

**Statement of Professor Jack F. Williams**

**Before the House Judiciary Subcommittee on Commercial and Administrative Law**

**To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to increase compensation for chapter 7 trustees in “no-asset” bankruptcy cases**

**September 16, 2008**

Madam Chairwoman and members of the Subcommittee, my name is Jack Williams. I am a Professor of Law at Georgia State University College of Law in Atlanta, Georgia, and currently the Robert M. Zinman Resident Scholar at the American Bankruptcy Institute (ABI). I am pleased to appear today to speak about pending legislation that would amend the Bankruptcy Code (the “Code”) to increase compensation for bankruptcy trustees in bankruptcy cases.

Founded on Capitol Hill in 1982, the ABI is a non-partisan, non-profit association of over 11,000 professionals involved in bankruptcy and insolvency, representing both debtors and creditors in consumer and business cases. The ABI is not an advocacy group and does not take lobbying positions on legislation before Congress or advocate any particular result in matters pending before the courts. Rather, the ABI is a neutral source for information about the bankruptcy system (such as how courts are interpreting provisions of the Bankruptcy Code) and a resource for members of Congress and their staff considering changes to the Code. As an academic, and as the ABI Resident Scholar, I am permitted to give my personal views on legislation, but those views should not be taken as the views of the ABI.

At Georgia State, I teach and write primarily in the areas of bankruptcy law (including business and consumer bankruptcies), taxation, homeland security, and military law. My C.V. is

Attachment 1 to this written statement, but let me briefly say that after graduating from George Washington University Law School, clerking for Judge William J. Holloway, Jr., of the U.S. Court of Appeals for the Tenth Circuit, and working for four years in the Dallas, Texas office of Hughes and Luce, I joined the faculty of Georgia State University College of Law, where I have taught for the past seventeen years. For calendar year 2008, I am serving as the Resident Scholar at the ABI in Alexandria, Virginia.

My testimony today will focus on the need to increase the compensation for bankruptcy trustees in typical “no asset” bankruptcy cases. A “no-asset” case is a consumer chapter 7 bankruptcy case in which there are no assets available to satisfy any portion of the unsecured claims of the creditors, or a case in which all of the individual debtor’s property is exempt. While the overwhelming majority (perhaps in excess of 95%) of chapter 7 cases are “no asset,” the bankruptcy trustee must still perform a variety of time-consuming duties, such as preparing for and conducting the meeting of creditors (commonly known as the 341 meeting (11 U.S.C. §341)), verifying information sought by the U.S. Trustee, ensuring that tax returns are filed, and examining the documents filed by the debtor. In the rare “asset” case, the chapter 7 bankruptcy trustee receives a commission on the assets administered.

Presently, bankruptcy trustees are compensated just \$60 for each bankruptcy case they handle (except for those cases in which the 2005 Amendments have waived a fee). The proposed legislation seeks to increase the fee to approximately \$120 per case. This fee increase would be the first in about 14 years.

During the time from the last fee increase, a bankruptcy trustee's duties and responsibilities have increased substantially. Typically, a bankruptcy trustee is charged with a large number of important duties, among them the administration, investigation, and oversight of a bankruptcy case. Bankruptcy trustees undertake various investigatory and audit functions and prepare reports of their findings. In many districts, the bankruptcy trustee engages in follow-up investigations regarding the new means testing, a requirement added by the 2005 amendments and generally administered by the U.S. Trustee. For example, the bankruptcy trustee may be tasked with assisting the U.S. Trustee by gathering and/or verifying information and or documentation for the U.S. Trustee's implementation of the new means test (including Current Monthly Income (CMI) data, tax returns, and documentation of certain expenses on Form 22A), additional section 341 meeting questioning imposed by the 2005 amendments, domestic support obligations (DSO) noticing, confirming credit counseling, and monitoring misconduct issues concerning attorneys, petition preparers, debt relief agencies (DRA). Many, but not all of these trustee duties, are found in Bankruptcy Code section 704 (11 U.S.C. §704). These duties are not only important for the orderly administration of a bankruptcy case, but absolutely essential to preserve the integrity of the bankruptcy system.

The bankruptcy trustee also serves as the "face" of the bankruptcy process, meeting with each debtor that files a chapter 7 bankruptcy case. For the vast majority of Americans, this is the "face" that they assign to the federal judicial process. It is essentially that we continue to attract highly competent, honest, and fair-minded individuals to serve as bankruptcy trustees. To be sure, no one becomes a bankruptcy trustee to get rich; their's is a calling of public service.

However, it serves no one to deny them reasonable compensation for the public service they provide.

Thank you again for the opportunity to appear today. Please do not hesitate to call upon me or the ABI if we can be of further assistance on this or any other bankruptcy policy issue.

## **ATTACHMENT 1**

### **Professor Jack F. Williams, JD, CIRA, CDBV**

Jack F. Williams is a Professor at Georgia State University College of Law and in the Middle East Institute in Atlanta, Georgia, where he teaches and/or conducts research in the areas of bankruptcy and business reorganizations, mergers and acquisitions, corporate finance, taxation, Islamic Commercial Law, and law and terrorism. Jack had served as the inaugural Robert M. Zinman American Bankruptcy Institute (ABI) Scholar in Residence (2001) and has returned to that post a second time for 2008. Jack is also the Association of Insolvency and Restructuring Advisors (AIRA) Scholar in Residence (2004-Present).

Jack has served as the Tax Adviser to the National Bankruptcy Review Commission (NBRC) and as Chair of the Tax Advisory Committee to the NBRC. He has served as Chair of the ABI Bankruptcy Taxation Committee, as Reporter (Taxation) for the ABI Bankruptcy Code Review Project, as Dean of the American Board of Certification, as a Commentator on the Republic of Croatia's and Bulgaria's Bankruptcy Codes, and as a Co-Drafter of the Russian Federation's Energy and Natural Resources Taxation Code.

Jack has taught Bankruptcy Taxation to attorneys in the Office of Chief Counsel, Internal Revenue Service, as part of the New York University School of Law/IRS Continuing Professional Education Program; to attorneys in the United States Department of Justice; attorneys and other professionals in the Office of the United States Trustee; and to bankruptcy judges as part of the U.S. Federal Judicial Center educational programming.

Jack is a Fellow in the American College of Bankruptcy. He has written 7 books and over 150 articles. Jack speaks frequently on a number of topics at various functions. You may reach Jack at [jwilliams@gsu.edu](mailto:jwilliams@gsu.edu) or 404.413.9149.