Ohio Northern	2	40	6	15
Ohio Southern	3	34	6	18
Oklahoma Eastern	0	2	1	50
Oklahoma Northern	0	6	2	33
Oklahoma Western	1	9	3	33
Oregon	1	23	10	43
Pennsylvania Eastern	2	10	0	0
Pennsylvania Middle	0	7	1	14
Pennsylvania Western	0	11	1	9
Puerto Rico	1	18	4	22
Rhode Island	0	6	0	0
South Carolina	0	14	0	0
South Dakota	0	2	1	50
Tennessee Eastern	0	24	6	25
Tennessee Middle	0	21	3	14
Tennessee Western	4	27	4	15
Texas Eastern	0	9	2	22
Texas Northern	2	17	7	41
Texas Southern	1	12	5	42
Texas Western	0	17	1	6
Utah	3	21	6	29
Vermont	0	2	1	50
Virgin Islands	0	0	0	N/A
Virginia Eastern	0	31	10	32
Virginia Western	0	11	1	9
Washington Eastern	0	9	4	44
Washington Western	3	26	9	35
West Virginia Northern	0	2	0	0
West Virginia Southern	0	4	1	25
Wisconsin Eastern	1	27	8	30
Wisconsin Western	1	10	5	50
Wyoming	0	1	0	0
TOTAL	76	1,498	341	23

CONCLUSION

In Fiscal Year 2014, the United States Trustee Program continued to administer audits of individual chapter 7 and chapter 13 bankruptcy cases. Out of 1,498 reports of audit, a material misstatement was reported in 16 percent of the random audits and in 31 percent of the exception audits. This resulted in an overall material misstatement rate of 23 percent.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF
LOCAL RULES OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 15-04

**TO REVISE LOCAL RULE 5003-1(C)(2),
TO DESCRIBE PROCESS AND FEE
FOR REDACTING COURT RECORDS**

In September 2014, the Judicial Conference of the United States adopted a national policy addressing the treatment of requests to redact personal identifiers from bankruptcy records, including the approval of a new fee for the filing of a motion to redact. The new policy emphasizes the importance of protecting private information contained in the records of cases filed in federal courts and requires the courts to collect the fee for every request to redact a document. The \$25 fee for redacting a document went into effect on December 1, 2014. In order to align this Court's Local Rule with both the spirit and mandates of the new policy and fee requirements, certain changes to the rule are necessary.

Accordingly, IT IS HEREBY ORDERED that Vt. LBR 5001-3(c)(2) is revised to read as follows:


- (2) **Filer Responsible for Redacting.** In all instances, the responsibility for redacting these personal data identifiers rests with the party who files the document or introduces the testimony which includes that information. As a corollary, the responsibility for protecting personal information of the debtor, and preventing dissemination of personal information relating to individuals and others affiliated with the debtor, rests with the party who files the document or presents the testimony which contains information about those individuals.
- (A) The Clerk will not review each document filed to verify redaction of personal data identifiers. However, to the extent the Clerk observes that a filed document contains personal data identifiers, the Clerk will restrict access to that document.
 - (B) When the Clerk restricts access to a document due to the inclusion of personal data identifiers, the Court will issue an Order directing the party who filed the document to
 - (i) file a motion to redact, accompanied by the \$25 fee, and a copy of the document in redacted form, by a date certain; and
 - (ii) appear at a hearing to show cause why sanctions should not be imposed for the party's inclusion of personal data identifiers in the document (the "Redaction Order").

Potential sanctions include monetary penalties and the striking of the document from the Court record.

- (C) If an individual or entity asserts harm based upon the publication of personal data identifiers in a bankruptcy case or proceeding, or by a party's failure to redact a document in response to a Clerk's notice, the complaining party may bring a motion for sanctions in the case or proceeding.
- (D) If the document with personal identifier information may be filed by one of multiple parties (e.g., a proof of claim may be filed by the creditor, debtor, or trustee), any one of those parties may file a motion to redact the document in response to the Redaction Order, and if the movant is not the party who filed the document, the movant may ask the Court to waive the fee, as authorized by the Miscellaneous Fee Schedule.

IT IS FURTHER ORDERED that these changes are effective upon entry of this Standing Order.

March 30, 2015
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge