

**Statement of Commissioner Jon Leibowitz,
Concurring in Part, Dissenting in Part**

In re Creaghan A. Harry, Matter No. X04-0063

I join in the statement of my fellow Commissioners as to the policy of the agency on a going forward basis. The statement recognizes that the new Bankruptcy Law is a useful tool that can be employed, when appropriate, to prevent malefactors from shielding assets that could otherwise be returned to consumers who have been misled or defrauded.

I respectfully disagree, however, with the decision to accept the settlement with Mr. Harry. To be sure, the new law was signed only on April 20, and the federal district court, not the Commission, would have determined the trial schedule in this matter. It is possible, then, that the Commission would not have had time to litigate the case, obtain a judgment against Mr. Harry, and then take the additional actions necessary to trigger Section 322 before the look-back period expires. It is also possible that, although Section 308 has a ten-year look-back, the conduct here would not have satisfied the requisite intent standard under that provision. Still, the settlement leaves Mr. Harry with significant equity in his \$2.4 million Florida estate. Reasonable people can disagree, but my sense is that the Commission should have rejected this settlement to attempt to obtain stronger relief, even if such an effort might have ultimately failed.