STATEMENT OF THE AMERICAN BANKRUPTCY INSTITUTE
COMMISSION ON CONSUMER BANKRUPTCY

ON CHAPTER 7 TRUSTEE COMPENSATION, INCLUDING H.R. 3553
THE BANKRUPTCY AND ADMINISTRATIVE IMPROVEMENT ACT

BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
HOUSE COMMITTEE ON THE JUDICIARY

SEPTEMBER 26, 2018

Chairman Marino, Ranking Member Cicilline and members of the Subcommittee, thank you for the opportunity to appear today. My name is Ariane Holtschlag. I am a partner at the Law Office of William J. Factor, Ltd. in Chicago. I am admitted to practice in the state and federal courts of Illinois and have practiced consumer bankruptcy law and creditor's rights litigation for more than 10 years. My law degree is from the University of Iowa College of Law, and I have an undergraduate degree from Illinois Wesleyan University.

I am testifying as a member of and on behalf of the American Bankruptcy Institute's Commission on Consumer Bankruptcy.

The American Bankruptcy Institute (ABI) is the world's largest association of insolvency professionals, made up of over 11,000 members in multi-disciplinary roles, including attorneys, bankers, judges, lenders, professors, turnaround specialists, accountants and others. These members represent debtor, creditor and other stakeholder interests. Founded in 1982, ABI is non-profit and non-partisan and organized under Internal Revenue Code section 501(c)(3). ABI also plays a leading role in providing congressional leaders and the general public with unbiased reporting and analysis of bankruptcy regulations, laws and trends. Although ABI is not and advocacy group, it is often called on to testify before Congress, analyze proposed bills, and conduct periodic briefings for congressional committees, legislative staff, other government regulators and the media.

In December 2016, the ABI's board of directors passed a resolution creating the Commission on Consumer Bankruptcy and charging the Commission with "researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure." The seventeen-person Commission is chaired by retired U.S. Bankruptcy Judges William Brown and Elizabeth Perris, with more than 50 years of combined judicial experience. The Commission reporter is Robert Lawless, the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law. Commission members serve without compensation. The Commission is funded by grants from the ABI Anthony H.N. Schnelling Endowment and the Endowment for Education of the National Conference of Bankruptcy Judges.

After soliciting public feedback, Commission members identified more than fifty discrete issues for study and divided these issues among three advisory committees composed of fifty-two bankruptcy professionals. The commissioners and committee members represent all diverse stakeholders in the bankruptcy system, including attorneys who primarily represent debtors and attorneys who primarily represent creditors as well as chapter 7 trustees, chapter 13 trustees, retired bankruptcy judges, government officials, and academics. Compensation for chapter 7 trustees is among the issues identified for study.

The Commission and its committees began their formal study in April 2017. The Commission conducted seven public meetings in which we have heard from nearly eighty expert witnesses and have received more than 130 written comments. The Commission and its committees have held over sixty meetings to discuss possible reforms to the consumer bankruptcy law. More information, including the membership of the Commission and its committees, is available at our web site: https://consumercommission.abi.org/.

The Commission plans to release its final report in the spring of 2018. This work will be the product of an open and collaborative process aimed at achieving consensus among the diverse stakeholders. Indeed, only recommendations that are approved by a two-thirds majority of the Commission will become part of the Commission's final report. The Commission did not intend to make public any recommendations before that time. However, because it has completed deliberations on the issue of chapter 7 trustee compensation and because of the importance of the topic to the operation of the bankruptcy system, we are releasing this statement at the invitation of the Subcommittee.

Recommendations from the Commission

With respect to chapter 7 trustee compensation, the Commission has approved the following recommendations:

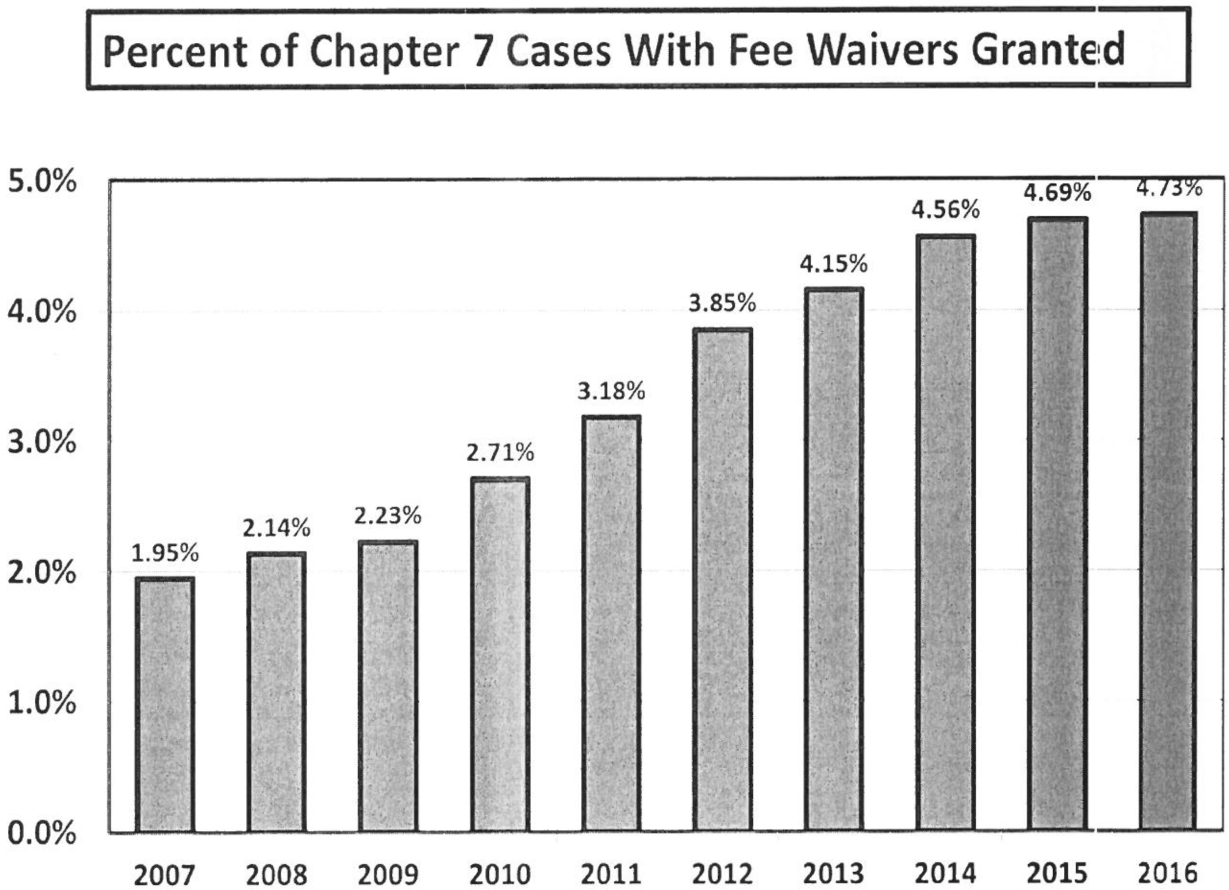
(1) Compensation should be increased for trustees to $120 with the increase in the fee coming from bankruptcy filing and other court fees already paid to the general treasury; these bankruptcy filing and other court fees should be placed into a special fund earmarked for trustee compensation, and

(2) The "breakpoints" for trustee compensation in asset cases should be adjusted --- to allow for more trustee compensation. Specifically, a 25% fee is currently applicable to the first $5,000 in distributions in a case. We recommend that this breakpoint be increased to $10,000. A 10% fee is currently in effect for distributions of between $5,000 and $ 50,000. We recommend that this be changed to distributions between $10,000 and $100,000. Finally, we recommend that the percent fee on distributions exceeding $1 million be increased from 3 to 4 percent. The 5% applicable on distributions between $100,000 and $1 million would not change.

Discussion and Recommendation

In written comments and in statements made to the Commission and its committees, the need to raise trustee compensation appears to enjoy almost unanimous support . Congress has not increased the $60 fee for a no-asset case since 1994.

Moreover, chapter 7 trustees earn no fee in an *in forma pauperis* (IFP) case because all debtor filing fees are waived (including the $60 fee which would otherwise be allocated to the trustee), pursuant to the 2005 Code amendments. IFP cases are increasing and are expected to continue to rise as a percentage of all Chapter 7 cases.



Source: Integrated Data Base published by the Federal Judicial Center
- Data reflects all chapter 7 cases filed during October of the designated year

Even with a proposed $60 increase in the fees for no-asset cases, a more comprehensive approach to raising compensation for the trustees would be to change the existing fee "breakpoints" on distributions in asset cases. The breakpoints provide for a percentage commission to the trustee in cases where assets are administered.

Far more Chapter 7 trustee compensation comes via asset cases than the per-case fee. For example, during 2015 and 2016, chapter 7 trustee compensation averaged $185 million per year --15% came from the $60 per case fee and 85% came from the percentage fee on distributions.

Increasing compensation in the asset cases would improve overall trustee compensation and offset the losses trustees will continue to suffer in the no-asset cases, even with a fee increase.

For example, as the chart below shows, raising the breakpoint for cases where a 25% fee applies from the current limit of $5,000 to $10,000 would increase aggregate compensation to trustees by some $12.2 million (based on annual averages for asset cases closed during CY 2015 and 2016). Raising the breakpoint in cases where the 10% fee applies from $50,000 to $100,000 would increase aggregate compensation by some $9.8 million. In the largest of cases (distributions over $1 million), raising the current 3% fee to trustees to 4% would yield an additional $14.1 million for panel trustees in the aggregate.

Together the three adjustments would increase annual trustee compensation in the aggregate by an estimated $36.1 million[1].

Estimated Annual Impact of Recommended Percentage Fee Increases

	Current Breakpoint	Recommended Breakpoint	Estimated Increase in Trustee Compensation ($ Millions)
25 % Fee	**$5,000**	**$10,000**	**$12.2**
10% Fee	**$50,000**	**$100,000**	**$9.8**
	Current	**Recommended**	
Fee on Distributions Over $ 1 million	**3%**	**4%**	**$14.1**
Total Estimated Annual Fee Increase ----->			**$36.1**

NOTES

[1] The recommended changes would also provide an additional $27.7 million (est) from the additional $60 per case fee.

- Estimates are based on annual averages for asset cases closed during Calendar Years 2015 And 2016. Because chapter 7 case filings continue to decline, future amounts would likely be somewhat lower.

- Figures do not include cases in North Carolina and Alabama, which account for about 3 percent of chapter 7 filings.

Note that if the fee increase does not apply to cases pending at the time the increase was made, it would take a number of years before the trustees would see these amounts. Although the Commission did not specifically consider it, these new breakpoints would need to apply to pending cases to have the intended effect.

We hope this statement is helpful to the Subcommittee in its study of this issue. Please call on the Commission to Study Consumer Bankruptcy if we can be of further assistance.