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How Has Effectuations Into Bankruptcy Reform Act of 1978 Provide Equity and Consensus for All-Inclusion? The Bankruptcy Code in Action Among Bankruptcy & Fraud Targeting

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How Has Effectuations Into Bankruptcy Reform Act of 1978 Provide Equity and Consensus for All-Inclusion? The Bankruptcy Code in Action Among Bankruptcy & Fraud Targeting

By Brian Mitchell Bolden

Key Words: Bankruptcy, Chapter Seven, Chapter Eleven, Chapter Thirteen

Scope

The scope of the research proposed conducts purposes of chapter 7 bankruptcy code among bankruptcy & fraud targeting human subjects according to “Bankruptcy Reform Act of 1978”.

Abstract

In this research paper, I quantify the extent to which risk amid bankruptcy and fraud targeting has quintupled while enacting bankruptcy code limited scope of activity of business and non-business, influence of Department of Justice United States Trustee Program, and Bankruptcy Court systemic and peak survival.

Executing bankruptcy codes, acts, initiatives, and risk interventions soften the blow of disproportionately effected cases. The recent decline of bankruptcy cases from 2020 to 2022 results in a robust recovery efforts.

All-inclusively, the resolve demonstrates the critical vantage point of judgeships, trustees, attorney, and bankruptcy court systems consensus dependence on the Bankruptcy Reform Act of 1978 and shows how temporary negative risk of bankruptcy and fraud targeting has persisted while enacting bankruptcy code(s).

Overview

With the stress the United States Department of Justice has experienced this abstract’s intent compares the United States Department of Justice along five key characteristics relative to other complexities of court systems.

There are in fact, recorded events and or episodes that examine and mirror stressful conditions. Triggers, in other words, have exposed challenges for reform in and around the Bankruptcy Reform Act of 1978 amid chapter 7, chapter 11 & chapter 13 bankruptcy code.

- ***U.S. Department of Justice Trustee Program Fastest Growing Among other Bankruptcy Programs***
- ***Despite Higher Bankruptcy & Fraud Targeting Risk, United States is Now Comparable to most other major High Performing Court Systems***
- ***Expeditious Bankruptcy Detections has led to Especially Expedient Improvements in the United States Fraud Discipline***
- ***The United States is Better Prepared than many countries to Stabilize Bankruptcy & Fraud Targeting***
- ***As records show, Caste and Social Systems Differences in Financial Institutions Fiscal Investitures and Opportunities, the United States has Been Exceptional at***

Rationalizing Penetration efforts for Rehabilitation of Bankruptcies and Pressures in Louisiana

1896-1950s

Mid-Nineteenth century Louisiana had a community complete with economic goods and services. The socioeconomic outlook, not satisfactorily satisfying, as this portion of the bayou state contributed to Louisianian's simple ADL's (Activities of Daily Life) needs. Baton Rouge and New Orleans were ant the precipice of the urban historical prewar stages and or antebellum Louisiana. Most occupations, such as barbers, blacksmiths, lawyers, post office workers, merchants, and parish courthouse support staff. Along the busy banks, bayous', and rivers the Louisiana Agricultural state was a primary place for crime and mischief. Even though New Orleans was the trade epicenter, the socioeconomic life blood of Louisiana was permissible to planters, farmers, & large-scale agriculturalist.

Data shows bankruptcies across the board have increased insurmountably since the end of World War II. Hence, the prosperity, of Americans and people of color have included but not limited to bankruptcy processes bankruptcy examinations, hearings, modern procedures, and providing a new start.

However, many wonder "what happens in the bankruptcy court?, what happens after they leave?, how many are bankruptcy repeats?"(Allen 1)

Bankruptcy's are typically due to increased populous and personal debt. While, business bankruptcies filed remained constant over the years past.

As a result, of this mainly from internal management issues for example, an executive or company president purchases lavish new vehicles for coworkers and family members through the business and ultimately uses company monies for personal expenses.

An Brookings Institute report by Stanley Girth, entitled Bankruptcy: Problem, Process, Reform (1970) uncovers an suggest, "only five to ten percent of business bankruptcies are attributable to dishonesty, uninsured catastrophe or personal problems, and therefore some small percent is attributable to dishonesty, one wonders why the example of the internal management problems set forth is one involving fraud. (Kruger 1)

The bankruptcy system is a well-oiled machine according to the imminently plain requirements of law, in the same way this can be a dredged, momentary, and structured process.

Present reality, merit and good faith performance and success have contributed to the better half of the bankruptcy code and system.

New solutions, such as abandoning the current bankruptcy system and "establishing a independent bankruptcy agency within the executive branch of government." (Kruger 2)

Where remedies can be affluently vetted and exercised for the benefit of the legal team.

Motivations are best practices to sustainably and successfully function as a judicial and fiduciary unit.

Survival of the fittest comes in to play as expert finding sharpen litigation tools in their arsenal.

Minimizing errors & scandals are a close quarters, where becoming the best is highly sought.

Reward systems and incentives are also considered motivation to keep the wheels turning and not to lose heart or disinterest in cases presented.

Bankruptcy Act of 1898 was primarily the criticizing of administration procedures that in turn are archaic and contribute to the minimal use of modernization of data strategies and processing. Secondly minimal administrative supervision, timely closing of personal and or business bankruptcy cases, the variance in state laws exempting property from the grasp of creditors on bankruptcy due processes along with the comparable bankrupts receive different resolve. Incompetent performance from attorneys in a professional setting. And lastly the utilizations of personnel not within the civil system.

Bankruptcy referees district courts came at a harsh time where “Bankruptcy is essentially a non-adversary process, and that the “mess” that needs cleaning up is not merely a body of legislation or of inefficient administrative practices, but rather a venal system, characterized by substandard professional performance, that should be eliminated”. (Kruger 3)

Reports show that of referee decisions “two-thirds of the cases the referee were affirmed by district courts, and on appeal, were usually affirmed by court of appeals. This finding could support a conclusion that responsible counsel does not undertake an appeal except when he has some hope of success.” (Kruger 4)

T.T. Allain or Theophile T. Allain, raised as a slave on the Australian Plantation in West Baton Rouge. While Some Acadians returned to France while others settled along the United States’ east coast and in Louisiana. Bringing Creole communities in Louisiana historically came from the State’s slave population. Although slavery was still alive and well, some areas were diminishing the strict recognizance where most colored children during these times were kept with pending slave papers, his father, Sosthene Allain, was the owner of both the plantation and of him and his mother in the early to mid 1800’s.

Plessy v. Ferguson of 1896 was a notable and significant racial argument at this time in history. Fannie Lou Hamer started several economic programs to help Black families. Hamer grew up in a sharecropping family and was fired exercising her political rights. She could see clearly how closely political freedom was linked with economic independence. After the end of slavery following the Civil War, the U.S. had failed and or went bankrupt on General William T. Sherman’s promise of giving “40 acres and a mile” to formerly enslaved people.

Later in this research paper evidence of giving back will be demonstrated.

In the words of Hamer there “where a couple of years ago, white people were shooting at Negroes trying to register [to vote], now they say, ‘go ahead and register – then you’ll starve.” Hamer developed these economic initiatives to uplift Black families and give them the economic independence needed to participate in the political system without fear of retribution from their employers.

Brown v. Board of education of 1966 created new start for communities but primarily for Louisiana legislation. For example, the ruling began passage of laws and constitutional amendments to strengthen segregation, this also established civil rights legislation to integrate public schools, with added congressional committee oversight and oversee desegregation, and lastly forming a joint committee to uphold segregation across the state which led to adopting laws that prohibited segregation in Louisiana public schools.

Bankruptcy Reform Act of 1978 in Louisiana dissented between that of Northern Pipeline Construction Co. v. Marathon Pipeline Co.,¹ declaring unconstitutional the broad grant of jurisdiction to bankruptcy judges in the Bankruptcy Reform Act of 1978. The decision at least temporarily creates great uncertainty in the administration of the Bankruptcy Act and for the long run creates considerable doubt about the ability of Congress to establish a unitary system for the administration of bankrupt estates and the development of Chapter 11 bankruptcy law.

1980s-2000s

Today, total or partial repayment of consumer debt is done through a three or five year payment plan under chapter 13 of the Bankruptcy Code, whereas a discharge of consumer debt is accomplished by filing for relief under chapter 7 of the Bankruptcy Code.

BAPCPA of 2005 provides two "safe harbors" to protect lower income debtors from their creditors. BAPCPA of 2005 places more burdens on consumer debtors in obtaining a discharge. BAPCPA of 2005 protects the interests of secured claims by requiring full payment of secured claims and requiring the debtor obtain a discharge, before a lien is released in a chapter 13 case and Chapter 7.

Revlon bankruptcy brings measures in full circle. This protection under Chapter 13 Bankruptcy Codes provides provisions at all cost, if anything else.

Local Baton Rouge Bookstore "Between The Lines" bankruptcy was filed years before Revlon. Bob Moses of whom was widely referred to as Bob, worked to support equity, dismantle segregation in the Jim Crowe South as a field director of the Student Nonviolent Coordinating Committee (SNCC) during the civil rights movement and was central to the 1964 "Freedom Summer" in which hundreds of students went to the South to register voters.

U.S. Department of Justice Trustee Program Fastest Growing Among Other Bankruptcy Programs

Trustees and debtors alike possessively, owe a fiducial duty to their counterparts. But they are without a reasonable doubt protected by a business judgment rule.

Two cases brought center-stage conveys how a trustee's discretion can be adjudicated given this rule.

First, in *In re CNC Payroll, Inc.*, No. 12-33012 (Bankr. S.D. Tex. 3/4/13), the court sua sponte instated an Order to Show Cause Why Trustee Should Not Be Removed Pursuant to 11§ U.S.C 324 Based upon a breach of fiduciary duty in employing the trustee's firm as counsel.

Sufficient judicial character to bankruptcy process to cause a momentary pause in embracing the assertion is a non-adversary procedure.

"Trustees must demonstrate more than the competence of their own firms. Trustees must demonstrate that retention of their own firm is better than any available alternative." (Lexis-Nexis 1)

Secondly, In re Tres-Ark, Inc., No-0912589 (Bankr. W.D. Tex. 11/21/12), included the bankruptcy court denied debtors motion to Remove Trustee after discovering proper execution of business judgement.

“The Debtor also sought to remove the trustee on the ground that the trustee's relationship with the Debtor had grown acrimonious, minimizing the likelihood for cooperation. In the typical case, it is common for the Debtor and the trustee to have a testy relationship since the trustee may often pursue avenues the Debtor would prefer to leave unexamined. However, in this case, the Debtor's insiders were also some of the principal creditors. The Court noted that the case cited by the Debtor did not appear to support a "continuing animosity" standard for removal, but noted that the Debtor had failed to establish this ground as a factual matter.” (Lexis-Nexis 2)

Positives and negatives both have their say in the bankruptcy system. Although, the bankruptcy system as a whole has served and is serving as the impetus for the initial reasoning behind implementation and positive change.

No asset report chapter seven case where there are no assets available to satisfy any portion of the creditors’ unsecured claims.

Section 341 meeting are conducted to validate court findings and solidify the pros and cons of bankruptcy filed with the court in good faith.

Credit counseling for BAPCPA of 2005 is one of the few things commentators and courts seem to agree on is that BAPCPA will provide fodder for litigation for years to come.

“The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA 2005) creates at least eight new duties for Chapter 7 trustee. The first three new duties are established in three new subsections of § 704(a) of the Bankruptcy Code. New subsection (10) creates a duty to provide certain notices to domestic support claimants. New subsection (11) creates obligation to perform the debtor’s obligations as a plan administrator under Employee Retirement Income Security Act. New Subsection (12) establishes obligations to patients of a healthcare business.” (Rhodes 1)

Under repeat filers, BAPCPA of 2005 resolves many tax-related problems that the Department of Justice Bankruptcy Working Group identified and that vexed the IRS and the Department over the years. The new tax return filing provisions are likely to have a positive effect, and the other amendments generally enhance the treatment of tax claims in bankruptcy proceedings. While, final report(s) initiates the closure of the case indefinitely. BAPCPA of 2005's business changes, while narrowly focused, are significant for those areas targeted. This research paper will, hopefully, provide clarity in bankruptcy practice to identify the areas affected and anticipate their impact on Chapter 7 & Chapter 13 caseloads.

Chapter 7 definition according to United States court system government website includes but is not limited to the chapter of bankruptcy code providing for “liquidation”.

Chapter 13 consists of the bankruptcy code providing for adjustments of debts of an individual with regular income “reorganization”

Bankruptcy Judgeship initiated by the bankruptcy courts were in fact the stronghold to judicial proceedings. Having appointed a large quantity of bankruptcy judges attributes hand in hand to the success thereof.

Over the years, the disclosing of bankruptcy statistics, data from law-enforcement and government officials have had a significant responsibility for bankruptcy system activities.

As a point of reference, sources from a credit organizations are moving with minimal to partial satisfaction. This is historical conception blends the positive and negative and how to reduce risk.

As advocates of the bankruptcy system in the nationwide community has encouraged the fishing practices of United States Department of Justice trustee program which may lead to actual reward and overall due praise.

Despite Higher Bankruptcy & Fraud Targeting Risk, United States is Now Comparable to Most Other Major High Performing Court Systems

Cured & corrected, pay for legal representation herewith bankruptcy is on the of the most complex and important factors facing the bankruptcy system. Those who in fact are unable to cough up the funds to or pay up front lose access to the bankruptcy system or must file pro se. In figure one, a brief outline of not likely to likely among low, moderate, and high results are recorded from a final report of the ABI Commission o Consumer Bankruptcy. The is of the result from U.S. Supreme Court decision in Lamie v. United States Trustee. Which held the attorney fees for work done on behalf of chapter 7 debtors. However, the bankruptcy case could not be rendered as a administrative expense and therefore cannot be paid for by estate assets.

Figure 1: Comparison of existing options to pay chapter seven attorney fees Table: A¹

	EFFECTIVENESS IN ENCOURAGING FEE PAYMENT	COST TO THE ATTORNEY	NEGATIVE EFFECT ON THE DEBTOR
OPTION 1: DELAY FILING UNTIL ANTICIPATED FEES ARE PAID	<i>High</i> Debtor has high incentive to pay the fees, because other-wise there will be no filing.	<i>Low</i> Any administrative cost in holding funds before filing can be covered by a higher fee.	<i>High</i> The delay in filing may cause harm to the client, and the attorney may deduct expenses from any refund if the case is not filed.
	<i>Low</i> The debtor is under	<i>High</i>	<i>Low</i> There is no

¹ *Comparison of existing options to pay chapter seven attorney fees Table: A*
<https://www.nclc.org/images/pdf/bankruptcy/rpt-abi-commission-on-consumer-bankruptcy.pdf>

**OPTION 2:
CHAPTER
7 FILING
WITHOUT
PREPAYMENT**

no legal obligation to pay the fees; the automatic stay and discharge prevent the attorney from asking for fee payment.

Failure of the debtor to make completely voluntary payments results in no possibility of payment for the services provided.

negative effect. Unless the debtor chooses to pay the fee, without prompting, the debtor obtains the legal services without charge.

High

The debtor is encouraged to complete plan payments to obtain a discharge and avoid the need for refiling after dismissal.

Moderate

The court may dismiss the case for failure to make plan payments before payment of attorney fees. Collecting unpaid fees would impose costs and reputation risk.

High

The attorney fees are higher than a chapter 7; failure to complete plan payments results in a loss of fee and expense payments and no discharge is obtained.

**OPTION 3:
FILE
CHAPTER 13**

Figure 2 confronts and summarizes the inadequacies of alternative payments of the debtors attorney fees under chapter 7. The importance of the presence of the attorney was stressed and further recommendations to reduce system changes to make bankruptcy less expensive was deliberated.

Figure 2: Comparison of proposed amendments to allow post-petitions collection of chapter seven Attorney fees² Table : B

	EFFECTIVENESS IN ENCOURAGING FEE PAYMENT	COST TO THE ATTORNEY	NEGATIVE EFFECT ON THE DEBTOR
OPTION 1: ATTORNEY'S FEE EXCEPTED FROM DISCHARGE, NO PROCE- DURAL PROTECTIONS	<i>Moderate</i> Although excepted from discharge, fees may be difficult to collect.	<i>Moderate</i> The attorney would incur costs of collection for unpaid fees.	<i>Moderate</i> The debtor is subject to fee-col-lection action but obtains discharge of other debts. The debtor's principal protection against unreasonable fees is only section 329.

² Table : B Comparison of proposed amendments to allow post-petitions collection of chapter seven Attorney fees <https://www.nclc.org/images/pdf/bankruptcy/rpt-abi-commission-on-consumer-bankruptcy.pdf>

**OPTION 2:
ATTORNEY'S
FEE
EXCEPTED
FROM
DISCHARGE,
WITH PRO-
CEDURAL
PROTECTIONS**

Moderate

Although excepted from discharge, fees may be difficult to collect.

High

Attorney would have to initiate a procedure in the bankruptcy case.

Moderate

The debtor is subject to fee collection but obtains discharge of other debts. Judicial review in every case offers additional protection against unreasonable fees.

**OPTION 3:
DELAY
DISCHARGE
UNTIL
ATTORNEY'S
FEES ARE
PAID**

High

Debtor will likely complete fee payments to obtain the general discharge.

Low

The attorney need only file a notice of nonpayment in the bankruptcy case. Collection action is likely not needed.

High

The penalty for not paying fees is loss of discharge.

**OPTION 4:
DELAY
DISCHARGE
FOR SIX
MONTHS**

Low to moderate

The debtor is under no legal obligation to pay the fees.

High

Judicial proceedings are required before collection efforts can begin.

Low

The attorney may repeatedly suggest voluntary fee payment.

Figure 2

Expeditious Bankruptcy Detections has led to Especially Expedient Improvements in the United States Fraud Discipline

Law on the books, infers that subsequent words of a Director of the EOUST or Executive Office of The United States Trustee included but was not limited to stating, “ Because [the prudence] Chapter 7 trustees are held to very high standards of conduct, they must maintain a reputation that is above reproach. Thus, in addition to adhering to all the requirements for case administration that are prescribed by the Bankruptcy Code, the Bankruptcy Rules, local rules and 28 C.F.R. § 58.3(b)(1) require the trustee to ‘Posses integrity and good morale of character...[and] trustee must conduct themselves in a manner that does not ...cast doubt on their honesty, integrity, or ability to faithfully administer bankruptcy cases.’” (Rhodes 2)

“In order to close an estate expeditiously, a bankruptcy trustee must expeditiously perform each task necessary to close the estate, including the liquidation of the estate. The duty to close the estate expeditiously will often conflict with other duties, but this conflict is explicitly recognized in the text of the statue itself, which requires the bankruptcy trustee to balance the need for expeditious conduct against the “best interest of parties in interest...””(Rhodes 3)

Ethics inside the Bankruptcy Court System, is the duty to report bankruptcy crimes is considered so imperative and important to case procedures which go hand in hand, with integrity of the judicial process that the referring trustee is granted absolute immunity from the civil suit for malicious persecutions purposes.

The trustee is to respectfully defend the integrity of the bankruptcy system, exercise due care to preserve the interest of all parties, and investigate, identify, and administer assets in a timely and thorough manner to maximize the value of the estate.

Means test is a newer centralized feature of the BAPCPA 2005 “under amended § 707(b)(1) and (6) grant the trustee standing to file a motion to dismiss for abuse when the income of the debtor and the debtor’s spouse exceeds the applicable state median. The trustee duty to maximize distributions compels the trustee [forward] to seek dismissal than they would likely recover more on their claims following a dismissal than they would from the foreseeable dividend resulting from administering assets” resulting in the best interest of the creditors. (Rhodes 4)

The United States is Better Prepared than many countries to Stabilize Bankruptcy & Fraud Targeting

Dangerous when wet, “Section 3057(a) of Title 18 requires a trustee to make a report to the United States Attorney when the trustee has reasonable grounds to believe that a bankruptcy crime has been committed or that investigation should be undertaken. The standard of ‘reasonable grounds,’ required to initiate an investigation, is not as stringent that required to believe a crime has in fact been committed. A trustee should coordinate such reports through the United States Trustee.” (Rhodes 5)

For example, many state bar ethics rules except from client confidentiality any information concerning an ongoing crime or fraud.

As records show, Caste and Social Systems Differences in Financial Institutions Fiscal Investitures and Opportunities, the United States has Been Exceptional at Rationalizing Penetration efforts for Rehabilitation of Bankruptcies and Financial Pressures in Louisiana

Law of the land, indicates case law institutes the business judgement standard to improve this discrepancy. The Bankruptcy Code establishes no explicit duty of due care. This level of efficiency and gold standard ensures a trustee discretion in balancing the cost and benefits of administering an asset of the estate. Likewise, this guidance is present in the case law addressing a trustees power to abandon property that is burdensome to the estate or that is of inconsequential value or benefit to the estate Under § 554 of the Bankruptcy Code.

However, the reality therefore rests in the law that creates a third duty from direct conflict of the duty to balance the competing interest of diligence and maximizing by exercising business judgement in pursuing the best interest of the estate.

One instance in Louisiana, that involved the excavation of property were confederate monuments and their removal along with the renaming of street signs effective since May of 2017, spearheaded by New Orleans Mayor Mitch Landrieu's administration.

Race was and is the factual evidence that supports a "[social] class struggle" where it was just as true and present in the rest of the southern regions. (Shugg 1)

As a consequence, "Histories of institutions of Higer Education are fast coming into style these days ." (Shugg 2)

Black Codes coupled incendiary times of the essence such as this while the large scale middle class championed a signature way of life.

Plessy v. Ferguson 125 year pardon took place on January 5, 2022, where the governor of Louisiana posthumously pardoned Homer Plessy, the defendant in the famous 1896 U.S. Supreme Court case Plessy v. Ferguson. Plessy is known for affirming the legal theory of 'separate but equal' that was used to justify Jim Crow laws in the 19th and 20th centuries.

Conclusion

Has the balance beam swung too far in either direction? This research paper studies Bankruptcies among Chapter 7, Chapter 11, & Chapter 13 cases trustee take on an infallible responsibility. Meanwhile, trustees are sent in to the smokey and fiery winds torrential conditions with the basic of protections and sufficient historical knowledge of debtor's affairs.

Is it important in any event to tell what happened, so it will or won't happen again? The purpose justifies the actions of the United States Trustee an provides support.

Congressional solutions and judicial merit, coupled to solidify reformation that has undergone over since the bankruptcy system's inception. Rationalization is how we got to this point and maintaining a steady pulse an internalizing is how continued efforts of success are measured for future outlook.

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NCLC

- <https://www.nclc.org/images/pdf/bankruptcy/rpt-abi-commission-on-consumer-bankruptcy.pdf>

JUSTIC.GOV

- <https://www.justice.gov/jmd/page/file/1492156/download>
- <https://www.justice.gov/jmd/page/file/1398586/download>

United States Courts:

- Bankruptcy Basics: www.uscourts.gov/bankruptcycourts/bankruptcybasics.html
- Bankruptcy Forms: www.uscourts.gov/bkforms/
- United States Bankruptcy Code: www4.law.cornell.edu/uscode/html/uscode11/usc_sup_01_11.html

United States Bankruptcy Trustee:

- Credit Counseling & Debtor Education: www.usdoj.gov/ust/eo/bapcpa/ccde/.
- Means Testing: www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm

NOTES

**Business and Non-Business Filings,
Years Ending
March 31, 2018-2022**

Year	Business	Non-Business	Total
2022	13,160	382,213	395,373
2021	19,911	453,438	473,349
2020	23,114	741,168	764,282
2019	22,157	750,489	772,646
2018	23,106	765,722	779,828

**Total Bankruptcy Filings By Chapter,
Years Ending
March 31, 2018-2022**

Year	Chapter			
	7	11	12	13
2022	265,071	4,333	228	125,655
2021	345,224	7,832	487	119,502
2020	479,211	6,938	627	277,353
2019	477,106	6,891	509	288,039
2018	480,933	7,735	499	290,566

