TESTIMONY OF THE HONORABLE PAUL M. BLACK,
CHIEF UNITED STATES BANKRUPTCY JUDGE
FOR THE WESTERN DISTRICT OF VIRGINIA
BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

HEARING ON "BANKRUPTCY LAW: OVERVIEW AND LEGISLATIVE REFORMS"

JULY 15, 2025

Chairman Fitzgerald, Ranking Member Nadler, and members of the Subcommittee, I am Paul Black, Chief United States Bankruptcy Judge for the Western District of Virginia. I am here today on my own behalf as a Judge and these comments reflect my own opinions. I do not represent other members of the judiciary, the Judicial Conference, the Administrative Office of the U.S. Courts, or the National Conference of Bankruptcy Judges, of which I am currently President-Elect.

Prior to being appointed to the bench, I was a bankruptcy practitioner for 28 years, having started as a bankruptcy court law clerk in 1985. Thereafter, I primarily represented secured creditors in commercial bankruptcies and distressed loan workouts. I did quite a bit of work in consumer bankruptcy cases over the years as well, primarily representing automotive and home mortgage lenders. I went on the bench in January 2014, and while I have had large cases both in my Court and others where I sit as a conflict judge, my docket in recent years is heavily consumer and small business focused. Many of my cases are Chapter 13 repayment plans where debtors are trying to maintain their home, or Subchapter V cases where small business debtors are trying to save their businesses and keep their employees on the job. Part of my district is in Appalachia, and many of the debtors who appear before me have very limited income, including those on nothing but some form of social security. I have empathy for the people who appear before me. My own grandfather was a coal miner.

The question arises: where could Congress really make an impact with new bankruptcy legislation?

I. The Subchapter V debt limit

Congress often does not get enough credit for the things it does well, but I will state for the record today the Small Business Reorganization Act (SBRA) is one of those things Congress did very well. This is one of the best pieces of legislation in the bankruptcy world in many years. When the SBRA went into effect in February, 2020, the debt limit was $2,725,625. The pandemic hit, and several weeks later, it was increased to $7,500,000. The debt limit increase had a sunset, and it was extended through June 21, 2024, when it reverted to its original limit, adjusted for inflation. What a small business may be in Southwest Virginia where I live may be very different than what a small business may be in Denver, Chicago, or New York, where costs of living, property values, real estate taxes and debt loads may be significantly higher.

The $7,500,000 debt limit was effective and appropriate. Businesses at this level simply struggle to afford the Chapter 11 process without the SBRA. The Chapter 11 bar is proficient in bringing those cases before the court, as the debt limit was at $7,500,000 far longer than not. The increased debt limit brings opportunity for small businesses to take advantage of the less costly and streamlined provisions of the Bankruptcy Code, enabling the debtors to more quickly get a plan confirmed and exit the court system, maintain entrepreneurial value and keep employees on the job. The vast majority of Subchapter V cases before me, 95%, are consensual plans. They are often two-party disputes, and in lieu of the cost of a creditors' committee, each case has a trustee who has a duty to be heard on the fairness of the plan to all parties, including creditor constituencies. The participation of these trustees has proven effective in getting these cases to a consensual confirmation. Were these small business cases forced to go the route of a regular Chapter 11 case, with its attendant increased costs and procedural steps, many would likely just fold the tent and go home. They just can't afford it. The SBRA works and it works at the increased debt levels. I encourage Congress to make the $7,500,000 debt limit which was so effective in operation a permanent addition to the Bankruptcy Code.

II. Bifurcation of Fees in Chapter 7 Cases

This is, to me, an access to justice issue. The *pro se* debtor filing rate varies across the country. Some districts are significantly higher than others. One constant, however, is that *pro se* cases, ones filed without the assistance of counsel, often struggle. They also tie up the Clerk's Office staff, who spend inordinate amounts of time dealing with *pro se* debtors at the counter or who filed documents through electronic self-representation. It is a real drain on the system, when we are in difficult budget times and the clerk's offices are being asked to do more with less.

Why is this a problem? Chapter 7 debtors often have difficulty coming up with a lump sum attorney's fee necessary to pay counsel to file a liquidating Chapter 7 bankruptcy case. In a Chapter 13 plan, debtors can and often do pay their fees over time. Some debtors simply should not be in those cases for no other reason than to pay their attorney's fees. In the *Lamie* case, the Supreme Court held that a Chapter 7 debtor's attorney fees cannot be treated as an administrative expense, meaning that the debtor's attorney cannot be prioritized ahead of other creditors.[1] They are entitled to receive the same pro rata share of assets as other unsecured creditors. In a no-asset case, they will get nothing at all just like anyone else. Further, several circuits have held that a pre-petition agreement to pay attorney's fees is subject to the automatic stay and any fee still owed post filing is subject to discharge.

What would help Chapter 7 debtors to more readily obtain counsel, as opposed to filing without counsel or going into an unnecessary Chapter 13 plan? Allow them to bifurcate their fees and pay some portion before filing and some portion afterwards. This would entail an amendment to the Bankruptcy Code that would (1) except from discharge Chapter 7 debtors' attorney fees due under any agreement for payment of such fees; (2) add an exception to the automatic stay to allow for post-petition payment of Chapter 7 debtors' attorney fees; and (3) provide for judicial

[1] *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004).

review of fee agreements at the beginning of a Chapter 7 case to ensure reasonable Chapter 7 debtors' attorney fees. We want to encourage counsel to take these cases by allowing them to get paid, with court oversight to prevent overreaching, which would benefit the entire system.[2]

III. Chapter 7 Trustee Fees

In 2018, Judge Alan Stout from Louisville, KY, testified before this Committee, advocating for an increase in compensation for Chapter 7 Trustees in no-asset cases. Then, like today, the no-asset fee is $60 a case. The last no-asset fee increase the Chapter 7 Trustees received was in 1994, from $45 to $60. Judge Stout pointed out 7 years ago that the responsibilities of trustees have increased substantially over this period, especially since adoption of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") in 2005.

Pending before the House is H.R. 3867, the Bankruptcy Administration Improvement Act of 2025, which has bipartisan support to date. It has a Senate counterpart, also with bipartisan support. This bill would raise the no-asset fee for the Trustees to $120 in such cases. Bankruptcy confers great relief and provides a safety net for individuals in financial distress. Indeed, one of the basic tenants of bankruptcy is to provide a "fresh start" to honest but unfortunate debtors. The Chapter 7 Trustees are the boots on the ground that make the system work. The bill has a funding mechanism built in to pay for these fees by raising the fees in certain Chapter 11 cases by .03 percent, and it would also extend certain temporary judgeships already in place around the country, including some which have looming expirations. I am also concerned about the aging of the Chapter 7 Trustee panels around the country, a common concern I hear from many of my colleagues on the bench at national meetings. We need to encourage younger bankruptcy practitioners to be willing to serve on these panels, but it needs to be financially viable for them to do so.

I realize I have limited time. I welcome your questions on the matters I have outlined, and any other matters I can appropriately discuss.

[2] Although I do not speak for the Judicial Conference of the United States (JCUS), my understanding is that the JCUS is supportive of a legislative solution to this issue, which has previously been conveyed to Congress.