

Committee Education Session

*Consumer Bankruptcy/
Professional Compensation*
The ABI Consumer Fee
Study: The Results of the Pilot
Study and Where We Are
Going from Here

Hon. Steven W. Rhodes, Moderator

U.S. Bankruptcy Court (E.D. Mich.); Detroit

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Proposal
Consumer Fee Study
Sponsored by the American Bankruptcy Institute

Lois R. Lupica
Maine Law Foundation Professor of Law
University of Maine Law School
Lead Researcher

Hypothesis: “BAPCPA has substantially increased the costs of accessing the bankruptcy system for consumer debtors and their creditors.”

This hypothesis will be tested by analyzing data from consumer bankruptcy case files and by examining data collected through a survey instrument. Data will be gathered with respect to (i) distributions to creditor classes (all creditors, secured creditors and unsecured creditors), (ii) trustee fees, (iii) debtor’s counsel fees, and (iv) other costs and expenses (credit counseling, filing fee, post-filing financial management).

I. The Pilot Study

The project will begin with a Pilot Study, with the objective of distilling the data that is available and accessible, as well as refining the study’s substance and process (the “Pilot Study”). In connection with the Pilot Study, small samples of fee-related data from a limited number of districts (to be determined) in cases filed, both pre- and post-October 17, 2005, will be gathered. The local rules and orders with respect to fees allowed in consumer cases in each of these select districts will be researched and this data will be analyzed to determine the principal determinants of fees and expenses.

The Pilot Study will commence in June with the formulation of Analysis Plan. This Analysis Plan will set forth the study’s (i) specific hypotheses, (ii) the sample jurisdictions and sample size for both the Pilot Study and the National Study, and (iii) the analysis to be conducted. Such analysis may include the identification of specific relations among the variables to be investigated, statistical methods to be used, variables to be used for adjusting results, as well as any recoding, rescaling, or collapsing of variables that may be necessary.

The necessary case files will be acquired from AACER, and research assistants will be enlisted to perform coding functions, as well as conduct research. A preliminary report of the Pilot Study’s findings will be presented at the ABI Winter Leadership Conference in December 2009.

II. Full-Scale National Consumer Fee Study

The full-scale Study will commence in early 2010, and be completed by Fall 2011. As part of the full-scale Study, data from pre- and post-BAPCPA cases, selected at random from various districts around the country will be gathered and analyzed. In addition, the full-scale Study will include the administration of a survey instrument, which will be developed in consultation with a statistical consultant, and with the help of a team of research assistants. This survey instrument will enable the gathering and compilation of information about the cost of BAPCPA that is not available from public records.

III. Staffing of the Project

Lois R. Lupica, Maine Law Foundation Professor of Law, University of Maine Law School (hereinafter, the “Researcher”) will serve as Lead Researcher and Principal Investigator.

To ensure the independence and integrity of the Study, the Researcher will have final authority with respect to the questions and issues investigated, the study methodology, and content of the Final Report.

Numerous students – primarily, but not exclusively, from the University of Maine School of Law – will perform research, data entry and clerical support for the Study. In addition, a statistical consultant will be engaged to assist in the Study’s statistical analysis

IV. Advisory Panel

A Study Advisory Panel (the “Panel”) will be appointed. This Panel will be comprised of academics, judges, practicing consumer bankruptcy attorneys and Trustees. Such information about the progress of the Study as the Panel will be

DRAFT

Consumer Bankruptcy Pilot “Fee Study”
The Costs of Bankruptcy Reform

Lois R. Lupica
Maine Law Foundation Professor of Law
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Lead Researcher

Questions for Study and Analysis

1. How have the various significant provisions of BAPCPA impacted legal fees charged in consumer bankruptcies?
 - A. Standard economic indicators.
 - (i) Cost of living (2003-2004 v. 2007-2008);
 - (ii) Inflation (2003 - 2004 v. 2007-2008)
 - B. Compare cost of living increases/inflation to increases in legal fees
 - (i) Chapter 7 cases
 - (ii) Chapter 13 cases
 - C. Controlling for inflation and cost of living increases, compare legal fees charged in 2003-2004 to fees charged in 2007-2008 (pre-BAPCPA v. post-BAPCPA).

What else would we control for? What are some of the other factors that could affect fees between the two periods of time?

2. Are there “market rates” for bankruptcy fees in the post-BAPCPA world?
 - A. Chapter 7 “market rates”
 - B. Chapter 13 “market rates”

What are the markets? Judicial Districts? Courts? (descriptive question)

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- C. With respect to Chapter 13 cases, what are the “no-look” fees in each district?
- D. What is the divergence in rates charges and the “no-look” fee in each district?
- E. What is the frequency of the “no-look” fee being charged in a Chapter 13, versus a fee application for a larger fee?
 - (i) 2003-2004 (pre-BAPCPA v. post-BAPCPA)
 - (ii) 2007-2008 (pre-BAPCPA v. post-BAPCPA)

- 3. What is the relationship between the market-rate for fees charged (*Average? Median? Per Judicial District?*) and pro se bankruptcy filings?

Thesis: The higher the market rate for legal fees, the more pro se bankruptcy filings.

- 4. What fees are paid to professionals in consumer bankruptcies?
 - (i) Chapter 7 fees paid to attorneys;
 - a. 2003-2004
 - b. 2007-2008
 - (ii) Chapter 7 fees paid to “other professionals”;
 - a. 2003- 2004
 - b. 2007-2008
 - (iii) Chapter 13 fees paid to attorneys;
 - a. 2003-2004
 - b. 2007-2008
 - (iv) Chapter 13 fees paid to “other professionals”
 - a. 2003-2004
 - b. 2007-2008

(Descriptive- Average? Median? By Judicial District? By Judicial Circuit? By Region?)

5. Is there a difference between the fees charged by attorneys to above- and below-median income debtors?
 - A. Post-BAPCPA attorney fees charged to debtor's with income above the median income in their district;
 - B. *Compared* to Post-BAPCPA attorney fees charged to debtors with income below the median income in their district.

6. How often are petition preparers used?
 - A. Chapter 7 cases
 - (i) 2003-2004;
 - (ii) 2007-2008;

 - B. Chapter 13 cases
 - (i) 2003-2004;
 - (ii) 2007-2008;

 - C. When used, what do they charge?

7. What is the relationship between attorney's fees and the amount of unsecured debt discharged?
 - A. Chapter 7 cases
 - (iii) 2003-2004;
 - (iv) 2007-2008;

 - B. Chapter 13 cases
 - (iii) 2003-2004;
 - (iv) 2007-2008;

8. What is the relationship between attorney's fees and the amount of secured debt discharged (all secured debt, including real estate)?

A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

9. What is the relationship between attorney's fees and the amount of real estate related secured debt discharged?

A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

10. What is the relationship between attorney's fees and the amount of bankruptcy-related administrative costs (carving out attorney fees)?

A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

11. What is the relationship between attorney's fees and the amount of trustee fees and expenses?

A. Chapter 7 cases

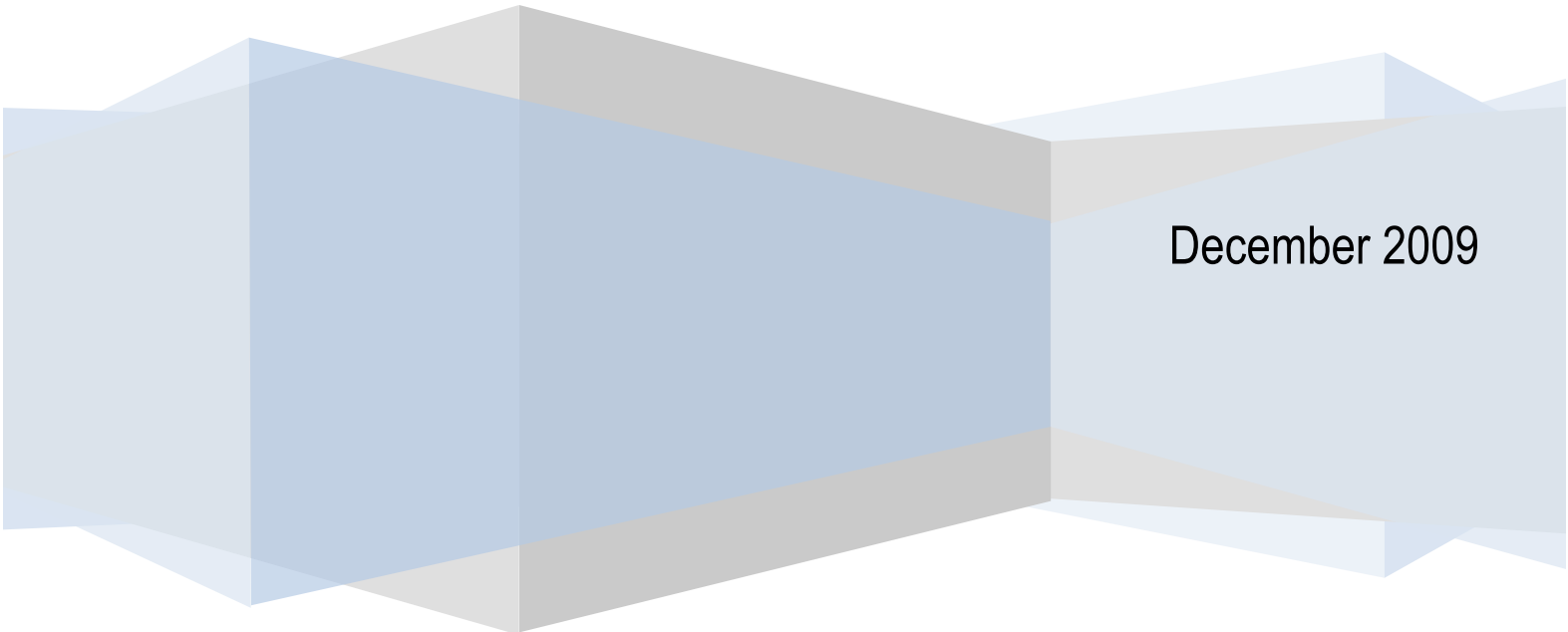
The American Bankruptcy Institute

The Costs of BAPCPA:

The Report of the Pilot Study of Consumer Cases

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December 2009

Introduction and Study Background¹

Substantial changes were made to the consumer bankruptcy system with the enactment of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”).² According to the bill’s legislative history, the amendments to the bankruptcy code were designed to “improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensur[ing] that the system is fair for both debtors and creditors.”³ These purported improvements incorporated into the bankruptcy code an “income/expense screening mechanism,”⁴ established a myriad of new eligibility standards for consumer bankruptcy relief,⁵ and imposed new responsibilities on “those charged with administering consumer bankruptcy cases as well as [on] those who counsel debtors with respect to obtaining such relief.”⁶ The sweeping changes to the consumer bankruptcy system were enacted however, without data support for, or seeming

¹ This Pilot Study was funded with the generous support of the Anthony H.N. Snelling Endowment Fund, a foundation supported by the membership of the American Bankruptcy Institute. I would like to thank Claire DeWitte and Bodie Colwell, University of Maine School of Law, Class of 2011, for their invaluable contribution to the Pilot Study. As Lead Research Assistants, Ms. DeWitte and Ms. Colwell have been integral to the development of (i) the research protocol, (ii) the Coding Manual, (iii) the data collection process, (iv) the Research Assistant Training Program, and (v) the Report of the Pilot Study. I would also like to thank Research Assistant Jonathan McPhee, University of Maine School of Law, Class of 2011, for his assistance with quality control procedures. And finally, I would like to thank Statistical Consultant, Elizabeth Newton, Ph.D. for her assistance in the development of the research design and the statistical analysis of the data.

² Henry J. Sommer, *Trying to Make Sense Out of Nonsense: Representing Consumers Under the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 Am. Bankr. L.J. 191, 191 (2005). (“There is no question that the provisions of the Bankruptcy Code have been changed in many significant respects. There is also no question that many debtors, especially those priced out of bankruptcy relief due to increased costs, will be negatively impacted by those changes.”)

³ 109th Cong. 1st Sess., House of Rep. 109-31, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Report of the Committee on the Judiciary, House of Rep. to accompany S. 256 together with Dissenting, Additional Dissenting and Additional Minority Views, April 8, 2005.

⁴ *Id.*

⁵ See 11 U.S.C. § § 342, 1328(a), 1308, 521, 526.

⁶ *Id.*

recognition of how such changes would affect the cost of accessing the bankruptcy system.⁷

The issue of the costs of BAPCPA was considered by Congress during its deliberative process, and addressed in a Congressional Budget Office report (the “CBO Report”).⁸ As is always the case, the answer you receive depends upon the question you ask: the primary focus of the CBO Report was on the costs of BAPCPA to the U.S. Government.⁹ The CBO Report noted that the primary cost increase would be for additional responsibilities of the U.S. Trustees imposed by BAPCPA.¹⁰ The CBO Report did, however, review the costs of the legislative mandates imposed on state, local and tribal governments, as well as on certain members of the private sector, including bankruptcy attorneys, creditors, bankruptcy petition preparers, debt relief agencies, consumer reporting agencies, and credit and charge-card companies.¹¹ It mentioned, in passing, that a number of the increased costs incurred by bankruptcy attorneys and others may be passed on to the consumer.¹² The increase in filing fees (paid by debtors) was reflected in the CBO Report as an increase in revenue, not costs.¹³

The issue of the cost of implementing a public policy is important. The “new” consumer bankruptcy code, in operation for almost four years, set in motion a new substantive policy for debt relief: the new system would weed out the system’s “abusers” while still maintaining meaningful

⁷ The Congressional Budget Office prepared a cost estimate of some of the direct costs of BAPCPA, and presented it to the House Committee on the Judiciary on April 4, 2005 (hereinafter, the “CBO Report”). See <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr031p1&dbname=109&> (*last visited*, November 28, 2009).

⁸ The CBO report noted that the primary cost increase would be for additional responsibilities of the U.S. Trustees imposed by BAPCPA. Additionally, new bankruptcy judgeships would impose additional costs -- \$26 million over the next five years, and \$45 million over the 2006 to 2015 period. The report’s summary stated, “[o]n balance and assuming appropriation of the necessary amounts to implement the act, CBO estimates that its enactment would increase budget deficits by about \$280 million over the 2006-2010 period.” *Id.*

⁹ The CBO Report did not estimate the costs of BAPCPA on consumer debtors. *Id.*

¹⁰ This Pilot Study does not address the issue of costs incurred by U.S. Trustees as a result of additional responsibilities mandated by BAPCPA. See the Government Accounting Office 2008 study, entitled “*Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*” (the “GAO Report”) for a comprehensive description of these increased costs.

¹¹ CBO Report, *supra* note 8.

¹² *Id.*

¹³ The CBO Report concluded that “as long as the likelihood of repayment by debtors and the pool of funds increases by an amount greater than the cost to creditors of administering the new bankruptcy code, creditors would be made better off under the act.” CBO Report, *supra* note 8.

access for those debtors needing genuine relief.¹⁴ To further this ostensible goal, the consumer bankruptcy code is laden with procedural and substantive conditions that must be satisfied before consumers may access (and exit) the bankruptcy system. As has been observed, the “principal target” of these conditions is the debtor.¹⁵

Over three million consumer debtors have met these conditions and filed for debt relief since BAPCPA’s effective date. Many of these consumers have received the relief they were seeking, even in the new “unwelcoming environment.”¹⁶ But many consumers in financial distress chose not to endure bankruptcy’s cold shoulder following BAPCPA’s enactment.¹⁷ The Consumer Bankruptcy Project’s most recent study examined the question of *who* left the bankruptcy system, post-BAPCPA, and *why*.¹⁸ Their data revealed *who* left the system – households with high debt loads and incomes comparable pre-BAPCPA filers. The question of *why* remains, although a number of plausible theories have been raised.¹⁹

¹⁴ “With respect to the interests of creditors, the proposed reforms respond to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability, the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system.” (footnote omitted). *Supra* note 4, at 1.

¹⁵ James J. White, *Abuse Prevention*, 71 Mo. L. Rev. 863, 866 (2006).

¹⁶ From January 2006 to October 2009, 3,509,409 bankruptcy petitions have been filed by consumers. See <http://bdp.law.harvard.edu/filingsdb.cfm> (last visited November 28, 2009). See also White, *supra*, note 15.

¹⁷ The number of consumers filing for bankruptcy protection declined, however, following BAPCPA’s enactment. In the first large-scale, national sample of households who filed for bankruptcy after BAPCPA, the Consumer Bankruptcy Project investigated whether the ostensible “evil” BAPCPA was enacted to address – high income abusers of the bankruptcy system – was effectively eradicated by the reform legislation. Despite the fact that since BAPCPA’s enactment, median family incomes have declined, basic expenses have risen, debt loads have multiplied, and the numbers of foreclosures and loan defaults have increased, fewer families have taken advantage of the bankruptcy debt relief system. Because there was no difference in income level between families filing for bankruptcy before BAPCPA and after BAPCPA’s enactment, the study concluded that the families that were shut out of the bankruptcy system were not the system’s “gamers.” Robert M. Lawless et. al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 Am. Bankr. L.J. 349 (2008).

¹⁸ “If bankruptcy filings had continued at the same level as they had been immediately before enactment of BAPCPA, about 1.6 million petitions would have been filed in 2007 – about twice as many as the 827,000 bankruptcy filings that actually occurred. The sharp reduction in filings after the amendments represents about 800,000 families that would have filed but did not. In the face of deteriorating economic circumstances, the absence of these families from the bankruptcy system is strong evidence that BAPCPA has had a powerful effect on families in financial trouble.” *Id.* at 351.

¹⁹ Henry J. Sommer, *Trying to Make Sense Out of Nonsense: Representing Consumers Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 Am. Bankr. L.J. 191 (2005). (“There is no doubt that bankruptcy relief will be more expensive for almost all debtors, less effective for many debtors, and totally inaccessible for some debtors as a result of the new law.”) *Id.* at 191.

Scholars have theorized that families in need may not be filing for bankruptcy because they are “discouraged by the negative publicity surrounding the 2005 amendments, concerned about the stigma associated with bankruptcy, or dissuaded by aggressive debt collectors who bully them into believing they can no longer file for bankruptcy.”²⁰ Other scholars have observed that procedural obstacles requiring greater up-front access costs²¹ and more emotional fortitude are hindering some consumers in financial distress from filing.²²

The Costs of BAPCPA Study’s ultimate goal is an examination of the question of how unwelcoming the new bankruptcy environment is. Compliance with the new procedural and substantive requirements costs money. What are the direct and indirect access costs of these new requirements? This study identifies, quantifies and analyzes these costs, and seeks to answer the question of who is bearing these costs. Are the costs off-set by the benefits of a more efficient system that is less vulnerable to abuse?²³ Or have the changes made the bankruptcy process less attractive to debtors and potential debtors, but resulted in creditors’ realization of larger distributions than they received under the “old” bankruptcy regime?

The Costs of BAPCPA Pilot Study has begun to answer some of these questions. The costs of accessing the “new” bankruptcy system was gathered from consumer filings in six judicial districts, and compared to the costs of access, prior to BAPCPA’s enactment. Data was gathered from Chapter 7 and Chapter 13 consumer cases. The data gathered as part of this study provides a preliminary insight into how the Bankruptcy Code’s new procedural requirements are monetized. It is more expensive for consumers to file for bankruptcy post-BAPCPA than it was pre-BAPCPA. Observations were also made, for the districts studied, concerning how costs differed, pre-and post-BAPCPA.

Also, the study developed models to determine whether distributions to unsecured creditors were affected by the changes made to the consumer bankruptcy code. Data from the Pilot Study reveals that distributions to unsecured creditors have decreased following BAPCPA’s enactment in both Chapter 13 and Chapter 7 consumer cases.

There are many questions on the agenda for the The Costs of BAPCPA: The National Consumer Bankruptcy Study (the “National Consumer Bankruptcy Costs Study”) which is expected to launch in 2010, not answered by the preliminary Pilot Study data. The Pilot Study collected data

²⁰ Lawless, *supra* note 17, at 386.

²¹ Ronald J. Mann, *Consumer Bankruptcy and Credit In the Wake of the 2005 Act: Bankruptcy Reform and the “Sweat Box” of Credit Card Debt*, 2007 U. Ill L. Rev. 375, 378-379; White, *supra* note 15, at 874.

²² Professor James J. White observed, “by raising the cost in hundreds of little ways, you might make bankruptcy unpalatable to many who currently take bankruptcy.” White, *supra* note 15, at 874.

²³ The concept of using a cost-benefit analysis in evaluating a public policy had its origin in the U.S. Federal Navigation Act of 1936. Pursuant to this Act, the U.S. Corp of Engineers was directed to carry out projects for the improvement of the waterway system only if “the benefit to whosoever they accrue are in excess of the estimated costs.” D. Pierce, *Cost Benefit Analysis and Public Policy*, 14 Oxford Rev. of Econ. Pol’y 84, 85 (1998).

about system costs and debtors' financial profile exclusively from public bankruptcy records. The National Study will examine petitions from a national random sample of consumer debtor bankruptcy files, and also seek answers to questions that cannot be found in bankruptcy petitions and schedules. Because all of the "debtor's duties become the duties of his[her] lawyer,"²⁴ professionals engaged in consumer bankruptcy cases, including debtor attorneys and trustees will be surveyed. The bankruptcy professionals will be asked, (i) Did the increase in legal fees, and other administrative fees affect consumer's decision-making? If so, how?, (ii) To what extent did the requirements for documentation (tax returns, pay advices, certificates of completion for consumer credit counseling) deter or delay potential consumer debtors?, (iii) How has your practice changed under BAPCPA?, (iv) How frequently do you file fee applications in Chapter 13 cases, relative to your practice pre-BAPCPA?, (v) Does representation of debtors take longer, prior to filing, than it did before the change in law?, (vi) Has the time from filing to confirmation been impacted by BAPCPA? (vii) From your experience, what are the most time consuming requirements in the new law?, (viii) What requirements have proven to be the least significant?, (ix) What requirements have proven to be the most significant?

The National Study will provide more evidence with which to answer the question of whether the 2005 Amendments to the Bankruptcy Code improved bankruptcy law and practice, or whether the Amendments just made it more cumbersome and more costly to use.

BAPCPA's New Consumer Case Requirements

There are a number of new hurdles (or barricades),²⁵ to be scaled by consumers seeking the benefits of the bankruptcy system. The most off-discussed addition to the roster of new requirements is the mandate that all debtors calculate their income and expenses under the "means test," whether or not the debtor is seeking relief under Chapter 7.²⁶ The means test necessitates a myriad of complex calculations, and requires the application of various local and IRS expense standards, adjusted by location and household size.²⁷ In addition, debtors must be

²⁴ White, *supra* note 15, at 872.

²⁵ "The data indicate that those who filed in 2007 largely have the same income profile as those who filed in 2001; there has been no shift in the income levels of filers that would have occurred if 800,000 high-income abusers had been pushed out of the system. These income data suggest that instead of functioning like a sieve, carefully sorting the high-income abusers from those in true need, the amendments' means test function more like a barricade, blocking out hundreds of thousands of struggling families indiscriminately, regardless of their individual circumstances." Lawless, *supra* note 17, at 353.

²⁶ 11 U.S.C. 707(b) (2005). The new disposable income test under Chapter 13 requires ...

²⁷ Anecdotal evidence suggests that most consumer bankruptcy attorneys use "means test" software, such as Best Case Solutions, which simplifies that calculations and application of formulas. A license for three people to use the program for Chapter 7 and Chapter 13 cases is \$1550. Some jurisdictions may require an additional program for an additional fee. <http://www.bestcase.com/grafix/pdf/orderfrm.pdf> (last visited, November 28, 2009). No doubt, the use of such software programs saves time, once the user becomes familiar with the system. Not being a regular user of the software, except for demonstrating its utility before

able to prove their income, by producing both “pay advices” and income tax returns. Debtors must also attend a credit counseling course in order to be eligible to file for bankruptcy. To receive a discharge, a debtor must attend a debtor education course.

Most debtors have complied and will continue to comply with these requirements by subcontracting them to his/her attorney. It is the lawyer who directs a debtor to the credit counseling course, as well as to the pre-discharge debt management course.²⁸ The lawyer (or the lawyer’s staff) prepares and calculates the means test, and reminds (and reminds again) debtors to produce their tax returns and pay advices. Lawyers also commonly provide clients with a Section 342(b) notice, describing the forms of bankruptcy, and warning of the consequences of asset concealment or fraud.²⁹ Lawyers must also certify, “after reasonable investigation” that the information provided by debtor in his/her petition is “well grounded in fact.”³⁰ To avoid sanctions and potential civil liability, attorneys are required to verify the information given to them by their clients with respect to the list of creditors, assets and liabilities, and income and expenditures.³¹ All of this takes time, and time is money.

The cost of the new consumer bankruptcy requirements was detailed in the first post-BAPCPA study of financial impact of the bankruptcy amendments.³² This study, conducted by the

my bankruptcy class once a year, I can attest to the fact that there are considerable start-up costs. I can see, however, a time saving value in repetitive use of the program.

²⁸ A number of consumer bankruptcy attorneys have told me that they have computer stations, and telephone centers set up in their offices, so that clients can complete these required courses on-line, or by telephone, while they are in the lawyer’s office for consultation.

²⁹ A debtor may receive a Section 342(b) notice from the court clerk. See 11 U.S.C. §342(b).

³⁰ Section 521 makes bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. To avoid sanctions and potential civil penalties, attorneys need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Completing a reasonable investigation of debtors’ financial affairs and, for Chapter 7 cases, computing debtor eligibility, requires attorneys to expend additional effort. Prior to BAPCPA’s enactment, the American Bar Association said that this requirement would increase attorney costs by \$150 to \$500 per case. Based on the 1.6 million projected filings under Chapter 7 (liquidation) and Chapter 13 (rehabilitation), the Congressional Budget Office estimated that the direct cost of complying with this mandate would be between \$240 million and \$800 million in fiscal year 2007, the first full year of implementation, and would remain in that range through fiscal year 2010. The Congressional Budget Office stated that they expected that some of the additional costs incurred by attorneys would most likely be passed on to their clients. CBO Report, *supra* note 8.

³¹ An attorney representing a consumer bankruptcy debtor is required to file a written statement of the compensation paid to the attorney, or the compensation agreed to be paid to the attorney for services rendered in contemplation of or in connection with the bankruptcy case, within one year before the filing of the bankruptcy petition, whether or not the attorney makes a specific application for compensation. See Section 329(a) and Fed. R. Bankr. P. 2016(b).

³² GAO Report, *supra* note 11.

Government Accounting Office, examined the costs of BAPCPA on the U.S. Trustee Program, the federal judiciary, consumers, and on private trustees.³³ The U.S. Trustee Program was found to have incurred significant costs in connection with its role in the implementation of the means test, debtor audits, data collection and reporting as well as counseling and education requirements.³⁴

Consumer bankruptcy attorney fees incurred in Chapter 7 cases were also examined in the GAO study: a nationwide random sample of 176 Chapter 7 cases filed pre-BAPCPA was compared to 292 randomly selected Chapter 7 cases filed post-BAPCPA.³⁵ The study found that the average attorney fee for a Chapter 7 case increased by \$366.³⁶

With respect to attorney's fees in Chapter 13 cases, the GAO study confined its examination to a review of 48 judicial districts' "no-look" fees, and found an increase in nearly every district studies, with more than half of the districts showing an increase of 55 percent or more.³⁷ The GAO study concluded that filing for consumer bankruptcy was more costly for debtors, private trustees and the U.S. Trustee following BAPCPA's enactment than before.³⁸

The result of a series of interviews with half a dozen consumer debtor attorneys concerning the costs of consumer bankruptcy was recently published in Professor James J. White's article, *Abuse Prevention*.³⁹ These interview subjects unanimously concluded that the cost of consumer Chapter 7 cases rose significantly, following BAPCPA's enactment.⁴⁰ The reasons cited for the increase in costs were related to the necessity of multiple meetings with prospective debtors prior to filing:

The first visit would be to explain the Section 342 disclosures and to begin collecting information. The second might be to get additional information and to arrange the counseling

³³ GAO Study, *supra* note 11.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ A single-district study was published in 2008 addressing the issue of BAPCPA's total direct costs: *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*. As part of this study, data was gathered in pre- and post-BAPCPA Chapter 7 cases in the Northern District of Alabama. This study examined ~ one hundred Chapter 7 cases, from each of the two time periods, concluding that costs were higher following the bankruptcy amendments. The study's conclusion called out for a national empirical study of the costs of BAPCPA. Robert J. Landry III and Amy K. Yarbrough, *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, 82 Am. Bankr. L. J 331 (2008).

³⁹ White, *supra* note 15, 875.

⁴⁰ *Id.*

briefing, commonly done by telephone in the lawyer's office. Last, the lawyer himself will have to verify the information given by the debtor and check the debtor for his tax return and pay stub. The lawyer will also have to do the mandated factual investigation. ...[including] getting credit reports, ... lien searches, and checking other public records to determine if the client is listed as the owner of real property.⁴¹

The Costs of BAPCPA Pilot Study has been informed by and builds upon the work of these prior studies.

The Pilot Study

Sample Selection

The data for the Pilot Study was collected from consumer bankruptcy cases filed in six judicial districts. Three judicial districts from each of the eleven judicial districts were initially selected: one from each of the high, low and medium population states in the circuit, as determined by the July 1, 2008 Population Estimate published by the U.S. Census.⁴² Six judicial districts were randomly selected from the pool of 33 judicial districts for Pilot Study sampling. Data was collected in the Pilot Study from (i) the Middle District of Florida, (ii) the Northern District of Illinois, (iii) the Northern District of Georgia, (iv) Maine, (v) Utah, and (vi) the Southern District of West Virginia. A stratified sampling method was used to ensure that cases from low, medium and high population states were represented in the Pilot Study sample.

Fifty Chapter 7 cases from each of the six Pilot Study districts were then randomly selected from the consumer cases filed in 2003 and 2004 (pre-BAPCPA),⁴³ and fifty Chapter 7 cases from each of the same districts were randomly selected from consumer cases filed in 2007 and 2008 (post-BAPCPA).⁴⁴

The core sample studied in the Pilot Study contains 293 Chapter 7 cases filed in 2003 and 2004, and 299 Chapter 7 cases filed in 2007 and 2008. The core sample of Chapter 13 cases studied in the Pilot Study was 414: 295 Chapter 13 cases filed in 2003 and 2004, and 119 Chapter 13 cases filed in 2007 and 2008. These numbers reflect the discarding of some cases for lack of petition information, as well as the fact that in some districts, an insufficient number of Chapter 13

⁴¹ White, *supra* note 15, at 876.

⁴² In states with more than one judicial district, the district with the highest population city was selected. Where there was an even number of states in a circuit, I calculated the average population for the circuit and selected the state with a population that was closest to that number; that state was identified as the "median population" state from that circuit.

⁴³ Half were selected from the first six months of 2003 and 2004, and half were selected from the second six months of 2003 and 2004.

⁴⁴ Half were selected from the first six months of 2007 and 2008, and half were selected from the second six months of 2007 and 2008.

cases were closed (but not dismissed).

Using the definitions developed in connection with the Bankruptcy Data Project, we examined non-commercial cases filed by actual people, not entities.⁴⁵ All cases studied in the sample were closed, but not dismissed. Joint petitions were considered to be one bankruptcy case. We made no distinction between individual and joint petitions. AACER created a random list of bankruptcy case files that fit the criteria for the study.⁴⁶

Data collection process

The Lead Researcher, together with the Research Assistants, examined case file samples in order to develop the data collection procedure. Over a series of meetings, a data entry Excel spreadsheet and a Coding Manual were developed (see Attached Coding Manual).

The Excel spreadsheet template included forty-nine data points. It was developed, with an eye toward collecting data concerning a multitude of potential predictors of costs of access to the consumer bankruptcy system. A Coding Manual was developed in conjunction with the Excel spreadsheet. For each column on the spreadsheet, the Coding Manual describes the data point and directs the Research Assistant to the place or document in the docket where the information is likely to be found. It also instructs the Research Assistant how the data is to be entered (the relevant "Code"), and sets forth any data validation measures applied to that column.

As each filed case was examined, data was entered on the spreadsheet, in accordance with the instructions in the Coding Manual.

Quality control measures

Throughout the data collection process, the research team met frequently to evaluate the integrity of the data collection procedure. Quality control was approached two different ways: (i) data validation was built into the data entry spreadsheet, and (ii) ten percent (10%) of cases were double coded.

Data validation is a function built into Excel spreadsheets that allows only approved entry of values into the cells. For example, in the Pilot Study, the column "Single or Joint Petition" allows

⁴⁵ The Bankruptcy Data Projects describes the classification of cases as follows:

Noncommercial: cases not classified as commercial cases.

Commercial: cases filed by legal entities, plus those with other indicia that the filing is related to a business. That is, the debtor may be an individual who indicates on the petition that she is "doing business as" another entity, or the debtor may list a Tax ID number instead of a Social Security Number.

Individual: cases filed by actual, natural people (teachers, doctors, and the like).

Entity: cases filed by legal entities (corporations, partnerships, and the like).

(<http://bdp.law.harvard.edu/filingsdb.cfm>)

⁴⁶ I am indebted to Mike Bickford at AACER for his patience and generous support of this project.

either “S” or “J” but not other values or letters. If a non-approved value is entered into the cell, a pop-up screen alerts the user that they cannot continue until an approved value is entered. Data validation acts as a check on typographical errors and other mistakes.

The second approach to quality control consisted of a research assistant blindly coding 10% of all cases that had been coded by other research assistants. After the coding was finished, the research assistants compared both data sets, reconciled any differences, and further refined data collection procedures.

Descriptive Statistics

Total Direct Access Costs

The initial question studied was whether Total Direct Access Costs were higher, after the Bankruptcy Reform Act of 2005 was enacted, than before. Total Direct Access Costs were defined to include (i) debtor’s attorney fees and expenses, (ii) trustee fees and expenses, (iii) filing fees, (iv) credit counseling and debtor education fees, and (v) any other professional fees.

Debtor’s attorney fees and expenses, trustee fees and expenses, filing fees and other professional fees were extracted from Chapter 7 and Chapter 13 bankruptcy cases filed in 2003 and 2004, and compared to those fees incurred in Chapter 7 and Chapter 13 cases filed in 2007 and 2008. In addition, most debtors who filed for bankruptcy protection following BAPCPA’s enactment are required to receive “credit counseling” from a government-approved organization within 180 days prior to filing.⁴⁷ Such debtors must also complete a “debtor education course” in order to receive a bankruptcy discharge. We added \$50 for pre-filing “credit counseling” and \$50 for pre-discharge “debtor education” for each bankruptcy case that was filed in 2007 and 2008.⁴⁸

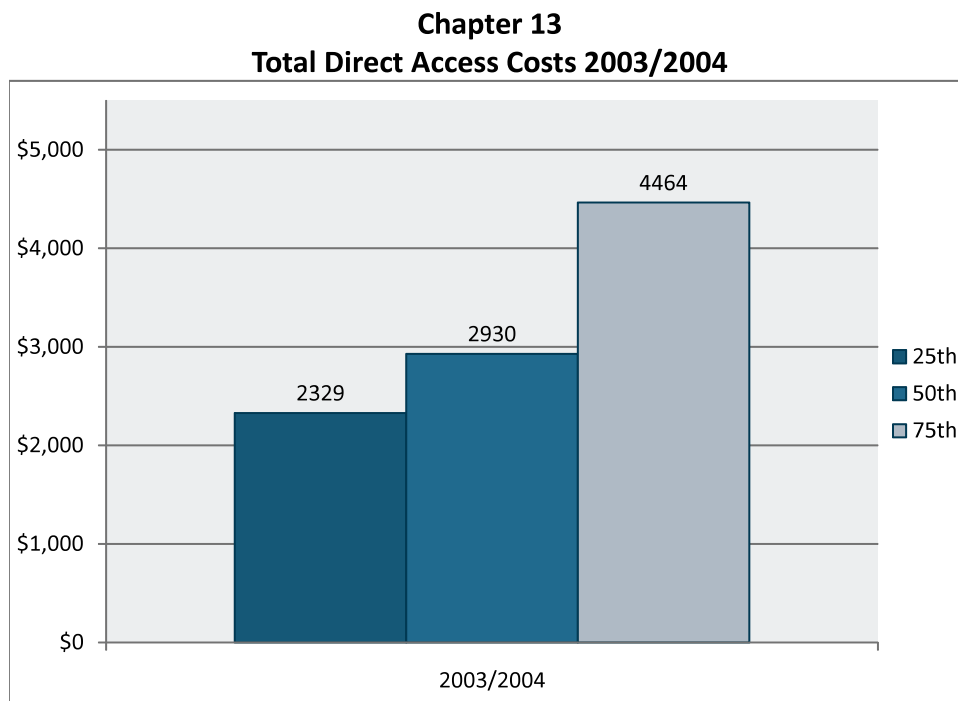
⁴⁷ See §109(h)(1) requiring an individual debtors to obtain credit counseling from an approved agency during the 180-day period preceding the filing of a bankruptcy petition.

⁴⁸ This was the median fee charged by the credit counseling and debtor education providers surveyed. The “Total Direct Access Costs” post-BAPCPA does not reflect the rare cases in which debtors received a waiver of the requirement to receive counseling. Under §109(h)(3) a Debtor may be exempted from the credit counseling requirement, but only upon written certification that describes exigent circumstances which merit waiver. Additionally, the Debtor must have requested credit counseling services, but been unable to obtain them, within five days from the Debtor’s request of the waiver. Courts have strictly construed the requirement for credit counseling, and few judges have granted waivers. For example, in *In re Booth*, BK No. 05-045002-LMK-13 (Bankr.N.D.Fla. Oct. 24, 2005), the debtors alleged the “exigent circumstances” of impending foreclosure of their home and repossession of their vehicle but failed to certify they had requested, but been unable to obtain, the required credit counseling within five days from their request. Judge Killian dismissed the case as having been filed by an ineligible person. In *In re Monteiro*, BK No. 05-85018- Ch 7 (Bankr.N.D.Ga. Oct. 31, 2005), a *pro se* debtor requested a waiver of the requirement, alleging she had been to credit counseling in the past and it had not been productive, and that her present situation was too complex for credit counseling. The court gave the debtor an opportunity to supplement her request with specific grounds complying with §109(h)(3) and obtaining a credit briefing within the 30 days of the

Chapter 13

For our sample of Chapter 13 cases filed in 2003 and 2004, the median Total Direct Access Costs was \$2,930. The 25th percentile of Total Direct Access Costs was \$2,329 and the 75th percentile was \$4,464.

Figure 1.1



commencement of her bankruptcy case. In another Chapter 13 case - filed to stop a foreclosure - the Debtor was held ineligible under §109(h), and the case was dismissed. *In re Sosa*, 336 B.R. 113. (Bankr.W.D.Tex. 2005). The court noted that dismissal might adversely affect the automatic stay in the next case, to stop the next foreclosure, but stated: "The Court's hands are tied. The statute is clear and unambiguous. The debtors violated the provision...and are ineligible to be debtors in this case. It must, therefore, be dismissed." A Minnesota bankruptcy court also found that failure to meet the requirements of §109(h) made the putative debtor ineligible to be a debtor; held this lack of eligibility to constitute cause for dismissal under §707(a); and stated that dismissal was "the only possible outcome...." *In re LaPorta*, 332 B.R. 879 (Bankr.D.Minn., 2005).

The median Total Direct Access Costs for Chapter 13 cases filed in 2007 and 2008 was \$4,077. The 25th percentile of Total Direct Access Costs was \$3,374 and the 75th percentile was \$4,661 (see Figure 1.2 below).⁴⁹

Figure 1.2

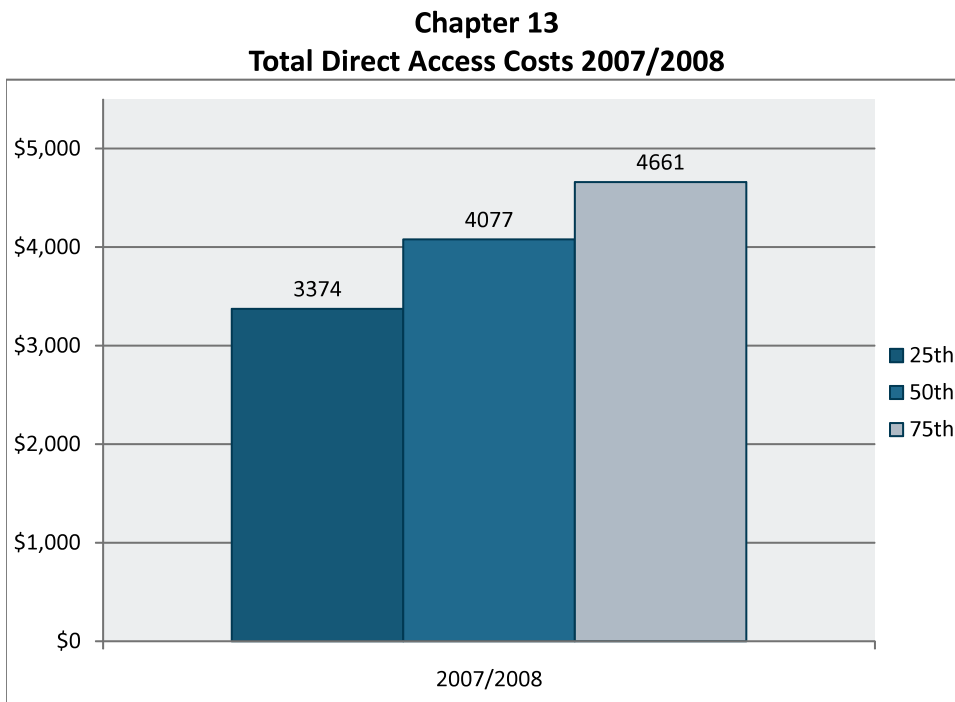


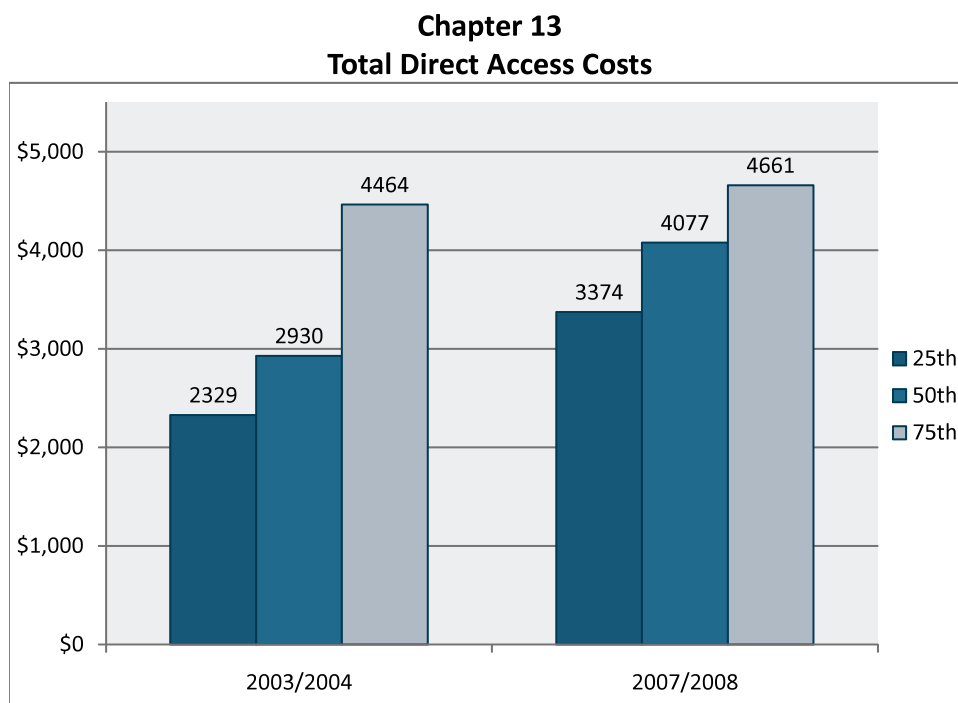
Figure 1.3 below compares the Total Direct Access Costs pre-BAPCPA to the Total Direct Access Costs post-BAPCPA. There was a significant increase from 2003-2004 to 2007-2008 in each of the 25th, 50th and 75th percentiles: a 39% increase at the median, a 45% increase at the 25th percentile and a 4% increase at the 75th percentile.

A number of fixed costs increased as a result of the amendments to the Bankruptcy Code. For example, filing fees increased from \$185 (in 2003) to \$274 (in 2008) – an increase of \$89

⁴⁹ Unless otherwise indicated, all dollars are adjusted for inflation, using the Consumer Price Index. See <http://www.bls.gov/cpi>.

(48%).⁵⁰ Median debtor's attorney fees and expenses in Chapter 13 cases increased from \$2,000 to \$3,000 (a 50% increase). In addition, the costs of credit counseling and debtor education added ~\$100 to each Chapter 13 case filed in 2007 and 2008.⁵¹

Figure 1.3



The data gathered in each of the Pilot Study districts may be of interest to courts, debtor's attorneys and trustees in these individual districts. Although there was quite a lot of variation in Total Direct Access Costs among Pilot Study Districts for Chapter 13 cases, Figure 1.4 below reveals that costs to access the bankruptcy system increased, post-BAPCPA, in every district studied. Because there are some costs that are fixed by statute and thus apply in all cases across

⁵⁰ The fees required to be paid by debtors filing for bankruptcy under Chapter 13 include a \$220 statutory fee and a \$39 miscellaneous administrative fee (total \$274). See 28 U.S.C. § 1930(a), as amended.

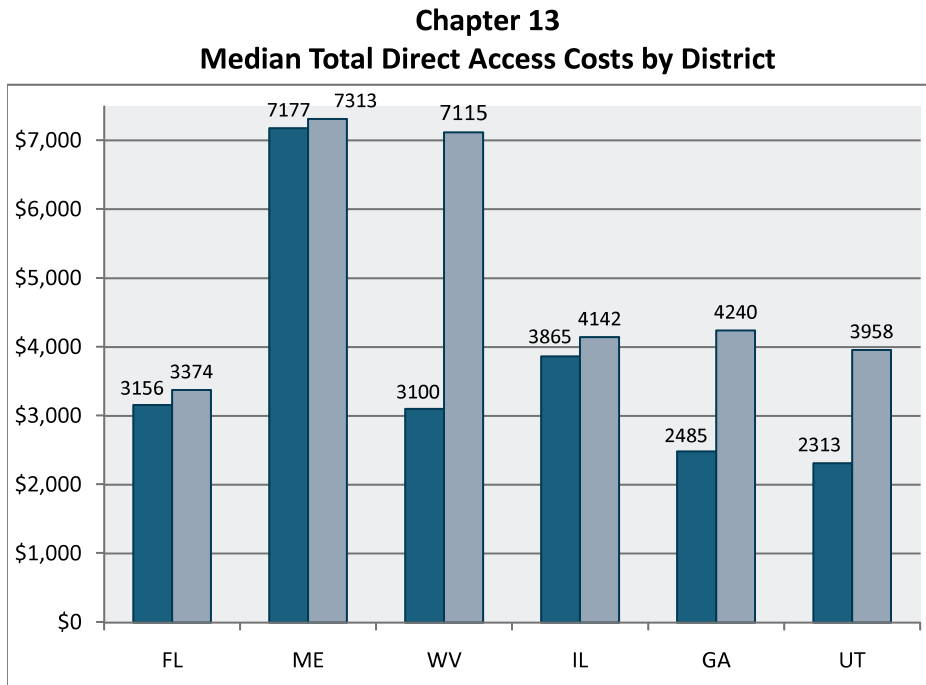
⁵¹ Nathalie Martin, et.al, *Mind Games: Rethinking BAPCPA's Debtor Education Provisions*, 31 SIU L. J. 517 (2007); A. Mechele Dickerson, *Can Shame, Guilt or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work*, 32 Loy.L.A. Law Rev. 945 (2006).

the country, the costs that varied between districts were attorney fees (and expenses) and trustee fees.

Sharp increases in total direct access costs, pre- and post-BAPCPA (as was found in the Southern District of West Virginia (129% increase), the Northern District of Georgia (70% increase) and Utah (71% increase)) suggests that attorney fees and/or trustee fees increased significantly in Chapter 13 cases. If the increase can be attributed to trustee fees, that may mean more assets are being administered by the trustee, or the practice of administering assets changed (such as mortgages being paid inside the plan, rather than outside the plan). If the cost increases are attributable to increased attorney fees, then that may be a reflection of the attorney responsibilities added by BAPCPA.

It is interesting to observe that at least among the districts selected for the Pilot Study, the highest total direct access costs were in low population jurisdictions. This seems to counter the common belief that costs are higher in larger cities, than they are in smaller cities, or rural areas.

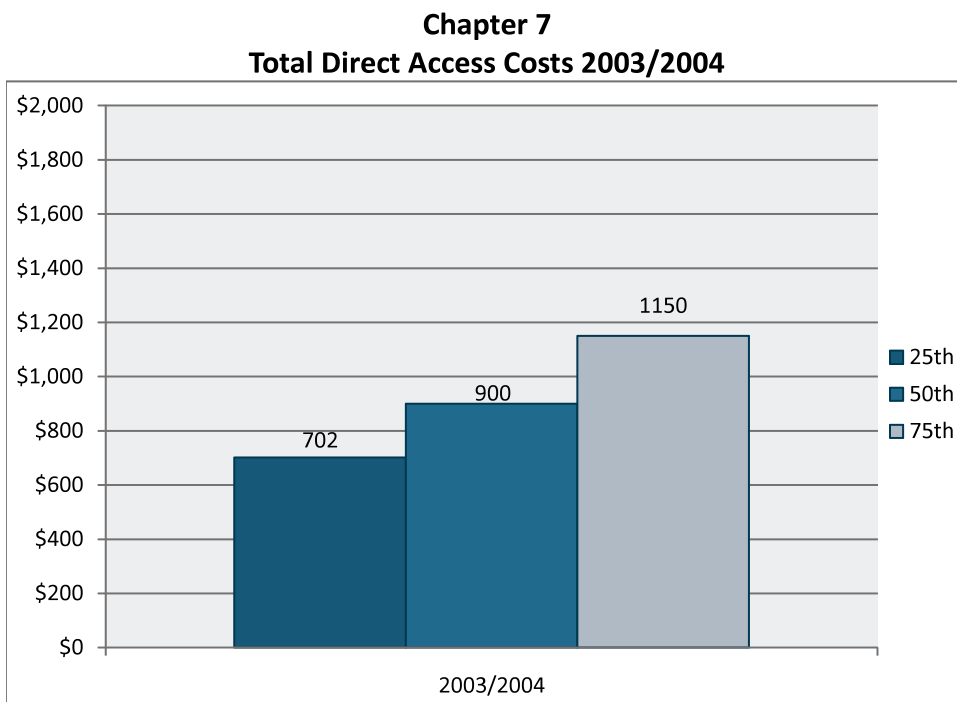
Figure 1.4



Chapter 7

The median Total Direct Access Costs for Chapter 7 consumer cases filed in 2003 and 2004 was \$ 900. For cases filed during this period, the 25th percentile of Total Direct Access Costs was \$ 702 and the 75th percentile was \$ 1,150 (see Figure 2.1 below).

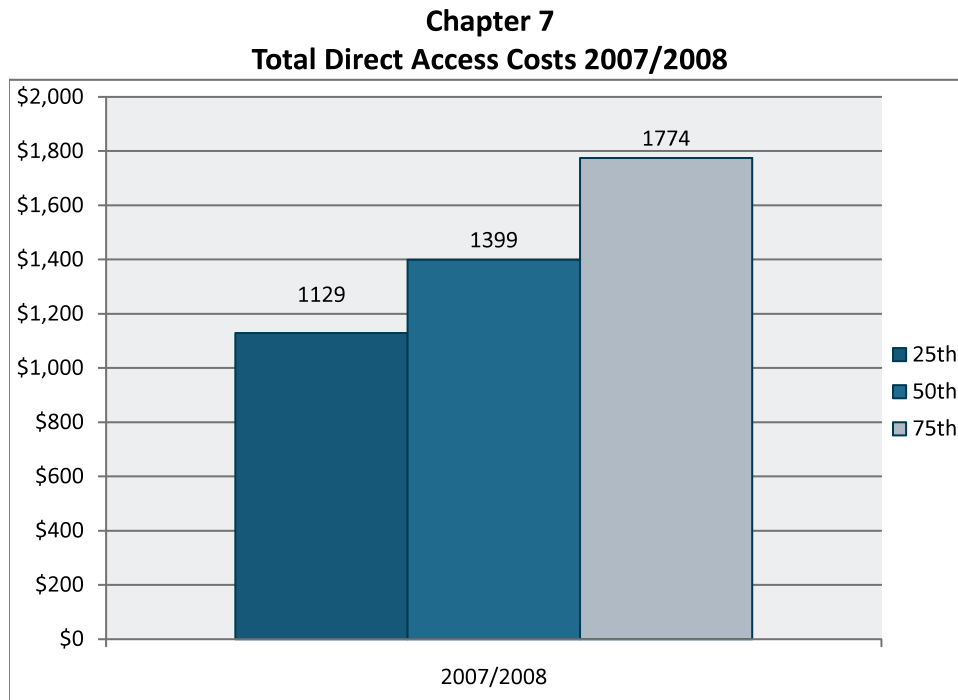
Figure 2.1



Following the enactment of the Bankruptcy Reform Act, the median Total Direct Access Costs for Chapter 7 consumer cases increased from \$ 900 to \$1,399 (representing a 55% increase). Costs in the 25th percentile were \$ 1,129 and \$ 1,774 in the 75th percentile. As was the case with Chapter 13, the filing fees for Chapter 7 increased following BAPCPA. In 2003-2004, the

filing fee was \$ 209 for Chapter 7 cases; for cases filed in 2007-2008, the fee is \$299 – an increase of 43%.⁵² In addition, the costs of credit counseling and debtor education added ~\$100 to each Chapter 7 post-BAPCPA consumer bankruptcy case.⁵³

Figure 2.2



This data confirms the findings in the GAO study,⁵⁴ the single district study of Chapter 7 fees in the Northern District of Alabama,⁵⁵ as well as Professor White’s informal survey of

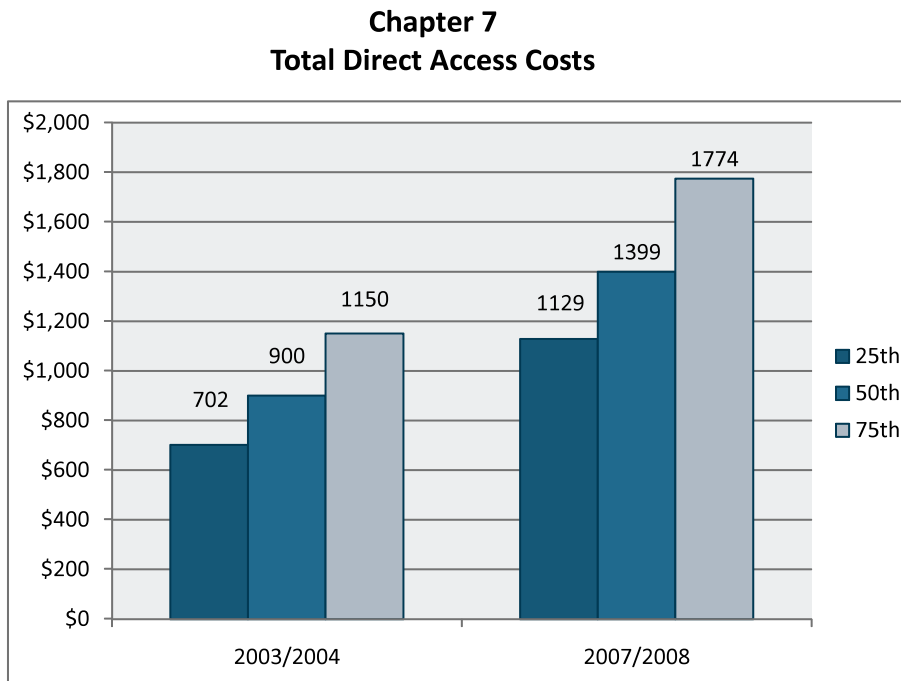
⁵² The Chapter 7 “filing fees” can be broken down as follows: \$200 statutory fee, \$39 miscellaneous administrative fee, \$15 miscellaneous for Chapter 7 trustees (total: \$299).

⁵³ See *infra*, note 11.

⁵⁴ See *supra* note 11.

bankruptcy attorneys.⁵⁶ Total Direct Access Costs for Chapter 7 consumer cases significantly increased following BAPCPA's enactment.

Figure 2.3



Similar to the Total Direct Access Cost data gleaned from Chapter 13 cases, the data gathered in each of the Pilot Study districts with respect to Total Direct Access Costs in Chapter 7 cases may be of interest to courts, debtor's attorneys and trustees in the individual districts studied. Although there was quite a lot of variation in Total Direct Access Costs for Chapter 7 among Pilot

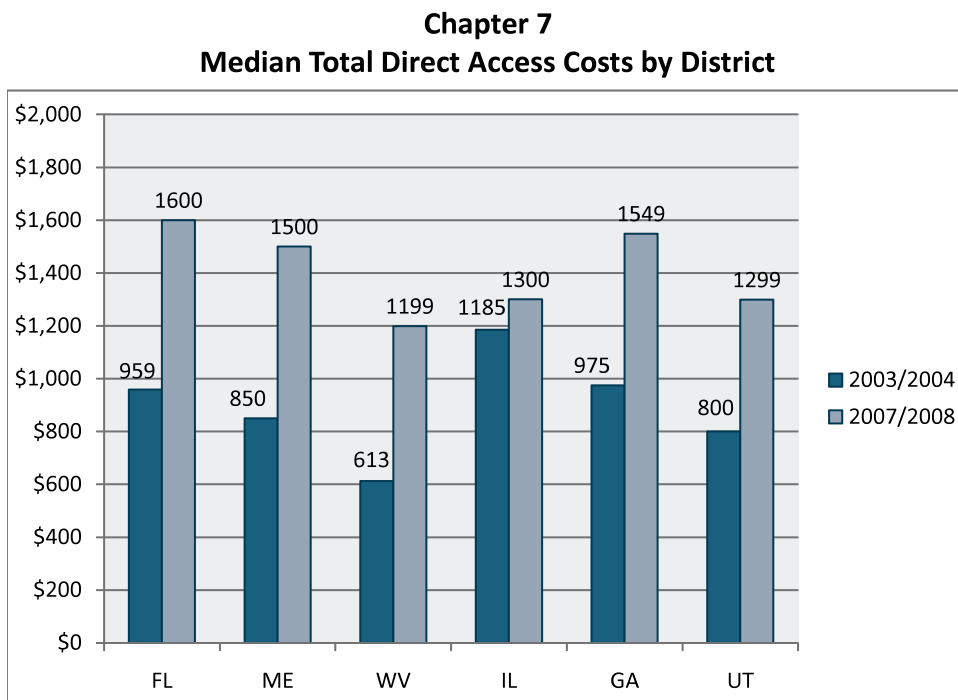
⁵⁵ See *supra* note 15.

⁵⁶ See *supra* note 15.

Study Districts, Figure 2.4 below reveals that costs to access the bankruptcy system increased post-BAPCPA in every district studied. Filing fees, credit counseling and debtor education fees are essentially fixed; given that most of the cases (89%), the costs that varied between districts were primarily attorney fees.

It is interesting to observe that at least among the districts selected for the Pilot Study, the highest total direct access costs were in both high population (Middle District of Florida and Northern District of Georgia) and low population jurisdictions (District of Maine and Southern District West Virginia).

Figure 2.4



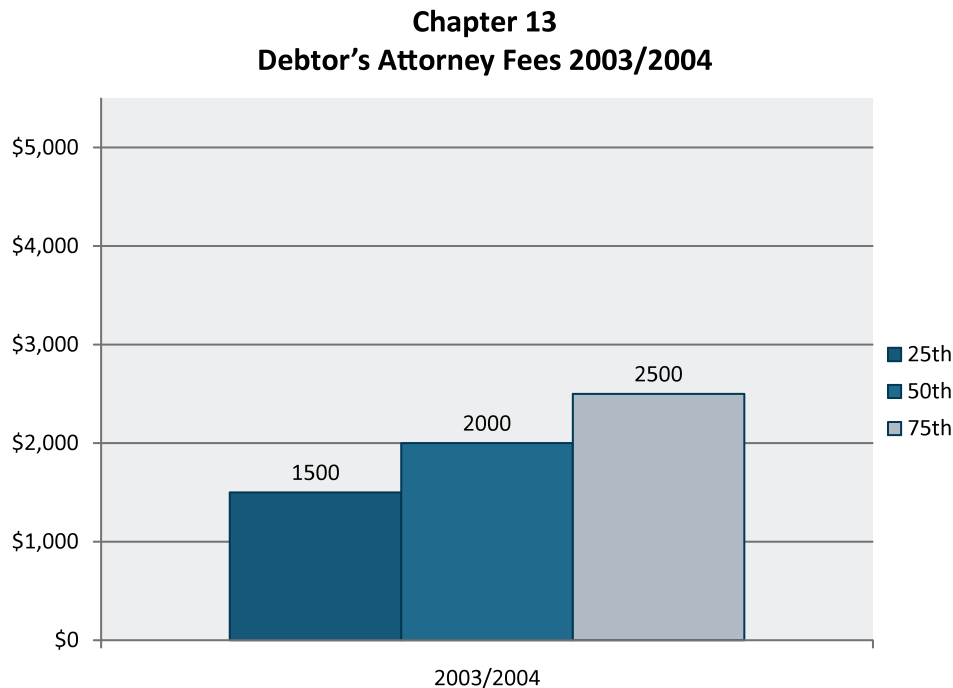
Debtor Attorneys' Fees

Chapter 13

Representing a debtor in Chapter 13 has always been a complex undertaking. Chapter 13, even prior to BAPCPA's enactment, was an onerous process for debtors, requiring them to adhere to a court-supervised repayment plan for three to five years. Counsel is charged with the task of explaining the complex process of the treatment of debtor's secured and unsecured debt, often necessitating the development of a strategy to "save" a home, and/or vehicle. Once a Chapter 13 plan is filed, there is the potential for plan challenges and other proceedings requiring on-going attorney time.

Representation of a Chapter 13 debtor in 2003/2004 yielded attorneys a median fee of \$2,000. The 25th percentile fee is \$1,500, and the 75th percentile is \$2,500.

Figure 3.1

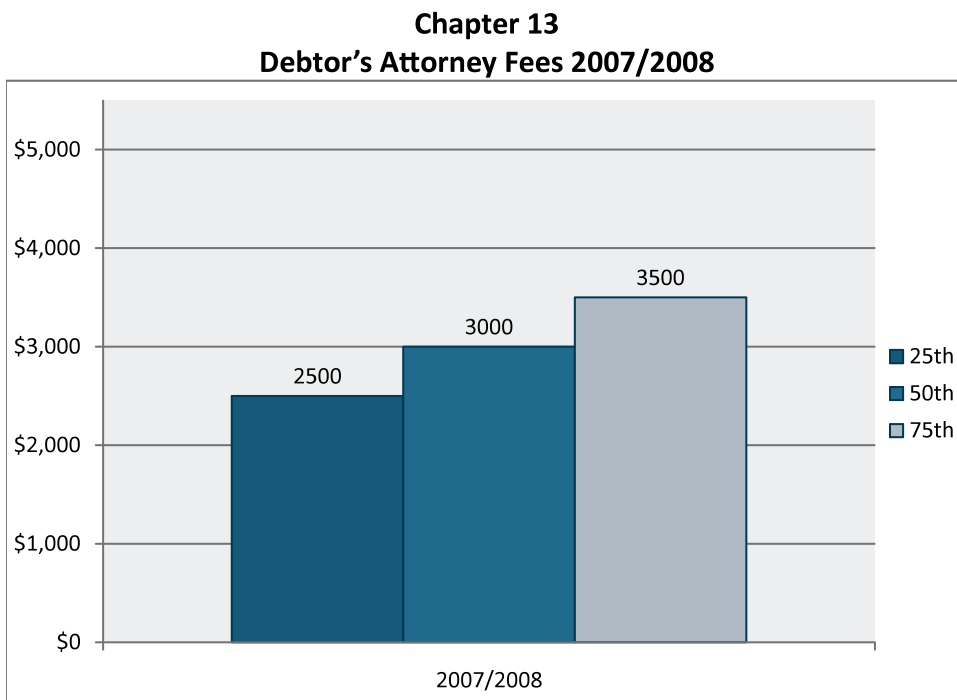


As noted above, many of the amendments made to the bankruptcy code in 2005 impose added responsibilities on prospective debtors. Accordingly it was predicted that these added responsibilities would increase Chapter 13 debtor's legal fees. A means test calculation must be performed in all cases filed after BAPCPA's enactment; new documentation must be produced; notices must be served; certificates must be obtained; and attorneys must conduct more rigorous

investigations of debtor's allegations.

The data supports these predictions. The median fee charged by attorneys representing Chapter 13 debtors in our sample is \$3,000. The fee charged in the 25th percentile is \$2,500, and the fee charged in the 75th percentile is \$3,500.

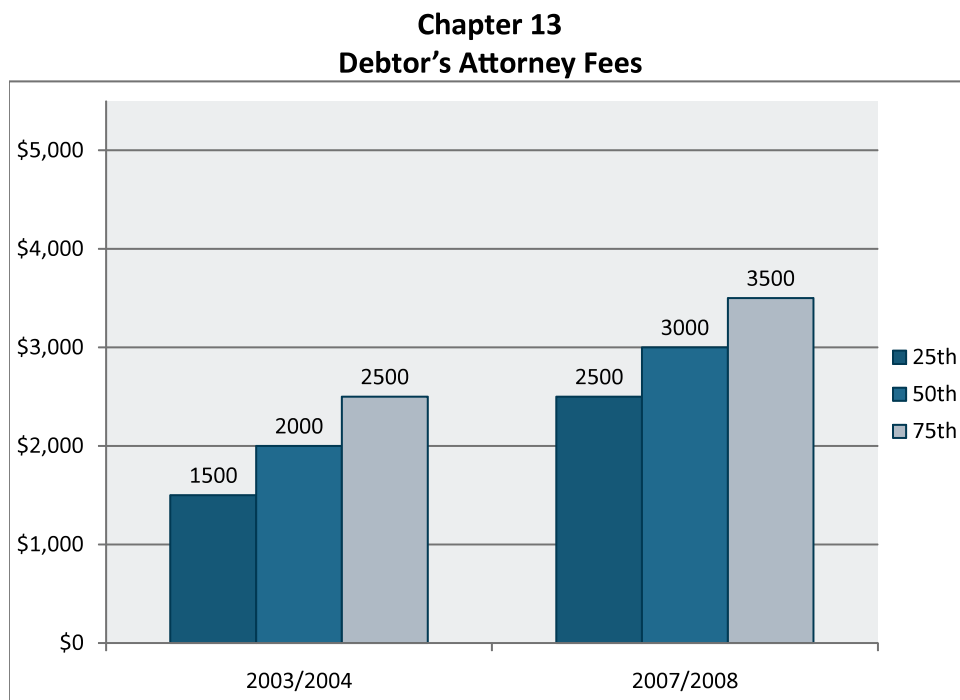
Figure 3.2



There was a 66% increase between the median Chapter 13 attorney fees in 2003/2004 and 2007/2008. The fees in the 25th percentile represent a 66% increase, and the fees in the 75th percentile increased by 40%. The increased responsibilities and obligations imposed upon debtor

(and thus debtor's attorney) may account for the bulk of this increase. It may also be the case that Chapter 13 cases, post-BAPCPA are more complex, post-filing and involved more challenges, contested actions and proceedings, and thus court and attorney time. This issue will be more fully explored in the National Study.

Figure 3.3

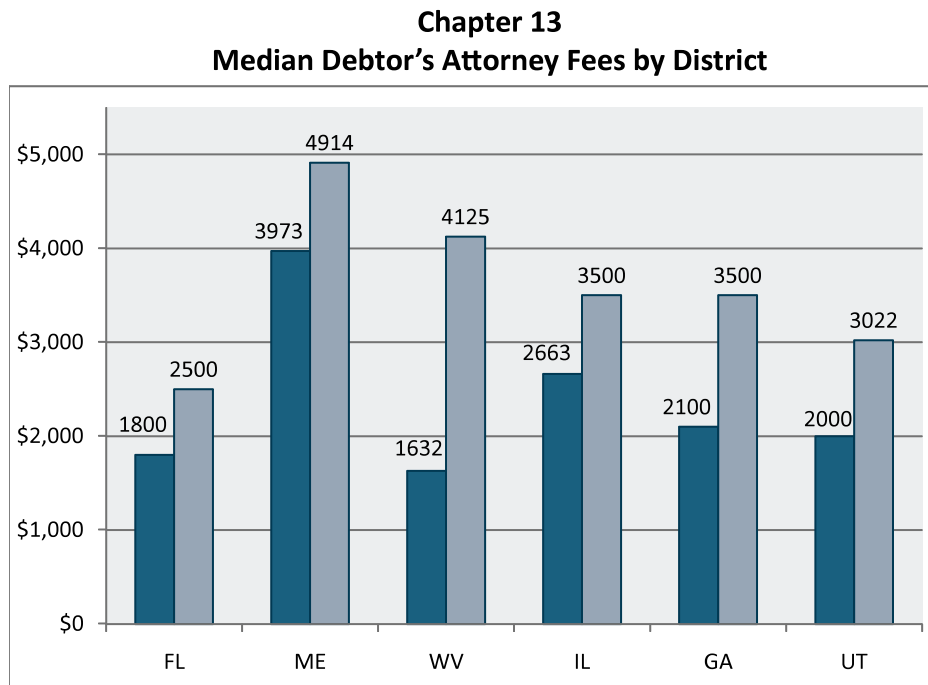


As noted in the discussion of the findings revealed in Figure 1.4, costs to access the bankruptcy system increased post-BAPCPA, in every district studied. Because there are some costs that are fixed by statute and thus apply in all cases across the country, the costs that varied between districts were attorney fees, and trustee fees.

The sharpest increase in attorney fees was found in West Virginia (a \$2,493 increase, in the 50th percentile). Fees for Chapter 13 attorneys in Georgia, Utah, Maine and Illinois increased by 66%, 51%, 24% and 31%, respectively. At least in these jurisdictions, it does not appear as if more assets are being administered – the bulk of the increase in Total Direct Access Costs can be attributed to a rise in attorney fees.

If the increase *can* be attributed to trustee fees, that may mean more assets are being administered by the trustee, or the practice of administering assets changed (such as mortgages being paid “inside the plan,” rather than “outside the plan”). If the cost increases are attributable to increased attorney fees, then that may be a reflection of the attorney responsibilities added by BAPCPA.

Figure 3.4



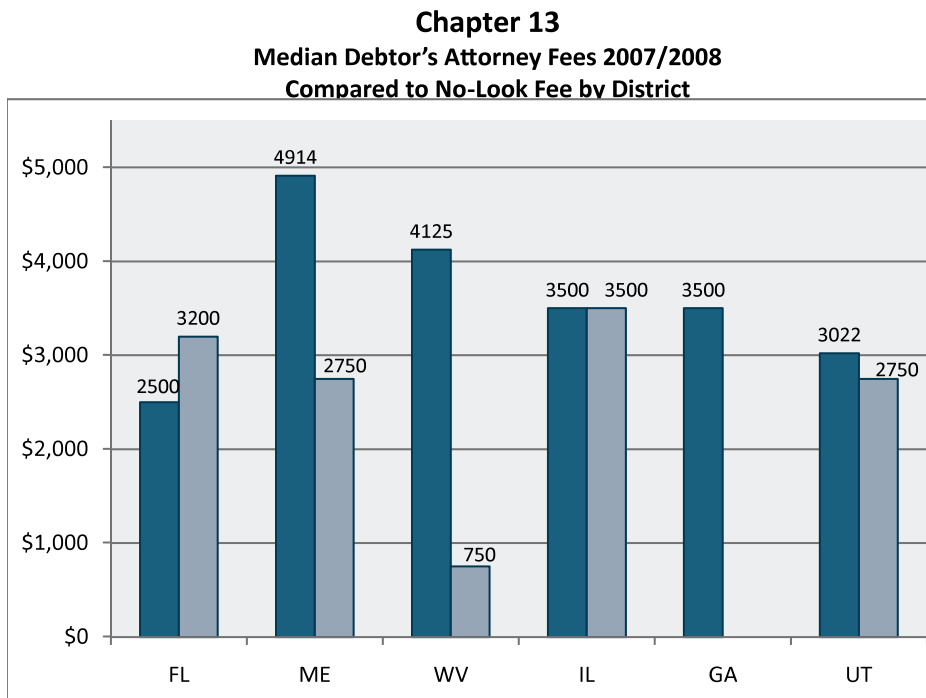
In many jurisdictions, bankruptcy courts have enacted standing orders regarding attorney fees for debtors’ counsel in Chapter 13 cases, pursuant to which an itemized fee application is not required when an attorney seeks fee that is below a specified threshold (known as a “no-look fee”). In other jurisdictions, no-look fees are set by local rule, memorandum decision, general order or

“local practice.”

There is a great deal of variation among districts with respect to both the amount of the no-look fee, as well as the tasks that must be performed for an attorney to have fees approved in excess of the no-look fee. Figure 3.5 below demonstrates that some districts’ median attorney fees reflect an adherence to the district’s no look fee, such as the District of Utah and the Northern District of Illinois. Other districts, such as Maine and the Southern District of West Virginia, notwithstanding their relatively high no-look fees, reveal a sharp divide between actual attorney fees received and the respective district’s no-look fee.

The GAO Study collected information on the no-look fees in place in 48 districts, before and after BAPCPA.⁵⁷ The found that the Chapter 13 no-look fee increased in almost all of the districts (or divisions)⁵⁸ studied. In more than half of those cases, the increase was 55% or more. The National Study will focus attention on the issue of no-look fees: how they are set; how frequently are they reviewed; how they compare to other jurisdictions; and how frequently fee applications for additional fees are filed and approved.

Figure 3.5



Chapter 7

⁵⁷ The GAO Study, *supra* note 11, at 24-25.

⁵⁸ As noted in the GAO Study, “a division is a sublevel below that of a federal judicial district.” *Id.*

As is the case with Chapter 13 debtor representation, representing debtors filing for bankruptcy under Chapter 7 has become considerably more complicated since BAPCPA's enactment. As discussed above, the administration of the means test, and the collection of supporting proof and documentation has added to the tasks required of Chapter 7 attorneys. We found that the median attorney fee charged by lawyers in Chapter 7 consumer cases was \$ 650 in 2003/2004. In 2007/2008, it had jumped to \$1,000 – representing a 53% increase. Attorney fees charged at the 25th percentile and the 75th percentile each increased by 40%. These findings are consistent with the findings in the GAO Study.

Figure 4.1

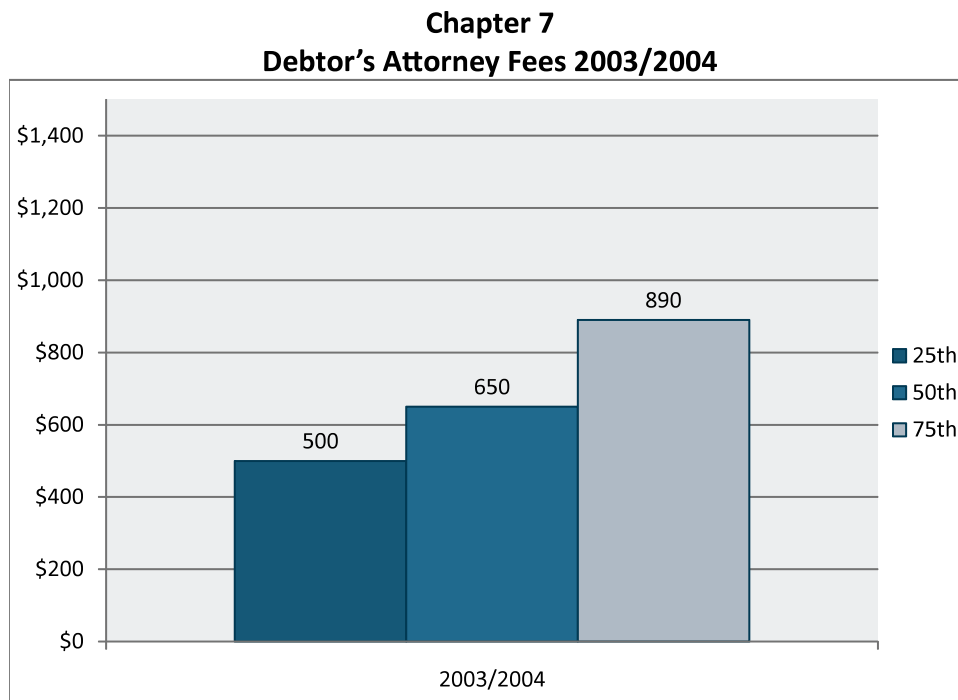


Figure 4.2

**Chapter 7
Debtor's Attorney Fees 2007/2008**

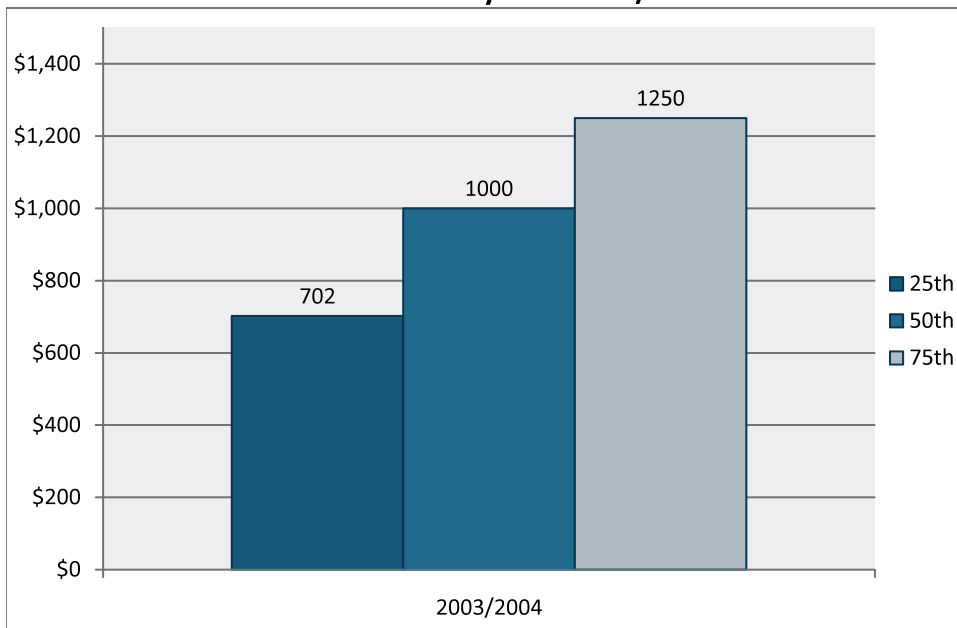
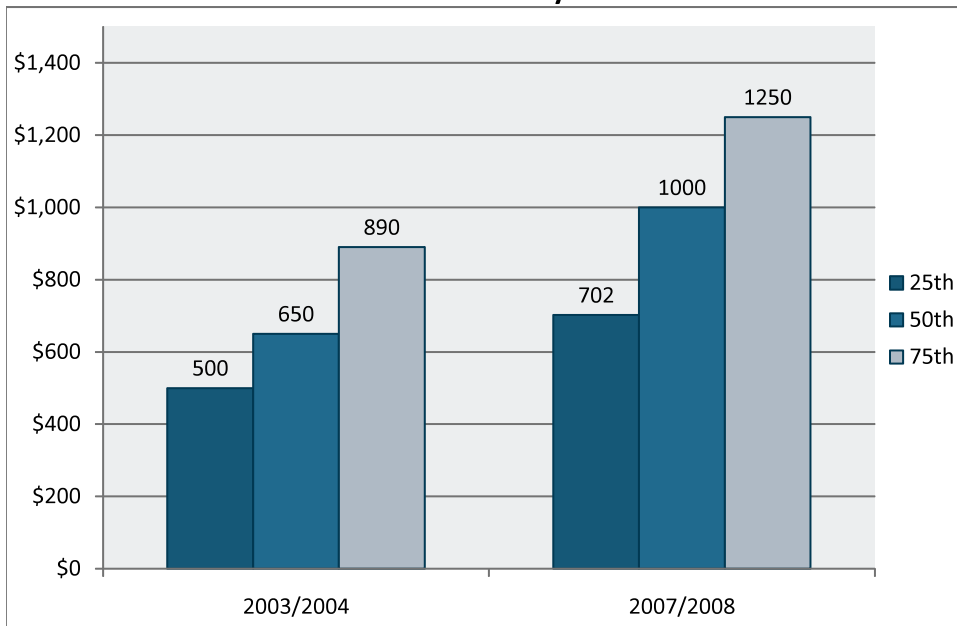


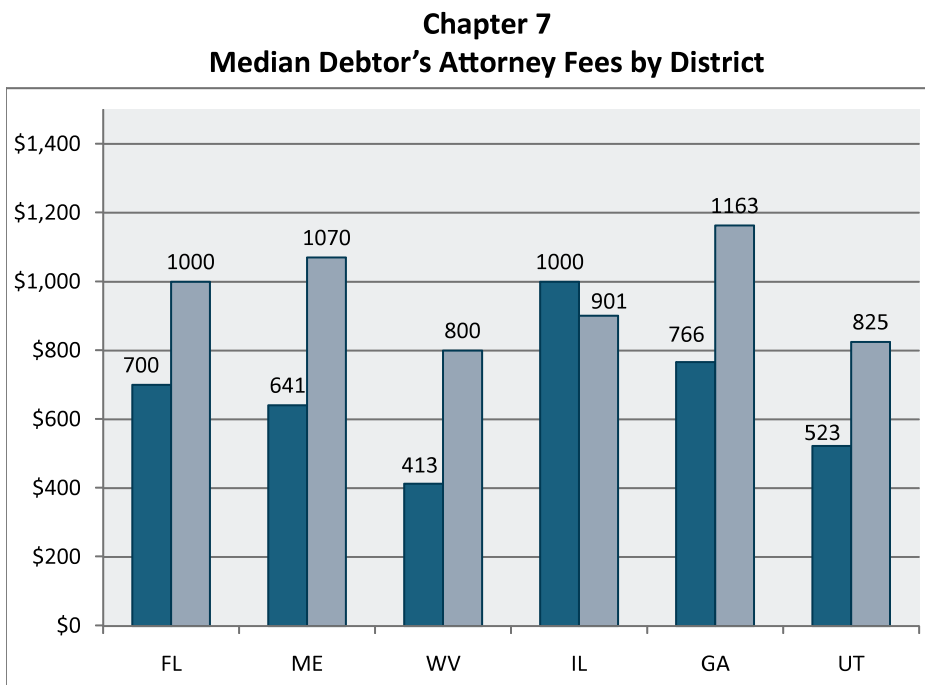
Figure 4.3

**Chapter 7
Debtor's Attorneys Fees**



When we looked at fees charged, district by district, we saw similarly sharp increases post-BAPCPA. In the Southern District of West Virginia, for example fees in Chapter 7 consumer cases increased by 93%. In the Northern District of Georgia, they increased by 51%.

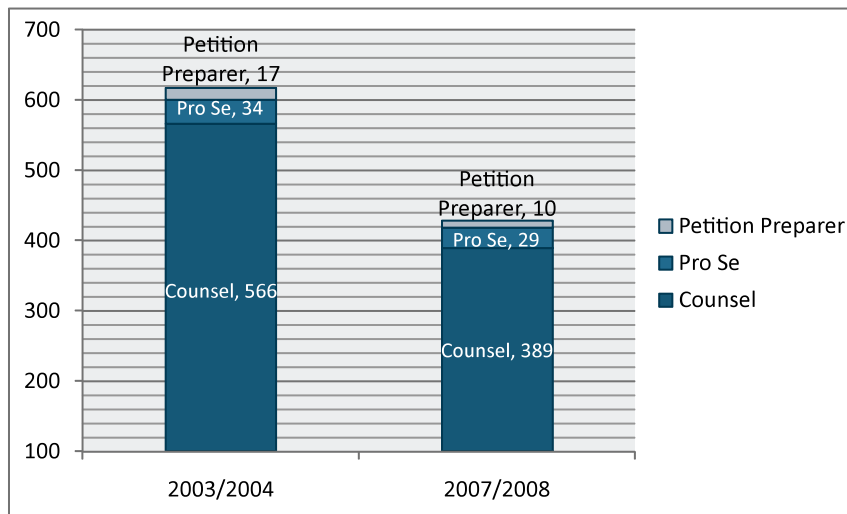
Figure 4.4



We examined whether higher legal fees led more Chapter 7 consumers to seek the aid of less expensive petition preparers, seek *pro bono* counsel or to file *pro se*. Figure 4.5 reflects debtors' use of petition-preparers and pro se debtors. In our sample, 6% of debtors filed *pro se* pre-BAPCPA. Seven percent of debtors filed *pro se*, post-BAPCPA. Of those pre-BAPCPA debtors, 50% had the assistance of a petition preparer; post-BAPCPA, 34% of the *pro se* debtors used petition preparers.⁵⁹ Seven percent of our sample of pre-BAPCPA had the assistance of a *pro bono* attorney.⁶⁰ One percent post-BAPCPA debtors had the assistance of a *pro bono* attorney.⁶¹ While some debtors file *pro se*, and other debtors found *pro bono* counsel, the vast majority of debtors, both pre- and post-BAPCPA paid a lawyer to help them navigate the bankruptcy system.

Figure 4.5

Debtor's Use of Petition Preparers & Pro Se Cases



⁵⁹ In 2003/2004, there were 34 pro se cases in our sample, 17 of which used petition preparers. In 2007/2008, there were 29 pro se cases in our sample, 10 of which used petition preparers

⁶⁰ Four out of 588 Chapter 7 filers.

⁶¹ Six out of 418 Chapter 7 filers.

Modeling the Costs of Access

Describing the difference in costs, before and after the amendment of the Bankruptcy Code has the advantage of simplicity, but in order to account for the many variables that may influence the costs, other than the statutory amendments, a regression model is required. For example, debtors could be presenting more complex financial profiles in 2007/2008, and such complexity could account for the increase in costs. Variables such as the value of personal property assets, or the number of documents on the docket may be proxies for case complexity. Linear regression models were developed to identify the strongest predictors of Total Direct Access Costs, and Debtor's Attorneys Fees.

Linear regression is an approach to modeling the relationship between a response variable (y), and one or more predictor variable (x). Given "y" (i.e., Total Direct Access Costs), and a number of predictor variables (x_1 = pre/post BAPCPA, x_2 = number of documents in docket, x_3 = amount of secured claims,) linear regression analysis can be applied to quantify the strength of the relationship between "y" and x_1 , x_2 or x_3 . Total Direct Access Costs (in one model) and Debtor's Attorney's Fees (in another model) were identified as the response variables, based on the presumption that the value of each of these response variables is caused by, or directly influenced by the predictor variables.

We began with a list of potential candidate predictors, from the total list of coded variables, in an effort to identify the predictors that most influenced Total Direct Access Costs and Debtor's Attorney Fees. Certain candidate predictors were then omitted from the models, for the reasons set forth below.

Omitted predictors	Reason
Estimated Value of Real Estate Assets	high correlation with Estimated Assets
Distribution to Unsecured Creditors	large number of zeroes (Chapter 7)
	high correlation with Secured Claims (Chapter 13)
Distribution to Secured Creditors	high correlation with Estimated Assets.
Estimated Secured Liabilities	high correlation with Secured Claims
Estimated Unsecured Liabilities	high correlation with Unsecured. Claims
Estimated Priority Liabilities	large number of zeroes

We narrowed the potential pool of predictors to the following: (i) Pre or Post BAPCPA, (ii) District, (iii) Single or Joint Petition, (iv) Number of Documents on Docket, (v) Number of Creditors, (vi) Estimated Assets, (vii) Estimated Debts, (viii) Current Monthly Income, (ix) Estimated Value of Personal Property, (x) Unsecured Claims, and (xi) Secured Claims.

Chapter 13 – Total Direct Access Costs

Figure 5.1 below is a model analyzing Total Direct Access Costs in Chapter 13, testing the six most highly correlated variables. The response variable is modeled as a linear function of p predictors. In this case, the response variable is Total Direct Access Costs and p , the number of predictors is 6. The departure of the model from the observed value of y is the error e , or the residual. The model can be written as $y_i = \beta_0 + \beta_1 X_{1i} + \beta_2 X_{2i} + \dots + \beta_p X_{pi} + e_i$. β_0 is the intercept term, or the predicted value of y when all the predictors are equal to 0. The other β s are the regression coefficients for the predictors in the model. In Figure 5.1 below, the most egregious outliers were omitted from analysis under this model.

Figure 5.1

Model for Chapter 13 adjusted log Total Direct Access Costs (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	6.516058	0.214253	30.413	< 2e-16 ***
Pre.or.Post.BAPCPA	0.255436	0.055859	4.573	6.47e-06 ***
Number.of.Documents	0.110236	0.029087	3.790	0.000175 ***
Secured.Claims	0.019585	0.005699	3.437	0.000652 ***
Unsecured.Claims	0.027549	0.009171	3.004	0.002837 **
Single.or.Joint.Petition	0.093783	0.044309	2.117	0.034929 *
Est.Val.Pers.Prpty.Assets	0.033487	0.015904	2.106	0.035882 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.404 on 390 degrees of freedom

Multiple R-squared: 0.4096, Adjusted R-squared: 0.393

F-statistic: 24.6 on 11 and 390 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	29.793	5.959	36.5074	< 2.2e-16 ***
Pre.or.Post.BAPCPA	1	3.413	3.413	20.9113	6.47e-06 ***
Number.of.Documents	1	2.344	2.344	14.3627	0.0001746 ***
Secured.C.Claims	1	1.928	1.928	11.8104	0.0006524 ***
Unsecured.C.Claims	1	1.473	1.473	9.0233	0.0028375 **
Single.or.Joint.Petition	1	0.731	0.731	4.4799	0.0349289 *
Est.Val.Pers.Prpty.Assets	1	0.724	0.724	4.4334	0.0358821 *
Residuals	390	63.654	0.163	1.0000	

In the above coefficient table, “estimate” is the coefficient estimate. For numeric variables, this is the predicted change in the outcome for a one-unit change in the predictor, when all other predictors are held fixed. The “standard error” provides information about the uncertainty in the estimate. The “t-value” is the coefficient estimate divided by the standard error. $Pr(>|t|)$ is the p-value, which is the probability of getting this result under the null hypothesis that the coefficient estimate is zero—meaning that the predictor is unrelated to the outcome. The smaller the p-value, the more significant the predictor. The retained model predictors all have a p-value that is less than 0.05.

The Analysis of Variance Table (“ANOVA Table”) presents a test for the difference between two or more means. It is useful in showing the overall impact of a categorical predictor. For numeric variables, the square of the t-value in the coefficient table is the F value in the ANOVA Table. The p-value is the probability of getting this result under the null hypothesis of no association between predictor and outcome. For numeric variables, the ANOVA Table provides the same p-values as the coefficient table.

In this model, the strongest predictor of higher Total Direct Access Costs is “Post-BAPCPA.” Stated differently, taking potential confounders into account, Total Direct Access Costs are significantly higher, post-BAPCPA.⁶² The number of documents in a case docket and the size of secured creditor claims (house and/or car) were also highly correlated. We recognized the number of documents in a case docket as a proxy for case complexity; the more motions, amendments and other case documents filed, the more complex the case. Again, the ANOVA Table shows Post-BAPCPA as having the greatest predictive value of high Total Direct Access Costs.

Chapter 7 – Total Direct Access Cost

Figure 5.2 below is a model analyzing Total Direct Access Costs in Chapter 7, testing the six most highly correlated variables.⁶³ The most egregious outliers were omitted from analysis under this model.

Figure 5.2

Model for Chapter 7 adjusted log Total Direct Access Costs (with certain outliers omitted)

Coefficients:

⁶² A confounding variable is an extraneous variable in a model that correlates, positively or negatively, with both the response variable and the variable predictors. These need to be controlled for, to avoid a “false positive” conclusions.

⁶³ The same model was used to analyze the predictive value of variables present in Chapter 7 cases: $y_i = \beta_0 + \beta_1 X_{1i} + \beta_2 X_{2i} + \dots + \beta_p X_{pi} + e_i$.

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	5.619473	0.151750	37.031	< 2e-16 ***
Number.of.Documents	0.195333	0.024729	7.899	1.60e-14 ***
Pre.or.Post.BAPCPA	0.279029	0.035271	7.911	1.47e-14 ***
Current.Monthly.Income	0.034240	0.011357	3.015	0.00269 **
Estimated.Debts	0.063182	0.021687	2.913	0.00372 **
Est.Val.Pers.Prpty.Assets	0.041746	0.015197	2.747	0.00622 **
Secured.C.Claims	-0.013445	0.005017	-2.680	0.00759 **

Residual standard error: 0.3931 on 537 degrees of freedom
Multiple R-squared: 0.347, Adjusted R-squared: 0.3336
F-statistic: 25.94 on 11 and 537 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
Number.of.Documents.	1	9.639	9.639	62.3914	1.600e-14 ***
Pre.or.Post.BAPCPA	1	9.669	9.669	62.5833	1.466e-14 ***
District	5	11.036	2.207	14.2869	3.820e-13 ***
Current.Monthly.Income	1	1.404	1.404	9.0887	0.002693 **
Estimated.Debts	1	1.311	1.311	8.4880	0.003724 **
Est.Val.Pers.Prpty.Assets	1	1.166	1.166	7.5460	0.006216 **
Secured.C.Claims	1	1.109	1.109	7.1813	0.007593 **
Residuals	537	82.963	0.154	1.0000	

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Again, the smaller the p-value, the more significant the predictor. The retained model predictors all have a p-value that is less than 0.05. The strongest predictor of higher Total Direct Access Costs in Chapter 7 cases is the number of documents in a case docket. The more complex the cases, the more it costs. In a Chapter 7 case, this is likely to mean that in “complex cases” (cases with a higher number of documents filed) there were assets to administer, and so the trustee received more than the minimum fee. It may also mean that there were more issues to be addressed by debtor’s attorney. Current monthly income is also a significant predictor of higher Total Direct Access Costs.

The second most significant predictor in this model is “Post-BAPCPA.” Total Direct Access Costs are significantly higher in Chapter 7 cases, post-BAPCPA. The ANOVA Table similarly shows Number of Documents as having the greatest predictive value of high Total Direct Access Costs, with Post-BAPCPA coming in second.

Chapter 13 – Total Debtor Attorney Fees

Figure 5.3 below is a model analyzing Total Debtor Attorney Fees in Chapter 13, analyzing the three most highly correlated variables. The most egregious outliers were omitted from analysis under this model.

Figure 5.3

Model for Chapter 13 log adjusted Total Debtor Attorney Fees (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	6.62008	0.13699	48.325	< 2e-16 ***
Pre.or.Post.BAPCPA	0.22439	0.04920	4.561	6.81e-06 ***
Number.of.Documents	0.12276	0.02987	4.110	4.81e-05 ***
Estimated.Assets	0.06015	0.02568	2.342	0.019678 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4143 on 394 degrees of freedom

Multiple R-squared: 0.3018, Adjusted R-squared: 0.2876

F-statistic: 21.29 on 8 and 394 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	21.3264	.265	24.8541	< 2.2e-16 ***
Pre.or.Post.BAPCPA	1	3.570	3.570	20.8016	6.812e-06 ***
Number.of.Documents	1	2.900	2.900	16.8961	4.807e-05 ***
Estimated.Assets	1	0.941	0.941	5.4849	0.01968 *
Residuals	394	67.614	0.172	1.0000	

The strongest predictor of high Total Debtor’s Attorney Fees in Chapter 13 cases is “Post-BAPCPA.” This is consistent with our descriptive findings: attorney fees are significantly higher following BAPCPA’s enactment than prior to it. The number of documents in a case docket is also a highly correlated predictor. The ANOVA Table similarly shows “Post-BAPCPA” as having the greatest predictive value of high Total Debtor’s Attorney Fees in Chapter 13 cases.

Chapter 7 – Total Debtor Attorney Fees

Figure 5.4 below is a model analyzing Total Debtor Attorney Fees in Chapter 7 cases, testing the three most highly correlated variables. The most egregious outliers were omitted. Under this model (which includes Chapter 7 no-asset cases), Current Monthly Income is the strongest predictor of high Attorney Fees. “Post-BAPCPA,” in this case, has a lower degree of predictive significance.

Figure 5.4

Model for Chapter 7 log adjusted Total Debtor Attorney Fees (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	5.29004	0.30048	17.605	< 2e-16 ***
Current.Monthly.Income	0.11202	0.02889	3.877	0.000119 ***
Pre.or.Post.BAPCPA	0.23140	0.09385	2.466	0.013986 *
Number.of.Documents.	0.14313	0.06605	2.167	0.030675 *

Residual standard error: 1.082 on 538 degrees of freedom
 Multiple R-squared: 0.1036, Adjusted R-squared: 0.09027
 F-statistic: 7.772 on 8 and 538 DF p-value: 6.804e-10

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	37.72	7.54	6.4407	7.94e-06 ***
Current.Monthly.Income	1	17.61	17.61	15.0325	0.0001187 ***
Pre.or.Post.BAPCPA	1	7.12	7.12	6.0796	0.0139861 *
Number.of.Documents.	1	5.50	5.50	4.6958	0.0306753 *
Residuals	538	630.23	1.17	1.0000	

Figure 5.5, Total Debtor's Attorney Fees in Chapter 7 cases with no-asset cases omitted, reveals five correlated variables. "Post-BAPCPA" and "Number of Documents" are the most highly correlated variables in this model.

Figure 5.5

Model for Chapter 7 log adjusted Total Debtor's Attorney Fees (16 observations with response = 0 deleted)

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	5.22144	0.24620	21.208	< 2e-16 ***
Pre.or.Post.BAPCPA	0.26973	0.04022	6.707	5.17e-11 ***
Number.of.Documents	0.09861	0.02904	3.395	0.000737 ***
Current.Monthly.Income	0.04224	0.01303	3.242	0.001264 **
Unsecured.C.Claims	0.04366	0.02032	2.149	0.032085 *
Estimated.Debts	0.05450	0.02482	2.196	0.028539 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.456 on 523 degrees of freedom
 Multiple R-squared: 0.2416, Adjusted R-squared: 0.2271
 F-statistic: 16.66 on 10 and 523 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	12.967	2.593	12.4723	1.881e-11 ***

Pre.or.Post.BAPCPA	1	9.353	9.353	44.9825	5.171e-11 ***
Number.of.Documents	1	2.397	2.397	11.5285	0.0007375 ***
Current.Monthly.Income	1	2.185	2.185	10.5083	0.0012641 **
Unsecured.C.Claims	1	0.960	0.960	4.6186	0.0320853 *
Estimated.Debts	1	1.003	1.003	4.8219	0.0285391 *
Residuals	523	108.747	0.208	1.0000	

Distributions to Unsecured Creditors

Chapter 13 Cases

Figure 6.1 below is a model analyzing distributions to unsecured creditors in Chapter 13 cases. Distributions to unsecured creditors is negatively correlated with "Post- BAPCPA" (after deletion of one outlier) and positively correlated with Total Direct Access Costs. Stated differently, distributions to unsecured creditors in Chapter 13 cases is lower, Post-BAPCPA than it is Pre-BAPCPA. It is difficult, under this model, however, to necessarily assert a chain of causation.

Figure 6.1

Models for Chapter 13 Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-1.3654	1.9947	-0.684	0.494
Pre.or.Post.BAPCPA	-3.0793	0.2886	-10.671	< 2e-16 ***
Total.Direct.Access.Costs	1.5854	0.2407	6.586	1.42e-10 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.612 on 402 degrees of freedom

Multiple R-squared: 0.2817, Adjusted R-squared: 0.2781

F-statistic: 78.83 on 2 and 402 D, p-value: < 2.2e-16

Analysis of Variance Table

Response: x[, 48]

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
Pre.or.Post.BAPCPA	1	776.66	776.66	113.871	< 2.2e-16 ***
Total.Direct.Access.Costs	1	295.82	295.82	43.371	1.419e-10 ***
Residuals	402	2741.85	6.82	1.000	

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Figure 6.2 below is a box plot revealing lower distributions to unsecured creditors in Chapter 13 cases, post-BAPCPA than they received pre-BAPCPA.

Figure 6.2

Box Plot of Chapter 13 Distribution to
Unsecured Creditors
Pre-BAPCPA and Post-BAPCPA



Chapter 7 Cases

Figure 7.1 below is a model analyzing distributions to unsecured creditors in Chapter 7 cases (including no-asset cases) with a single predictor: “Post-BAPCPA”. This model is complicated by the fact that distributions to unsecured creditors is sometimes zero, but even eliminating those cases, the coefficient is negative.

Figure 7.1

Model for Chapter 7 Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	11.5154	0.4120	27.95	<2e-16 ***
Pre.or.Post.BAPCPA	-3.0849	0.3034	-10.17	<2e-16 ***

Signif. codes: 0 ‘***’ 0.001 ‘**’ 0.01 ‘*’ 0.05 ‘.’ 0.1 ‘ ’ 1

Residual standard error: 2.745 on 403 degrees of freedom
Multiple R-squared: 0.2042, Adjusted R-squared: 0.2022
F-statistic: 103.4 on 1 and 403 DF, p-value: < 2.2e-16

Figure 7.2 below is a model analyzing distributions to unsecured creditors in Chapter 7 cases, excluding no-asset cases. The relationship to “Post-BAPCPA” is negative but not significant (most likely due to small sample size). There are several outliers, but omission of these outliers

does not change the results. Figure 7.3 below is a box plot revealing lower distributions to unsecured creditors in Chapter 7 cases, post-BAPCPA than they received pre-BAPCPA.

Figure 7.2

Model for Chapter 7 adjusted, log, non-zero, Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-1.5683	1.7074	-0.919	0.36648
Pre.or.Post.BAPCPA	-0.3837	0.3091	-1.242	0.22510
Total.Direct.Access.Costs	1.2794	0.2015	6.349	8.47e-07 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.8486 on 27 degrees of freedom
 Multiple R-squared: 0.6967, Adjusted R-squared: 0.6405
 F-statistic: 12.4 on 5 and 27 D, p-value: 2.621e-06

> fanova(tmp)

Analysis of Variance Table

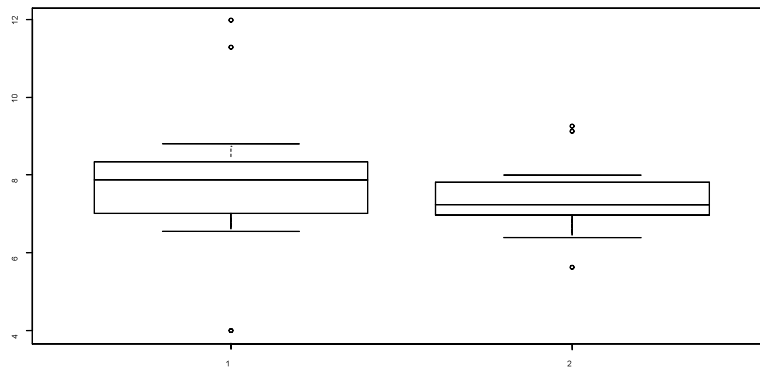
Response: x[j, 48]

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	3	10.2735	3.4245	4.7555	0.008663 **
Pre.or.Post.BAPCPA	1	1.1099	1.1099	1.5413	0.225098
Total.Direct.Access.Costs	1	29.0310	29.0310	40.3143	8.472e-07 ***
Residuals	27	19.4432	0.7201	1.0000	

 Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Figure 7.3

Box plot of Chapter 7 Adjusted Log
Non-Zero Distribution to Unsecured Creditors
Pre(1) and Post(2) BAPCPA



The National Consumer Bankruptcy Costs Study

As noted above, many questions remain to be studied as part of the National Consumer Bankruptcy Costs Study. As part of the National Consumer Bankruptcy Costs Study, petitions from a national random sample of consumer debtor bankruptcy files will be examined in an effort to get a more complete sense of the “costs” required for consumers to access the bankruptcy system. As part of the National BAPCPA, we will also seek answers to questions that cannot be found in bankruptcy petitions and schedules. Because all of the “debtor’s duties become the duties of his[/her] lawyer,”⁶⁴ professionals engaged in consumer bankruptcy cases, including debtor attorneys and trustees will be surveyed. The bankruptcy professionals will be asked, (i) Did the increase in legal fees, and other administrative fees affect consumer’s decision-making? If so, how? (ii) To what extent did the requirements for documentation (tax returns, pay advices, certificates of completion for consumer credit counseling) deter or delay potential consumer debtors? (iii) How has your practice changed under BAPCPA? (iv) How frequently do you file fee applications in Chapter 13 cases, relative to your practice pre-BAPCPA? (v) Does your representation of debtors take longer, prior to filing, than it did before the change in law? , (vi) Has the time from filing to confirmation been impacted by BAPCPA? (vii) From your experience, what are the most time consuming requirements in the new law, (viii) What requirements have proven to be the least significant? (ix) What requirements have proven to be the most significant?

Results of the National Consumer Bankruptcy Costs Study will be reported in December 2011.

⁶⁴ White, *supra* note 21, at 872.

Appendix A

Case Law

Fee and Compensation Issues in Consumer Bankruptcy Cases

The following statutory provisions in the Code address professional compensation:

- §326 Limitation on compensation of trustee;
- §328 Limitation on compensation of professional people;
- §329 Debtor's transactions with attorneys,

- §330 Compensation of officers; and
- §331 Interim compensation.

Case law regarding these statutory provisions was collected from all regions with a particular focus on the districts examined in the pilot study. Below are examples of cases heard by bankruptcy courts pre- and post-BAPCPA in regards to the statutory provisions in the Code listed above.

§326. Limitation on compensation of trustees.

This section outlines the trustee compensation formula and fixed percentage for fees. Frequently, cases challenge trustee's percentage fees and the reasonableness of fees under Section 326(a). For example, the Western District of New York found that the maximum trustee commissions can be unreasonably excessive, thus requiring a reduction in trustee commission, despite the accuracy of the fee percentage under Section 326(a). *In re Butts*, 281 B.R. 176, 180 (Bankr. W.D.N.Y. 2002). In the District of Utah, a Chapter 7 trustee argued that BAPCPA removed the reasonableness test from the calculation of the trustee's commission, because Section 326(a) provided a pure statutory commission. Pre-BAPCPA, trustee's were allowed reasonable compensation according to §330, but were capped by a formula in §326. The District of Utah Bankruptcy court disagreed that there was a no-look statutory provision and held that it "must still determine whether the trustee's fee is reasonable, but must consider the provisions of Section 326 in its inquiry." *In re Clemens*, 349 B.R. 725, 728 (Bankr. D.Ut. 2006).

Section 328. Limitation on compensation of professional persons

This section addresses the fees of professionals who are hired to assist the trustees in the bankruptcy case. Issues arise regarding the compensation distinction between a trustee serving as trustee and serving as attorney for the trustee. For example, the Eastern District of Virginia found that fee applications must explicitly differentiate between fees for the trustee and fees for the trustee's attorney, particularly when one person serves in both capacities. *In re King*, 88 B.R. 768, 770, (Bankr. E.D.Va. 1988). As with other fee-based sections of the Code, litigants challenge what actually needs to be disclosed in special counsel's fee applications. To illustrate, the Eastern District of Wisconsin found a duty of full disclosure for special counsel for trustees, including potential conflicts of interests; effectively, compensation was denied. *In re Tomczak*, 283 B.R. 730, 735, (Bankr. E.D.Wis. 2002).

Section 329. Debtor's Transactions with Attorneys

Under Section 329, litigation issues often deal directly with attorney's disclosure of fees, pursuant to Rule 2016(b). There are many cases that call on judges to scrutinize itemization in the fee disclosures. For example, the Central District of Illinois sustained a debtor's challenge to the attorney's fee disclosure because the "itemization did not support a finding that the time expended was reasonable in light of the results obtained." *In re Imler*, No. 02-90582, 2005 WL 670348, at *2 (Bankr. C.D.Ill. Feb. 3, 2005). Additionally, case law demonstrates the reduction or rejection of fee requests if the attorney fails to file a fee application or seek court approval in a timely manner despite services owed beyond the presumptively reasonable amount. *Brinson v. Baxter*, No. 05-14034, 2007 WL 3005335 (S.D.Ga. Oct. 11, 2007); *Fitzgibbons v. Zeman*, No. Co-08-058, 2009 WL 613139 (B.A.P. 10th Cir. Mar. 11, 2009).

Attorneys have argued that there are services that may fall outside the disclosure requirements of Section 329. For example, the Northern District of Illinois held that an attorney's service of refinancing the debtors' home requires disclosure with the court, thus ordering the attorney to disgorge his fees. *In re Andreas*, 373 B.R. 864, 868 (Bankr. N.D.Ill. 2007).

Section 330. Compensation of officers

Under this section, cases are frequently litigated regarding the reasonableness of attorney and trustee fees. The 1st Circuit held that "in determining how many hours were reasonable, the court must review the work to see 'whether counsel substantially exceeds the bounds of reasonable effort' . . . the court is also expected to consider factors such as the type of work performed, who performed it, and the expertise required." *In re Spillane*, 884 F.2d 642, 647 (1st Cir. 1989). The District of Maine found that "Section 330(a) clearly limits compensation to professionals for services that were necessary, reasonable, and that benefited the estate." *In re Pulsifer*, 156 B.R. 1, 2 (Bankr. D.Me. 1993).

Bankruptcy courts continue to hear cases that challenge the reasonableness fees and applications for compensation beyond no-look fees. For example, the 9th Circuit found that compensation in excess of presumptively reasonable fees needs to be awarded for "out of the ordinary" services. *In re Eliapo*, 468 F.3d 592, 601 (9th Cir. 2006). Frequently, attorneys are denied compensation beyond the no-look fee if the court deemed the attorney's services "usual" and "routine." *In re Wagoner*, No. 4:07-BK-00032 JMM, 2008 WL 2233502, at *1 (Bankr. D.Ariz. May 21, 2008).

Section 331. Interim Compensation

Under this section, bankruptcy courts have determined that attorneys and trustees can receive interim compensation when it is deemed reasonable in light of the facts of the case. For example, the Western District of Tennessee found that "the totality of the circumstances in a given case will determine whether a court should exercise its discretion in allowing interim compensation where a disbursement by a trustee has not occurred." *In re Heatherly*, 179 B.R. 872, 875 (Bankr. W.D.Tenn. 1995).

Appendix B

CODING MANUAL
COSTS OF BAPCPA STUDY

Lois R. Lupica
Maine Law Foundation Professor of Law

Lead Researcher

December 2009

Note: Dollar amounts to be rounded to the nearest dollar

Coding Category	Description	Where to find the information	Code	Data Validation
Case ID	Case number assigned by the court	Cover page	Case number	
District Filed	Judicial District where the debtor filed the petition	Cover page	Two or four digit code state/district code plus "B" (i.e. ILNB, UTB)	

Population Density	Population category the district falls in	Attached population chart	1 = high 2 = medium 3 = low	Only accepts "1", "2" or "3"
Region	The Region of each Judicial District: Northeast, Southeast, Middle-West, Southwest, West.	Attached Region Chart	Refer to Region Chart below for Code.	Only accepts "1", "2", "3", "4", or "5"
Judicial Circuit	Judicial Circuit where District is located	Attached Circuit Chart	Refer to Circuit Chart	Only accepts "1", "2", "3", "4", "5", "6", "7", "8", "9", "10" or "11"
Chapter 7 or 13	Chapter under which the debtor filed for bankruptcy	Cover page	7 = Chapter 7 13 = Chapter 13	Only accepts "7" or "13". Drop down menu.
Date Case Filed	Date the petition is filed	Cover page	<i>i.e.</i> , 01/01/03	Restricted to dates between 1/1/03 and 1/1/09
Pre-BAPCPA or Post-BAPCPA	Whether the case was filed prior to October 17, 2005, or after October 17, 2005	Cover page	1 = 2003-2004 2 = 2007-2008	Only accepts "1" or "2". Drop down menu.
Single or Joint Petition	Whether the petition is filed single or joint	Cover page or petition	S = Single J = Joint	Only accepts "S" or "J". Drop down menu.
Case Dismissed	Case dismissed prior to discharge	Docket	1 = Yes/dismissed 2 = No/not dismissed	Only accepts "1" or "2". Drop down menu.
Number of Documents on Docket	Number of filings made	Final page of docket. Last filing number on the docket listing.	1 = 1 -10 2 = 11 – 25 3 = 26 – 50 4 = 51 – 75 5 = 76+	Only accepts "1", "2", "3", "4", or "5"
Filing Fee	Filing fee paid by debtor	Petition (may also be indicated on docket)	\$ ____	
Other Administrative Fees	Fees paid other than filing fee (i.e. schedule amendments)	Docket	\$ ____	
Number of Creditors	Total number of creditors (range) (proxy for size of case)	Petition, schedules or matrix. May also be listed on docket.	1 = 1-15 2 = 16 – 49 3 = 50 – 99 4 = 100 – 199 5 = 200+	Only accepts "1", "2", "3", "4", or "5"

Estimated Assets	Debtor/s' Estimated Assets from Schedule (range) (proxy for size of case)	Petition, Summary of the Schedules	1 = \$0 - \$50,000 2 = \$50,001 -100,000 3 = \$100,001-500,000 4 = \$500,000+	Only accepts "1", "2", "3", or "4"
Estimated Debts	Debtor/s' Estimated Debts from Schedule (proxy for size of case)	Petition, Summary of the Schedules	1 = \$0 - \$50,000 2 = \$50,001 -\$100,000 3 = \$100,001 -500,000 4 = \$500,000+	Only accepts "1", "2", "3", or "4"
No Asset Case	In a Chapter 7 case, when there is no distribution to unsecured creditors. Should be left blank for Chapter 13s.	TIB No-Asset Report &/or Cover Page	1 = Yes 2 = No	Only accepts "1" or "2". Drop down menu.
Total Debtor's Attorney/s' Fees	The total amount the Debtor's Attorney was paid to represent Debtor. This amount should include pre-petition expenses, all bankruptcy-related representation, and any post-confirmation representation. If there is more than one Attorney (meaning if the debtor changed lawyers), indicate the total amount of fees charged in the case.	TIB Final Report & any Fee Applications	\$_____	
Debtor's Atty's Expenses	Expenses listed in TIB's Final Report	TIB Final Report, Order granting Fee Application	\$_____	
Debtor's Atty's hourly rate	Blended hourly rate of all lawyers representing debtor	Fee Application	\$_____	
Debtor's (atty's) paralegal's hourly rate	Blended hourly rate of all paralegals involved in representation	Fee Application	\$_____	
Debtor's Attorney's Prepetition Fees	Portion of Debtor's Attorney fees paid by debtor pre-petition	Fee Disclosure, Fee Application or TIB Final Report	\$_____	
Debtor's Attorney's Post-Petition Fees	Portion of Debtor's Attorney fees paid by debtor pre-petition	Fee Disclosure, Fee Application or TIB Final Report	\$_____	
Fee Application/	In some cases, Fee	Docket	1 = Yes	Only accepts "1" or

Disclosure Filed	Applications are filed as a matter of course. In others, they are filed when atty fees for a case exceed the no-look fee. Consider the Attorney fee disclosure an "application"		2 = No	"2". Drop down menu.
Pro Se Debtor	Debtors who are NOT represented by an attorney	Petition & TIB Final Report	1 = Yes 2 = No	Only accepts "1" or "2". Drop down menu.
Petition Preparer	Were the case documents prepared by a Petition Preparer?	Petition Preparer Disclosure or TIB Final Report	1 = Yes 2 = No	Only accepts "1" or "2". Drop down menu.
Petition Preparer Fee	What was Petition Preparer Fee?	Petition Preparer Disclosure or TIB Final Report	\$_____	
Trustee Fees	Trustee Fees incurred in connection with case	TIB Final Report	\$_____	
Trustee Expenses	Expenses incurred by TIB in connection with case	TIB Final Report	\$_____	
Fee for Attorney for Trustee	If TIB engaged counsel (in connection, for example, with an adversary proceeding), what fees were charged by such counsel	Order granting application to hire attorney or TIB Final Report	\$_____	
Other Professional Fees	Fees for i.e., broker, accountant, valuation expert, auctioneer or the like	Order granting application to hire professional or TIB Final Report	\$_____	
Current Monthly Income	As indicated on Schedules (proxy for case complexity)	Summary of Schedules	\$_____	
Applicable Median Family Income	Applicable Median Family Income, by State, adjusted by family size (Post-BAPCPA only)	Statement of Current Monthly Income	\$_____	
Estimated Value of Real Estate Assets	Estimate found in Schedules	Summary of Schedules	\$_____	

Estimated Value of Personal Property Assets	Estimates found in Schedules	Summary of Schedules	\$____	
Estimated Liabilities (Secured)	Estimate found in Schedules	Summary of Schedules	\$____	
Estimated Liabilities (Unsecured)	Estimates found in Schedules	Summary of Schedules	\$____	
Estimated Liabilities (Priority)	Estimates found in Schedules	Summary of Schedules	\$____	
Chapter 13 converted 7	Motion to convert from a Chapter 13 to a 7. The case should appear in the list of Chapter 7s.	Docket	1 = Yes 2 = No	Only accepts "1" or "2" Drop down menu.
Additional filing fee for Conversion	Should appear in conversion order.	Docket	\$____	
Reaffirmed Loan	Agreement to waive the discharge.	Reaffirmation Agreement	1 = Yes 2 = No	Only accepts "1" or "2". Drop down menu.
Amount of Reaffirmed Loan	The amount of the loan/s being reaffirmed (an aggregate amount)	Reaffirmation agreement/s	\$____	
Number of Reaffirmation Agreements (# of loans reaffirmed)	Total number of loans reaffirmed. If none, this column is blank	Each Reaffirmation Agreement will be listed on Docket	Number of agreements	Only accepts numbers between 1 and 99
Mortgage paid outside the Plan		Plan or TIB Final Report	1 = Yes 2 = No	Only accepts "1" or "2" Drop down menu.
Size of mortgage paid outside the plan	Amount of secured claim paid to mortgage bank NOT through the Plan (all mortgages, if more than one)	Schedules , Plan or TIB Final Report	\$____	
More than one mortgage paid outside plan		Schedules , Plan or TIB Final Report	1 = Yes 2 = No	Only accepts "1" or "2" Drop down menu.
Size of 2nd mortgage paid through plan	If second mortgage paid through plan, state amount	TIB Final Report	\$____	
Unsecured Creditor Claims	Total dollar amount of ALLOWED unsecured creditor claims (including priority	TIB Final Report	\$____	

	claims and administrative claims, not picked up as Professional Fees (Debtor's atty, TIB, other attys, other fees professionals)).			
Distribution to Unsecured Creditors	The dollar amount unsecured creditors are actually paid in through the bankruptcy case (including all of the above-mentioned creditors).	TIB Final Report	\$_____	
Secured Creditor Claims	Total dollar amount of ALLOWED secured claims.	TIB Final Report	\$_____	
Distribution to Secured Creditors	The dollar amounts secured creditors are actually paid in through the bankruptcy case.	TIB Final Report	\$_____	
Payments to Debtor/ Debtor Refund	Dollar amounts paid to Debtor through the bankruptcy case (usually the amount of equity left after the liquidation of an asset and after creditors have been paid).	TIB Final Report	\$_____	

For all Chapter 13 Cases: Services Included in No Look Fee		
<u>Counseling of Debtor – Pre-filing:</u>		
<ol style="list-style-type: none"> 1. Meet with the debtor to review the debtor's assets, liabilities, income and expenses. 2. Analyze the debtor's financial situation, and render advice to the debtor in determining whether to file a petition in bankruptcy. 3. Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss both procedures with the debtor, and answer the debtor's questions. 4. Explain to the debtor how the attorney's fees and trustee's fees are 		

<p>paid.</p> <p>5. Explain what payments will be made directly by the debtor and what payments will be made through the debtor's Chapter 13 plan, with particular attention to mortgage and vehicle loan payments, as well as any other claims with accrued interest.</p> <p>6. Explain to the debtor how, when, and where to make the Chapter 13 plan payments.</p> <p>7. Explain to the debtor that the first plan payment must be made to the Trustee within 30 days of the date the plan is filed.</p> <p>8. Advise the debtor of the requirement to attend the § 341(a) Meeting of Creditors, and instruct the debtor as to the date, time and place of the meeting.</p> <p>9. Advise the debtor of the necessity of maintaining insurance on real estate and vehicles securing loans or leases.</p>		
<p><u>Preparation of Petition, Schedules Statement & Initial Motions – Pre-filing:</u></p> <p>Timely prepare, file and serve the debtor's petition, plan, schedules, statement of financial affairs, and any necessary amendments thereto, which may be required.</p>		
<p><u>Post-filing Representation:</u></p> <p>Appear at the 341 Meeting of Creditors with the debtor.</p> <p>Respond to objections to plan confirmation, and where necessary, prepare an amended plan.</p> <p>Prepare, file, and serve necessary modifications to the plan which may include suspending, lowering, or increasing plan payments.</p> <p>Prepare, file and serve necessary amended statements and schedules.</p> <p>Prepare, file, and serve necessary motions to buy, sell, or refinance property when appropriate.</p> <p>Gather and submit to Trustee properly documented proof of income for each debtor, and all required pay advises and tax returns.</p> <p>Object to improper or invalid claims, if necessary.</p> <p>Represent the debtor in motions for relief from stay.</p> <p>Respond to the objections to plan confirmation, and where necessary, prepare, file and serve an amended plan.</p> <p>Where appropriate, prepare, file, and serve necessary motions to avoid liens on real or personal property and to value the collateral of secured creditors.</p> <p>Other legal services as are necessary for the administration of the present case before the Bankruptcy Court.</p>		

Region Chart

Region	States in Region	Code
Northeast	Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island, Delaware, Maryland, New Jersey, New York, and Pennsylvania, and Washington, D.C.	1
Southeast	Virginia, North Carolina, South Carolina and Georgia, Florida, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Tennessee and West Virginia	2
Southwest	Arizona, New Mexico, Oklahoma and Texas	3
Middle-West	Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin	4
West	Colorado, Idaho, Montana, Nevada, Utah, Wyoming, Washington, Oregon, California, Alaska, Hawaii	5

Circuit Chart

Circuit	States in Circuit	Code
1st Circuit	Maine, New Hampshire, Massachusetts, Rhode Island	1
2nd Circuit	Vermont, Connecticut, New York	2
3rd Circuit	Pennsylvania, New Jersey Delaware	3
4th Circuit	Virginia, West Virginia, North Carolina, South Carolina, Maryland	4

5th Circuit	Mississippi, Louisiana, Texas	5
6th Circuit	Michigan, Ohio, Kentucky, Tennessee	6
7th Circuit	Indiana, Illinois, Wisconsin	7
8th Circuit	Arkansas, Missouri, Iowa, Minnesota, Nebraska, South Dakota, North Dakota	8
9th Circuit	Alaska, Hawaii, Arizona, Nevada, California, Idaho, Montana, Oregon, Washington	9
10th Circuit	Wyoming, Utah, Colorado, Kansas, Oklahoma, New Mexico	10
11th Circuit	Florida, Georgia, Alabama	11

Population Density Chart

July 1, 2008 Population Estimates (by circuit) ⁶⁵	High	Median	Low
1st Circuit	District of Massachusetts State population 6,497,967	District of Maine State population 1,316,458	District of Rhode Island State population 1,050,788
2nd Circuit	Southern District of New York State population	District of Connecticut State population	District of Vermont State population

⁶⁵ United States Census, Table 1 Annual Estimates of the Resident Population for the United States. Regions, States and Puerto Rico: April 1, 2000 to July 1, 2008.

	19,490,297	3,501,252	621,270
3rd Circuit	Eastern District of Pennsylvania State population 12,448,279	District of New Jersey State population 8,682,661	District of Delaware State population 873,092
4th Circuit	Western District of North Carolina State population 9,222,414	District of Maryland State population 5,663,597	Southern District of West Virginia State population 1,814,468
5th Circuit	Southern District of Texas State population 24,326,974	Eastern District of Louisiana State population 4,410,796	Southern District of Mississippi State population 2,938,618
6th Circuit	Southern District of Ohio State population 11,485,910	Western District of Tennessee State population 6,214,888	Western District of Kentucky State population 4,269,245
7th Circuit	Northern District of Illinois State population 12,901,563	Southern District of Indiana State population 6,376,792	Eastern District of Wisconsin State population 5,627,967
8th Circuit	Western District of Missouri State population 5,911,605	Southern District of Iowa State population 3,002,555	District of North Dakota State population 641,481
9th Circuit	Central District of California State population 36,756,666	Western District of Washington State population 6,549,224	District of Alaska State population 686,293
10th Circuit	District of Colorado State population 4,939,456	District of Utah State population 2,736,424	District of Wyoming State population 532,668
11th Circuit	Middle District of Florida State population 18,328,340	Northern District of Georgia State population 9,685,744	Northern District of Alabama State population 4,661,900

