PREPARED STATEMENT OF

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BEFORE

UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON
ADMINISTRATIVE OVERSIGHT AND THE COURTS

"COULD BANKRUPTCY REFORM HELP PRESERVE SMALL BUSINESS JOBS?"

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Mr. Chairman and Members of the United States Senate Judiciary Subcommittee on Administrative Oversight and the Courts:

My name is Charles D. Bullock. I am a practicing attorney and a founder of the Michigan based law firm Stevenson & Bullock, P.L.C. I am licensed in both Michigan and Tennessee. My practice concentrates on individual and small business bankruptcy cases, representing trustees, creditors, debtors, and other interested parties in Chapter 7, 11, 12 and 13. In addition, I serve as an Adjunct Professor lecturing on bankruptcy matters at the Thomas M. Cooley Law School - Auburn Hills, Michigan Campus.

I appear before you, today, in my individual capacity and not as a member or representative of any group, organization or school.

I am honored to be here to share with you my experiences in representing the various stakeholders in small business Chapter 11 bankruptcy cases. I come before this Subcommittee neither pro-debtor nor pro-creditor. I frequently represent debtors and trustees as well as creditors. My law partner, Michael A. Stevenson, is a panel trustee in the Eastern District of Michigan. Thomas J. Budzynski, who is "of counsel" to our law firm has served as an appointed Chapter 12 Trustee in the Eastern District of Michigan. Given that background, I do not have a bias towards one group or the other. But having witnessed the expense and anxiety of my small business clients, I am strongly in favor of reforms that will permit efficient reorganizations on a cost effective basis.

My substantive comments are premised on the firm belief that there must be an alternative to the current process set forth in Chapter 11 when a small business seeks relief in bankruptcy and attempts to reorganize. I do not, however, believe that such an alternative would require one to revisit the Bankruptcy Abuse Prevention and Consumer

Protection Act of 2005. I agree with those who have called on this body to refrain from reflexive legislative efforts which do not afford a wholesale solution, particularly the comments of the well respected jurist, Honorable Thomas B. Bennett, United States Bankruptcy Court for the Northern District of Alabama, who during his December 5, 2007 testimony before the Senate Committee on the Judiciary when discussing *"The Looming Foreclosure Crisis: How to Help Families Save Their Homes"* stated: "I am here to urge caution and restraint in doing anything which attacks what is only a portion of a greater problem." I strongly agree with the premise: Caution and restraint must be implemented in doing anything which attacks what is only a portion of a greater problem. I hold a view that seems to be shared by all experts in the field whether they are for or against a piece of legislation, which is that any legislative solution should attempt to address the entire problem.

With that in mind, I strongly support amending Chapter 12 to accommodate small business enterprises seeking to reorganize. It is my firm belief that the immediate and long term benefits of such Chapter 12 accommodation would address more than a portion of the greater problem and would provide little risk to those you desire to assist and to those many more not contemplated to be affected by the proposed legislation. This solution benefits everyone involved in bankruptcy. It continues the business operation, retains jobs, and enables creditors to be paid. This is a commendable attempt to obtain balance and increase the potential benefits of a reorganizing bankruptcy case.

As this Subcommittee is aware, reorganization in bankruptcy is obtained through Chapter(s) 11, 12 or 13. The United States Bankruptcy Code provides that a debtor that is not an "individual" may not be a debtor under Chapter 13 of Title 11. 11 U.S.C.

§109(e). Stated another way, only an individual may be a Chapter 13 debtor. Furthermore, only a family farmer or family fisherman may be a debtor under Chapter 12. 11 U.S.C. §109(f). Because of these restrictions, debtors engaged in business that are not eligible for relief under Chapter 12 or 13, that seek to reorganize in bankruptcy, are required to file for relief under Chapter 11, regardless of size, amount of revenue, or the amount of the creditor base.

Insurmountable challenges are often imposed on both creditors and debtors when a small business seeks relief in the existing Chapter 11. Significant impediments to successful reorganization under Chapter 11 include, among other things, the high costs, balloting, and the lack of a standing trustee. If the goals of the bankruptcy process are to provide a structured environment supervised by the Court in which financially troubled companies may remain in business, continue to provide and create jobs, and restructure and retire debt, Chapter 11 fails miserably in addressing small business issues.

I have represented, or closely interacted with, nearly every party in a typical Chapter 11 reorganizing bankruptcy case. My experience dictates that Chapter 11 obligates debtors, creditors, and equity security holders to invest limited resources in the technical legal process, rather than allowing the parties to specifically allocate those resources to the substantive reorganization efforts. In the best legislative solution, a reorganization of a small business would assist the debtor and ensure that the debtor attends to the critical components of the case. That legislative solution would promote expediency, which is essential for small business cases to succeed. Unfortunately, under the current system, small business cases are rarely resolved expeditiously in Chapter 11. On the contrary, the requirements set forth in Chapter 11 relating to both case

administration and the confirmation process actually inhibit the efforts of the debtor, creditors, interested parties, and the Court to promptly resolve case issues and confirm plans, thereby driving up the administrative costs and increasing the failure rate of those cases. In my opinion, if feasibility is not a real issue, fast tracking small businesses in bankruptcy proceedings, as frequently happens in Chapter 12, would greatly increase the probability of a successful reorganization and ongoing business and preserve rather than eliminate jobs.

The small business Chapter 11 reorganization cases I have participated in or observed generally possess a number of the following attributes: (1) the debtor is closely held (small number of equity security holders); (2) the debtor has less than $10,000,000 in total debt; (3) the debtor has less than five creditors holding secured claims against the debtor; (4) the debtor has no access to debtor-in-possession financing; (5) creditors are unable or unwilling to commit resources to protecting their rights in the case due to the low potential for significant distributions from the debtor; (6) there is no appointment of a Chapter 11 Trustee or Examiner; (7) the business assets of the debtor have a significantly higher value on a replacement value basis than would be received on the open market at a forced sale; (8) few creditors actually participate in the case; (9) few creditors cast ballots; and (10) the debtor is unable to satisfy administrative expenses in full at plan confirmation.

I have participated in or observed a number of successful Chapter 13 business bankruptcy cases. With limited exception, those Chapter 13 cases shared a number of attributes with small business Chapter 11 reorganization cases: (1) less than five creditors held secured claims against the debtor; (2) the debtor had no access to debtor-in-

possession financing; (3) creditors were unable or unwilling to commit resources to protecting their rights in the case due to the low potential for significant distributions from the debtor; (4) the business assets of the debtor had a significantly higher value on a replacement value basis than would be received on the open market at a forced sale; (5) few creditors actually participated in the case; and (6) the debtor was unable to satisfy administrative expenses in full at plan confirmation.

In this context, I have marveled at the efficiency of the Chapter 13 process, the modest administrative expense cost of Chapter 13 in relation to Chapter 11, the usefulness of a standing trustee, and the benefits inuring to both the debtor and the creditors once a plan is confirmed. As a result, I am convinced that Chapter 12 is a good fit for the small business debtor. The Chapter 12 requirements of 11 U.S.C. §1222 (Contents of Plan) and 11 U.S.C. §1225 (Confirmation of Plan) are well suited for the traditional small business debtor. Those provisions are quite similar to the Chapter 13 requirements of 11 U.S.C. §1322 (Contents of Plan) and 11 U.S.C. §1325 (Confirmation of Plan). These provisions afford exceptional flexibility in both plan formulation and the confirmation process. In light of the cumbersome nature of Chapter 11 and the fragile nature of many small business debtors, the resulting lower administrative expenses incurred by a debtor in Chapter 12 recommend this alternative. So too, creditor costs would be lower in Chapter 12. Balloting and unsecured creditors committees will give way to an independent and disinterested Chapter 12 standing trustee who would represent the interests of all creditors. Inasmuch as feasibility is a condition of confirmation in Chapter 12, a judicial gatekeeper will have a better ability to maintain its docket and the integrity of the bankruptcy system by expeditiously confirming, converting or dismissing

these cases. In the Eastern District of Michigan, where I practice, we have an exceptionally diligent, albeit extremely overworked, Court.

I am willing to further assist the Members of this Subcommittee and its staff with the task of determining how best to reform the current Chapter 11 process as it relates to small businesses seeking relief in bankruptcy which has precipitated the subject matter of this hearing.

Mr. Chairman, I thank you and the other Members for allowing me to present my views and offer my testimony.