

trustee. The examiner would be appointed to conduct such an investigation of the debtor as is appropriate under the particular circumstances of the case, including an investigation of any allegations of fraud, dishonesty, or gross mismanagement of the debtor of or by current or former management of the debtor. The standards for the appointment of an examiner are the same as those for the appointment of a trustee: the protection must be needed, and the costs and expenses must not be disproportionately high.

By virtue of proposed 11 U.S.C. 1109, an indenture trustee and the Securities and Exchange Commission will be parties in interest for the purpose of requesting the appointment of a trustee or examiner.

Subsection (c) directs that the United States trustee actually select and appoint the trustee or examiner ordered appointed under this section. The United States trustee is required to consult with various parties in interest before selecting and appointing a trustee. He is not bound to select one of the members of the panel of private trustees established under proposed 28 U.S.C. 586(a)(1) which exists only for the purpose of providing trustees for chapter 7 cases. Neither is he precluded from selecting a panel member if the member is qualified to serve as chapter 11 trustee. Appointment by the United States trustee will remove the court from the often criticized practice of appointing an officer that will appear in litigation before the court against an adverse party.

Editorial Notes

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-327, §2(a)(30)(A), inserted “or” at end of par. (1), substituted a period for “; or” at end of par. (2), and struck out par. (3) which read as follows: “if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.”

Subsec. (b)(2)(B)(i). Pub. L. 111-327, §2(a)(30)(B), substituted “subsection (a)” for “subsection (d)”.

2005—Subsec. (a)(3). Pub. L. 109-8, §442(b), added par. (3).

Subsec. (b). Pub. L. 109-8, §416, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 109-8, §1405, added subsec. (e).

1994—Subsec. (b). Pub. L. 103-394, §211(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103-394, §211(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103-394, §§211(a)(1), 501(d)(30), redesignated subsec. (c) as (d) and inserted comma after “interest”.

1986—Subsecs. (a), (b). Pub. L. 99-554, §222(1), (2), inserted “or the United States trustee” after “party in interest”.

Subsec. (c). Pub. L. 99-554, §222(3), substituted “the United States trustee, after consultation with parties in interest shall appoint, subject to the court’s approval, one disinterested person other than the United States trustee to serve” for “the court shall appoint one disinterested person to serve”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1405 of Pub. L. 109-8 effective Apr. 20, 2005, and applicable only with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1406 of Pub. L. 109-8, set out as a note under section 507 of this title.

Amendment by sections 416 and 442(b) of Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced

under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1105. Termination of trustee’s appointment

At any time before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may terminate the trustee’s appointment and restore the debtor to possession and management of the property of the estate and of the operation of the debtor’s business.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2628; Pub. L. 98-353, title III, §501, July 10, 1984, 98 Stat. 384; Pub. L. 99-554, title II, §223, Oct. 27, 1986, 100 Stat. 3102.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

This section authorizes the court to terminate the trustee’s appointment and to restore the debtor to possession and management of the property of the estate and to operation of the debtor’s business. Section 1104(a) provides that this section does not apply in the case of a public company, for which the appointment of a trustee is mandatory.

HOUSE REPORT NO. 95-595

This section authorizes the court to terminate the trustee’s appointment and to restore the debtor to possession and management of the property of the estate, and to operation of the debtor’s business. This section would permit the court to reverse its decision to order the appointment of a trustee in light of new evidence.

Editorial Notes

AMENDMENTS

1986—Pub. L. 99-554 inserted “or the United States trustee” after “party in interest”.

1984—Pub. L. 98-353 substituted “estate and of the” for “estate, and”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704(a);

(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(a)(1) of this title;