

---

## MEASURING CHAPTER 11:

### THE REAL WORLD OF 500 CASES

LISA HILL FENNING FN\*

Craig A. Hart FN\*\*

In late 1994, Congress officially launched a potentially far-reaching review of the nation's bankruptcy laws by creating the first bankruptcy reform commission in more than a generation. FN1 One of the issues on the new Commission's agenda is the future of chapter 11, as a result of several controversial high-profile cases, and some stinging academic and public critiques. FN2 Any recommendations by the National Bankruptcy Review Commission for changing chapter 11 should be based upon solid evidence regarding the actual workings of the reorganization process. The principal source of information about chapter 11 cases is the Administrative Office of the United States Courts, FN3 but its demographic data presents an out-of-focus picture for a variety of reasons. To develop a clearer picture of the full range of debtors who are using chapter 11 and what is happening in their cases, this Article reports upon a study of more than 500 cases from one judge's chapter 11 docket during the early 1990s in Los Angeles, California. The study reveals a different picture from what most would expect.

Chapter 11 is usually viewed as the exclusive province of large, publicly held corporate debtors, mostly because they dominate the headlines concerning chapter 11 and consume most of the time of the nation's foremost bankruptcy practitioners. This preoccupation is also due, however, to the lack of readily available information about the other 99% of cases. Analyses predicated on the large public cases result in models that assume a separation of the interests of management from equity, an active corps of unsecured creditors, and enough unencumbered funds to pay professionals handsomely. FN4

Most chapter 11 debtors, however, are small businesses, managed by their owners. FN5 These chapter 11s rarely attract enough interest from unsecured creditors to organize a committee; dealing with secured creditors monopolizes the attention of both court and debtor. Many individual debtors are unrepresented. Small business debtors are often represented by their general business attorney. Representation by nationally recognized bankruptcy experts is the exception. Remarkably little reliable data is available about the actual demographics of these chapter 11 debtors, the reasons for their filing, and what happens to them after they file. FN6 Lacking empirical data about the ordinary chapter 11 case, the debate about the effectiveness of chapter 11 resembles the classic parable about searching for the penny under the street lamp because that is where the light is.

The typical chapter 11 docket of bankruptcy judges around the country simply does not consist of a steady stream of megacases. Even in the Central District of California, the highest volume bankruptcy court in the country with more than its share of megacases, FN7 large high profile cases are the exception rather than the rule. The everyday chapter 11 case load involves local convenience stores, construction companies, and other small family enterprises. The chapter 11 docket is populated with the filings of people and businesses that are invisible in most of the academic discussions about the future of chapter 11. Even the much vilified single-asset real estate cases have constituted only about one-third of the Central District chapter 11 docket during the darkest years of the recent Southern California real estate depression. FN8

In more than ten years on the Central District bankruptcy bench, Judge Fenning has handled roughly 2,000 chapter 11 cases. In this Article, we present the results from analyzing 510 of Judge Fenning's cases filed from January 1, 1991 through December 31, 1994 (the Study Cases ). We compare our demographic data with the Administrative Office's data. We describe the progress of a smaller subgroup of the Study Cases through chapter 11. Finally, we assess the limits and reliability of the available official data as a basis for drawing conclusions about the functioning of the chapter 11 system, and offer suggestions for data collection and analysis to improve information about chapter 11 in particular, and the bankruptcy process in general.

It is important to understand that the Administrative Office routinely compiles two different types of bankruptcy statistics: (1) *case processing statistics*, such as the numbers of bankruptcy cases filed and closed, which come directly from the bankruptcy clerks' official records; FN9 and (2) *demographic data* about the size and nature of the cases being filed, based upon the responses to questions asked of debtors as part of their bankruptcy petitions. The case processing statistics count the actual petitions filed with the court, filing fees paid, orders entered by the clerk, files actually closed and shipped to storage, and other activities performed by the clerks' offices. The case processing statistics are used in the day-to-day operations of the courts, and in determining the clerical and judicial resources needed to meet the anticipated workload of the bankruptcy courts. In contrast, the demographic data, comes from debtors' descriptions, not from clerks' activities. Intended to provide a very general overall view of who is using the bankruptcy court system, the demographic data is not used by the clerks' offices in operations, although it does play some role in the workload formulas used to assess the resource needs of the courts. FN10 The clerks' offices can and do vouch for the reliability of their own case processing statistics, but neither the clerks' office nor the Administrative Office can vouch for the accuracy of debtors' self-reported information.

Our study found no reason to question the reliability of the case processing statistics and, indeed, we rely upon them in our analysis. On the other hand, we found that the demographic data both underestimates and overestimates various categories of information about chapter 11 cases. Because this information comes from non-court sources, its accuracy cannot be guaranteed under the best of circumstances. Nonetheless, we believe that modifications to the forms and procedures used to collect and report the demographic information could significantly enhance its reliability.

We recognize the limitations of our study, and urge caution to avoid overgeneralizations from our data. With respect to the descriptive profile of chapter 11 cases, we cannot be sure that the percentages described for various types and sizes of cases would hold true in all districts. With respect to the data problems we identify, some are limited to the Central District of California. However, our findings about the flaws in the questionnaire forms and procedures used to collect and report the demographic data relate to the system as a whole.

The Administrative Office, the Advisory Committee on Bankruptcy Rules and the courts should work together to correct these flaws, so that more accurate reports about the size and nature of chapter 11 cases can be provided. Most importantly, we must start collecting data about chapter 11 case outcomes; as presently designed, the system collects none.

## I. SUMMARY OF FINDINGS AND CONCLUSIONS

The picture of the typical chapter 11 case emerging from our study is that of a medium-size enterprise, run by an individual or a small group. We found that:

*The cases are mostly real estate related.* The principal asset of a majority of our chapter 11 debtors was real estate, rather than an operating business. FN11 Based upon analysis of our entire data base of 510 chapter 11 cases, we found that 56% to 64% were filed primarily to protect real property from impending foreclosure.

*85% of the cases are mid-sized.* Our analysis of a subgroup of 262 cases, for which more detailed information was available, revealed that approximately 65% scheduled between \$500,000 and \$10 million in assets and liabilities. Another 20% scheduled assets and liabilities in the \$100,000 to \$500,000 range. Thus, fully 85% of our cases qualify as mid-sized, falling within the middle three categories of the seven-category spectrum developed by the Administrative Office.

Because of this pronounced bell curve cluster, our study population did not have enough very small and very large cases to identify any clear correlations between size or type and the length of the chapter 11 case. Our study recorded case events only up to our August 31, 1995 cutoff date. Not all of the cases were finished by that date: about 24% were still active cases, reflecting the fact that many were only eight to twelve months old. By our cutoff date, 46% of the cases had been dismissed and 24% converted. Approximately 6% had confirmed plans. This confirmation rate is an interim figure that will probably increase, because a total of 22% had disclosure statements on file, most of which were still awaiting confirmation as of our cutoff date. We found no pattern linking the demographic factors of size or

type of business with the kind of plan confirmed or the economic outcome.

We compared our demographic description with the demographic data reported by the Administrative Office. FN12 We found discrepancies in several categories.

*More business cases.* According to our figures, the proportion of business chapter 11 cases is 7% higher than the number of business cases reported in the Administrative Office demographic data for our district. The understatement in the official statistics results primarily from a lack of adequate instructions to debtors about how to classify their cases.

*Fewer extremely large cases.* Approximately 16% of our cases were erroneously reported as having more than \$100 million in assets or liabilities, when in fact none of these cases had scheduled more than \$10 million. This problem was caused by ambiguities in the questions listed on the petition. This problem will be corrected by revisions to the petition that are currently in progress.

*Few publicly held corporate filings.* We found only one publicly held corporation among the more than 500 chapter 11 filings analyzed in our study. The Administrative Office reported more than 2,000 Central District bankruptcy filings by publicly held corporations under *both* chapter 11 and 7 during the four year period of our study. FN13 but does not break these figures down by chapter. More investigation of this disparity is necessary.

We believe these problems with the demographic data are caused by: (1) ambiguities in the questions asked of debtors on the bankruptcy petition; (2) the absence of adequate methods of verifying the accuracy of data supplied by debtors; and (3) the clerks' practice of substituting an assumed answer in reporting data from cases in which debtors failed to provide all required information a practice necessitated by the lack of a not available reporting category for the clerks' data entry. Improving the forms, providing additional instructions to both debtors' and clerks' staff, and reworking the overall procedures governing the collection and analysis of the demographic data could substantially reduce the frequency of these errors. This Article suggests some specific corrective measures. The Administrative Office itself has recognized and is already addressing some of these problems.

Fixing the errors in the present system of data collection is not enough. The scope of the current statistical system is too narrow. Much more detailed information on the progress and outcome of chapter 11 cases is needed to evaluate the effectiveness of judicial case management alternatives and of the chapter 11 reorganization process as a whole. Designing and implementing an effective data collection system that would provide more comprehensive statistical measurements of the performance of the system requires careful thought about what data we need and how we intend to use it. While such a system would not necessarily be expensive due to the recent advances in court automation, a congressional commitment of additional resources would enable the courts to undertake an intensive review and development process to produce a new system within the next few years. Otherwise, more pressing operational needs of the courts will probably take priority over development of a more comprehensive data collection system.

We urge that the policies and priorities be modified to place greater emphasis on meeting the needs of the judges, the public, and congressional policymakers who need more information about chapter 11 cases. It should not be left to individual judges to develop this information in the ordinary course of chambers work.

## II. CURRENTLY AVAILABLE OFFICIAL DATA

The current official data collection system was designed to serve the administrative needs of the Administrative Office of the United States Courts and the clerks of the bankruptcy courts. It provides the basis for determining clerical and judicial staffing requirements and the most appropriate allocation of resources. As a senior analyst with the Administrative Office of the United States Courts acknowledged, the Administrative Office maintains various statistics on chapter 11 cases, but the focus of the statistical reporting system is mainly on the number of cases filed, terminated, and pending. Relatively little financial or procedural progress information is compiled on these cases. FN14 It is precisely this kind of financial and progress information, however, that bankruptcy judges require for the systematic improvement and refinement of their case management and decisionmaking. Additionally, Congress and the Bankruptcy Reform Commission also need such information to determine future policy directions for chapter 11.

## *A. The Administrative Office's Statistical Reporting System*

By congressional mandate, the Administrative Office of the United States Courts is required to collect statistics regarding the performance of the federal court system, including chapter 11 filings. FN15 This information has long been commonly known as SARD data, using the acronym of the Statistical Analysis and Reports Division of the Administrative Office. During the period covered by the Study, SARD was renamed the Statistical Division. The case processing statistics collected indicate the total number of bankruptcy cases filed each year and the chapters under which they are filed. The demographic data collected by the Administrative Office includes the magnitude of the debtors' assets and liabilities, whether the filings are business or nonbusiness in nature, and the kind of business involved.

Before 1987, bankruptcy clerks were supposed to report the actual amount of assets and liabilities in each case, based upon their review of the information in the debtor's schedules. In many cases this information was not reported because the schedules had not been filed by the time the statistical reports were due to be sent to the Administrative Office. In 1987, the statistical forms were amended to reflect an estimated size range of assets and liabilities in each case, based on information that debtors were supposed to supply on a new Bankruptcy Cover Sheet. FN16 Only five choices for the asset and liability ranges were provided, with the top category including all cases in which these amounts exceeded \$1 million.

According to the 1987 cover sheet, \$1 million cases, \$100 million cases, and \$1 billion cases fell into the top category. FN17 When the Federal Judicial Center (the FJC ) prepared its 1988–89 time study of bankruptcy judges' workloads to develop a case weighing system to assist in determining judgeship needs, FN18 SARD data thus failed to provide the information necessary to differentiate the relative burden imposed on bankruptcy judges by huge, as opposed to mid-size, chapter 11 cases. In addition, data problems arose in some districts, particularly in the Central District of California, which had not been requiring debtors to submit the cover sheets. The FJC reconstructed the necessary data for the Central District by reviewing case files. FN19

Effective August 1991, the cover sheet was merged into Official Form 1, FN20 thereby integrating the SARD questions into the voluntary petition itself. At the same time, two additional asset and liability categories were added: one for larger cases between \$10 and \$100 million and another for over \$100 million. FN21 The total number of categories was thus increased to seven. FN22 These changes were the culmination of several years of revision work by the Advisory Committee on Bankruptcy Rules. FN23

The following statistical and descriptive information is now required of each chapter 11 debtor as part of the voluntary bankruptcy petition:

*Type of debtor* Available choices: individual, joint (husband and wife), partnership, corporation publicly held, corporation not publicly held, municipality, other

*Nature of debt* Available choices: non-business/consumer, business

*Type of business* Eleven available choices include: farming, professional, real estate, retail/wholesale, other business

*Nature of business* This narrative description is usually left blank.

*Asset/no asset* Whether debtor expects funds to be available for distribution to unsecured creditors

*Est. no. of creditors* Checkbox format offers six choices from 1–15 to 1000–over.

*Estimated assets* Checkbox format offers seven choices from Under 50 to 100,000–over. In very small print, the heading notes that all numbers are in thousands of dollars.

*Estimated liabilities* Checkbox format offers the same seven choices as for assets.

*Est. no. of employees* Five checkboxes offer choices from 0 to 1000—over.

*Est. no. of equity* Five checkboxes offer choices from 0 to 500—over.

#### *security holders*

Inclusion of the statistical data questions on the petition eliminated the problem of the missing cover sheet. The data's accuracy, however, remains wholly dependent upon self-reporting by the debtor or whoever fills out the form for the debtor. FN24 We estimate that the responses provided by the debtor on the petition are inconsistent or incomplete at least 20% to 25% of the time, based upon our comparison of the responses on the petition with the numbers provided in the schedules and statement of affairs.

When the bankruptcy petition is processed by the clerk's office, the information provided by the debtor is keypunched into computer-readable form and transmitted to the Administrative Office as part of the case opening report. The newer BANCAP and NIBS FN25 automated docketing systems have internal quality controls that identify missing data or inconsistencies that violate rules for data entry. For example, the computer system will not allow entry of assigned judge code numbers that do not match the judges in the district. While these quality controls reduce certain types of data errors, such tests for validity of the data do not involve any real world accuracy checks of the type conducted as part of this study. The older Bankruptcy Automated Noticing System (BANS) being used in the Central District during this study was even less sophisticated. It involved batch-loading of information into the Administrative Office's computer system. Once loaded, the data was not available on-line to the court at all.

Moreover, clerks' offices have not been given any directives about methodology for inputting the data into the system, other than the proper computer codes for each response category. As we know from our review of the Study Cases' petitions, debtors sometimes omit responses to the Statistical Division questions. No instructions, however, about how to handle missing responses are provided to the clerks' offices by the Administrative Office. The Statistical Division rejects case opening reports entirely if they fail to respond in any category. Because they are not allowed to indicate that the information is simply not available, FN26 clerks' offices have developed a variety of approaches for dealing with missing data including protocols for filling in the blanks with assumed answers in order to avoid rejection of the case opening report. When errors are discovered in the data, FN27 no regular established procedure currently exists to make the appropriate corrections.

According to the Administrative Office, total filings in the Central District of California increased from just under 60,000 cases in 1990, FN28 to a peak of almost 94,000 in 1992, FN29 then dropped back under 83,000 in 1994. FN30 With this incredible filing volume, the district always ranks first in total filings, outstripping the next highest district (usually either the Northern District of Illinois or the Northern District of Georgia) by a factor of almost three-to-one. FN31 In addition, the Central District has consistently ranked in the top three districts nationwide in terms of case filings per judge for our 21 active judges. FN32 During this four-year period, the Central District averaged about 11% of the total chapter 11 filings in the country.

#### TABLE 1

##### PERCENTAGE OF NATION'S CHAPTER 11 CASES

##### FILED IN THE CENTRAL DISTRICT OF CALIFORNIA

##### Year United States Central District of California Percentage

1991 23,989 2,268 9.45

1992 22,634 2,539 11.22

1993 19,174 2,421 12.63

1994 14,773 1,792 12.13

TOTAL

1991–1994 80,570 9,020 11.20

### *B. Other Official Data*

Other case processing statistics regularly collected by the Administrative Office are directed at measuring the activity of the clerks' offices, and are not particularly useful for assessing the effectiveness or outcomes of chapter 11. For example, the Administrative Office measures the efficiency of bankruptcy clerks' offices based largely upon the speed with which cases are closed. Closing is a clerical act certifying that the administration of the case is complete and that no further court or clerk's office action is necessary. FN33 In chapter 7 cases, closing is important to the panel trustees; it is when they get paid. FN34 It is also important to debtors because it is when property abandoned by the trustee reverts in the debtor and the automatic stay terminates, FN35 thereby permitting secured creditors to proceed with their remedies. By contrast, in chapter 11 cases, administrative closing has no legal or economic consequences for the debtor or creditors.

Similarly, the case processing statistics track creditor payouts in chapter 7, 12, and 13 cases, but not chapter 11 cases. Chapter 7 panel trustees and chapter 12 and 13 standing trustees are required to complete detailed reports of distributions to creditors from the debtors' estates. FN36 It is therefore possible to calculate with reasonable accuracy the total amounts paid under those chapters. No equivalent reports are required in chapter 11 cases, which are rarely administered by trustees. FN37 Moreover, chapter 11 cases are routinely closed after confirmation, but before all payments have been completed, FN38 so the ultimate payouts to creditors cannot be determined before the court's supervision and reporting ends. As a result, the Administrative Office's regular case processing statistical system reports much more information about the rest of the bankruptcy system than it does about chapter 11. To address this lack of information, the Administrative Office and the Federal Judicial Center occasionally conduct special studies of various aspects of chapter 11. One of the more noteworthy examples is a 1989 study of chapter 11 confirmation rates in 15 districts during the first decade under the Bankruptcy Code. FN39 The study showed that about 17% of chapter 11 cases result in confirmed plans, typically within about 21 months. FN40 The results of this study were later confirmed by an independent study of plan consummation rates in the Poughkeepsie Division of the Southern District of New York. FN41

On an ongoing basis, however, no other statistics are regularly gathered or maintained by the Administrative Office about the progress or substantive outcomes of chapter 11 cases. The absence of such data is not surprising. Under the general policy direction of the Judicial Conference of the United States, the Administrative Office's focus has been on using its limited resources to generate information needed by its staff to determine resource requirements, and by the clerks' offices to run their operations. Performance, therefore, has been assessed by what is relatively easy to measure: the flow of case-related papers through the clerks' offices. Measuring the effectiveness of chapter 11 is harder to do.

### III. THE CHAPTER 11 STUDY

This study was prompted by a desire to reassess our chambers' case management systems in light of the advent of computerized docketing and reporting systems in our court. We wanted to develop chapter 11 reporting systems that would capture all useful and necessary information for judicial case management purposes. Judicial information needs differ from those of the Administrative Office and the clerks. The primary goal of the clerk is to move the case from filing to closing as expeditiously as possible. The primary goal of the judge in a bankruptcy case is to do justice by reaching an appropriate resolution of the debtor's legal and financial problems. Judges need to know which businesses to shut down and when, which plans are feasible, and which debtors simply cannot afford their houses and must move on with their lives.

Currently, bankruptcy judges mostly learn the art of judging and the skills of case management by trial-and-error, on-the-job training. At least in theory, however, judges would be more effective decision-makers if they knew more about actual consequences of their decisions, especially any unintended outcomes. It is difficult to improve judicial

performance without feedback; this study represents an effort to quantify and assess past results as a guide for future choices.

### *A. The Study Cases and the Subgroup Cases*

The Central District of California Bankruptcy Court uses a random case assignment system, except for subsequent related cases which are usually assigned to the same judge in the interest of efficient judicial administration. Thus, the 510 Study Cases as a whole represent a substantially random sample of the cases filed in the Los Angeles division of the Central District during 1991 to 1994. FN42

For many purposes, however, we analyzed a subgroup of 262 cases for which both completed petition responses and schedules were available (the Study Subgroup Cases ). For the Study Subgroup Cases, we could compare the information reported to the Statistical Division to the actual information reflected on the schedules and statement of affairs. Based upon our extensive review of the entire data base, we believe that the Study Subgroup Cases data is reasonably representative of the whole. FN43 We have opted to provide as much information as possible, even though that meant using different case populations for various tables and graphs. We emphasize, however, that our numerical analysis of the smaller universe of Study Subgroup Cases is not based upon a statistically random sample that is generalizable to the entire population of chapter 11 cases. FN44 Moreover, even though the larger universe of Study Cases should be representative of Central District cases, it is not a random sample of cases filed nationwide. Phenomena observed in the Central District may be atypical, caused by any of a number of local variables, including the generally dismal state of the economy in Southern California during this period, FN45 the high cost of housing that pushed many individual debtors above the chapter 13 debt limits and into chapter 11, or the influence of local legal culture. **FN46**

### *B. Sources of Information about the Cases in the Study*

Collecting the information for our study required retrieving files and locating paper dockets for each of the 510 chapter 11 cases in the study. FN47 For each case, we collected the following basic data: case name and number; petition date; and reported responses regarding magnitude of assets, liabilities, and the type of case. We also traced case milestones, including the dates of any conversion to another chapter, dismissal, and filing or confirmation of a plan. From this information, we calculated how long each case was pending before confirmation of a plan, dismissal or conversion.

We collected this information from several sources within the court. We began by reviewing the bankruptcy petitions which we had for all cases. We also analyzed all available schedules and statements of affairs; these were unavailable in a substantial number of cases, mostly because they were never filed. In addition, the dockets, disclosure statements, and bench calendar notes regarding disposition of motions and other matters yielded useful information about the progression of the cases. FN48

### *C. Debtor Demographics*

Based upon the demographic and case data that we were able to collect, we examined several different dimensions in developing a profile of the Study Cases.

#### **1. Proportion of Business versus Non-business Cases**

Depending upon what is defined as a business case, our analysis indicates that about 79% of the Study Subgroup Cases qualify as business cases. This figure is about 7% higher than the 72% that the Administrative Office shows for our district as a whole. FN49 The proportion of non-business chapter 11 filings was much lower in most other districts. Between 1991 and 1994, only 12.8% (9,143 out of 71,507) of the chapter 11 cases filed outside of the Central District were reported as non-business. FN50

During the study period, SARD instructions directed clerks to identify a chapter 11 case as a business filing in all corporation or partnership cases, and in individual cases in which the debtor is currently engaged in business or was

formerly engaged in business . . . [and] owes more for business debts than for consumer debts. FN51 This differs somewhat from the instructions to debtors that previously accompanied the Bankruptcy Cover Sheet, which had directed debtors to check the business box [i]f the debtor is a business enterprise, or most of the debts of an individual arose from the operation of a business or self-employment. FN52 Thus, under the Administrative Office definition, individual cases involving substantial business debt, such as secured guarantees of Small Business Administration loans, personal guarantees of commercial leases, or control person employment tax liabilities, should be classified as business cases.

In practice, however, our review of the Study Cases reveals that debtors do not interpret and apply the business/non-business distinction in the intended manner. A major part of the problem is the absence of any definition or explanation of this distinction on the petition. Unless the individual debtor is continuing to operate a business as a proprietorship, the petitions are usually marked non-business. If the business was incorporated and the subject of a separate filing, or if it was already closed before the filing of the petition, the individual debtors apparently do not believe themselves to be in business, and therefore mark non-business, even if the majority of their scheduled debts relate to the business.

For our Study Cases, at least 7% of the individual cases reported as non-business in fact scheduled mostly trade debt or business debt. If these cases were recharacterized as business cases, then at least 79% of the Study Cases qualify as business, versus the 72% reported by the Administrative Office.

## GRAPH A

### BUSINESS VS. NON-BUSINESS CHAPTER 11 FILINGS

Study Subgroup Cases Central District SARD Statistics

TABLE 2

#### BUSINESS VS. NON-BUSINESS

#### CHAPTER 11 FILINGS

Study Subgroup Cases Central District SARD Statistics

Business 206 (79%) 6,530 (72%)

Non-Business 47 (18%) 2,533 (28%)

Not Available 9 (3%) n/a

The business versus non-business distinction is not currently used for any administrative purpose within the court system. FN53 Judges and trustees, however, often rely on this distinction in making their initial assessments of cases, though not for quantitative analysis. Outside the court system, this distinction is sometimes used in general business and economic analyses. If the data systematically understates business filings because of ambiguities in the questions asked, then the method of collecting the data will lead to faulty analysis.

These findings suggest that the bankruptcy petition should provide improved instructions for determining whether the debtor should check off business or non-business. The format of the official forms is determined by the Advisory Committee on Bankruptcy Rules, not by the Administrative Office. FN54 For example, the form could be revised to offer individual debtors a choice between mostly business-related debts versus mostly consumer debts. Alternatively, the choice could be framed as business or consumer with a sentence indicating that a case is business if a majority of the debt is business-related. Either of these approaches should improve the reliability of the demographic data on this issue. As we know from the results of opinion-polling, how the question is asked will affect the kinds of answers received.



## 2. Reported Assets and Liabilities: The Problem of Phantom Megacases

The petition questions require the debtor to report the amount of assets and liabilities involved in the case. [FN55](#) Debtors, however, often fail to check off any box in the liabilities and assets section of the petition. More importantly, since the addition of the two largest categories to the petition questionnaire in 1991, [FN56](#) the Administrative Office demographic data has been adversely affected by another questionnaire format problem. Unlike the other questions on the form, the figures next to the assets and liabilities checkboxes are supposed to be in thousands of dollars. [FN57](#) Both pro se debtors and the law offices of leading debtor bankruptcy lawyers frequently miss this distinction. They read the categories without mentally adding three zeros behind the numbers.

The statistical result is phantom megacases. [FN58](#) A comparison of the debtor's responses on the petition with the assets and liabilities in the schedules reveals that petitions indicating more than \$100,000,000 in assets or liabilities were actually intended to show merely \$100,000 in assets or liabilities. Among the 262 Study Subgroup Cases for which this portion of the form was completed by the debtors, this megacase error was made in at least 41 cases or one out of every six cases (16%).

### TABLE 3

#### PHANTOM MEGACASES :

#### STUDY SUBGROUP CASES ERRONEOUSLY REPORTED AS MEGACASES

ActualSARD–Reported

Asset Size

100,000K +030 (11%)

Liability Size 100,000K +029 (10%)

Asset or Liability Size 100,000K+041 (16%)

The petition format should be corrected to deal with the reality that many debtors misread the form. It is our understanding that the Advisory Committee on Bankruptcy Rules is currently revising the official forms; this correction is among the changes that are contemplated.

The study also found that some debtors failed to respond to the questions about estimated assets and liabilities. Our inquiries about the processing of incomplete petitions revealed that the Administrative Office requires all case opening reports to provide complete information for all questions. If debtors do not furnish responses, the clerk's office must supply an answer. Otherwise, the case opening report will be rejected by the Administrative Office. For at least part of the study period, the Central District filled those blanks by assuming that cases fell in the minimum size categories. Other districts have used different approaches to the missing data problem. No standardized national procedure exists. While the presumption of smallness is probably reasonable in consumer chapter 7 cases, it is contrary to the available data about chapter 11 cases. Use of such a presumption would skew the data in the direction of overstating the number of the smallest cases. Where size or other demographic data is not reported by debtors, clerks' offices should be able to report forthrightly that the information is not available.

Relying on scheduled information to fill in blanks or cross-check the accuracy of responses that seem to be erroneous is not always an available solution. In many chapter 11 filings, the petitions are filed before the schedules are prepared. The Federal Rules of Bankruptcy Procedure give debtors up to 15 days after the filing of the petition to submit any remaining required papers. [FN59](#) In the Central District, 15-day extensions are routinely granted in chapter 11 cases. [FN60](#) This means that the schedules are commonly not filed until 30 days after the petition. Thus, they are not yet available when the case opening report must be submitted to the Administrative Office. As debtors and counsel regularly admit in open court, the amounts reported on the petition are often totally unsupported guesses

that bear little relationship to the figures later compiled in the schedules and statement of affairs. While the schedules are not always accurate either and often require amendment, they are usually a much more complete listing of assets and debts than the debtor, and consequently the court, has available when the petition is filed.

## GRAPH B

### ACTUAL LIABILITIES VS. SARD-REPORTED LIABILITIES

(Study Subgroup Cases)

To assess the extent of the problem caused by these statistical deficiencies, we compared the reported demographic data for the Study Subgroup Cases' petitions with the information set forth in the schedules. As portrayed in Table 4 and Graph B, the distribution changed dramatically. When the actual liabilities set forth on the schedules are compared with the liabilities as reported to SARD on the petition form, the percentage of cases in the mega category drops from 11% to 0%. Similarly, the percentage in the under-\$50,000 and \$50,000 to \$99,999 categories drops from 5% to 2%, while the percentage in the \$1,000,000 to \$9,999,999 category increases from 29% to 44%, and the percentage in the \$10,000,000 million to \$99,999,999 category increases from 5% to 11%.

TABLE 4

### ACTUAL VS. SARD-REPORTED LIABILITIES

(Study Subgroup Cases)

Liability Size Actual SARD-Reported

under \$50K 3 (1%) 9 (3%)

\$50-99K 3 (1%) 4 (2%)

\$100-499K 59 (23%) 54 (21%)

\$500-999K 52 (20%) 45 (17%)

\$1,000-9,999K 116 (44%) 76 (29%)

10,000-99,999K 29 (11%) 13 (5%)

100,000K + 0 29 (11%)

1,000K + (Old SARD) n/a 4 (2%)

Unreported n/a 28 (11%)

In other words, the tiny and huge categories virtually disappear, while the middle range expands considerably. FN61 Even in the Central District of California, a district notorious for its large bankruptcy cases, approximately 45% of the cases fall in the under-\$1-million categories. Fully 89% of the Study Cases involve less than \$10 million in liabilities.

Analysis of the asset side of the reporting equation demonstrates a similar disparity between actual scheduled assets and petition-reported assets. This disparity also results from the apparent misunderstanding of the petition's categories. FN62 Approximately 91% of the Study Subgroup Cases involve scheduled assets of less than \$10 million. A comparison of the actual scheduled assets to petition-reported assets indicates a decrease in the percentage of cases in the mega category from 11% to 0%. Similarly, the under-\$50,000 and \$50,000 to \$99,999 categories shrink from

13% to 8%; on the other hand, the \$1,000,000 to \$9,999,999 category grows from 29% to 47%, and the \$10,000,000 to \$99,999,999 category increases from 3% to 9%.

#### GRAPH C

##### ACTUAL ASSETS VS. SARD–REPORTED ASSETS

(Study Subgroup Cases)

#### TABLE 5

##### ACTUAL VS. SARD–REPORTED ASSETS

(Study Subgroup Cases)

Asset Size Actual SARD–Reported

under \$50K 13 (5%) 25 (10%)

\$50–99K 7 (3%) 9 (3%)

\$100–499K 45 (17%) 45 (17%)

\$500–999K 50 (19%) 38 (15%)

\$1,000–9,999K 124 (47%) 75 (29%)

10,000–99,999K 23 (9%) 8 (3%)

100,000K + 0 30 (11%)

1,000K + (Old SARD) n/a 3 (1%)

Unreported n/a 28 (11%)

#### 3. Debtor Entity Types: Questions about Publicly Held Corporations and Super Chapter 13s

The petition requests that the debtor identify the type of entity and provides the debtor with several choices: individual; partnership; corporation, publicly held; corporation, not publicly held; municipality; and other. FN63 The Administrative Office does not generally report data regarding entity type by chapter of filing on a district-by-district basis. Therefore, the entity type data for the chapter 11 cases in the study is compared to the Administrative Office’s entity data for all filing under all chapters in this district. Our study indicates that approximately 37% of the Study Cases were filed by corporations, 40% by individuals, and 23% by partnerships. FN64 Table 6 and Graph D provide this information in more detail.

#### GRAPH D

##### ACTUAL ENTITY TYPES

(401 Study Cases)

#### TABLE 6

##### ACTUAL ENTITY TYPES

(401 Study Cases)

Number of CasesPercentage of Cases

Individual16140

Publicly Held Corporation11

Close Corporation14836

General Partnership123

Limited Partnership4712

Joint Venture328

*Filings by Corporations.* Of the 148 corporate chapter 11 cases in our study, we found one publicly held corporation debtor. We also found three petitions erroneously reporting that they were publicly held, although their petitions and schedules revealed that they were instead closely held corporations. These errors may have been just carelessness the publicly held corporation checkoff box comes first [FN65](#)—or they may be due to classification problems resulting from the failure of the form to explain the difference between publicly held and not publicly held corporations. A clerk entering this data into the reporting system similarly lacks any guidance on this subject: the SARD instructions are silent regarding distinctions between the different types of corporate entities. [FN66](#)

We could not directly compare our data with the Administrative Office’s demographic data because we did not have access to a breakdown of corporate chapter 11 cases for the Central District. We did, however, compare our figures with the data available in a draft of the Administrative Office’s proposed Judicial Caseload Profile. [FN67](#) The Profile is a district-by-district analysis of bankruptcy filings on a calendar-year basis. [FN68](#) The draft Profile for the Central District reported that more than 2,000 publicly held corporations filed chapter 7 or 11 bankruptcies from 1991 through 1994, accounting for 24% of the district’s corporate filings. [FN69](#) For 1994, the Administrative Office’s statistics indicate that 54% of the total corporate filings under all chapters in our district involved publicly held corporations, or 943 of 1706 total corporate filings. [FN70](#) Based on these figures, Judge Fenning’s pro rata share should be approximately 45 publicly held corporate debtors for that one year alone.

Independent analyses, however, have identified only 70 bankruptcy filings under either chapter 7 or chapter 11 by publicly held corporations during 1994 for the entire country, [FN71](#) only three of which occurred in the Central District. [FN72](#) According to these sources, only 1,100 such filings have occurred in the entire country in the past decade, [FN73](#) while the Administrative Office’s figures show nearly that many public corporation chapter 11 cases in 1994 for this district alone. [FN74](#) While some publicly held corporations may be hidden among Judge Fenning’s chapter 7 cases filed during the study period, we are not aware of any.

We have been unable to identify the reason for these apparent discrepancies in the demographic data about publicly held corporate filings. In the past, the Administrative Office has not published district-by-district statistics about the number of filings by publicly held corporations. Instead, The Bankruptcy Yearbook & Almanac [FN75](#) has generally been the source relied upon by the bankruptcy community for information about filings by publicly held corporations. It is important to note that this particular data is not the basis for administrative decision making within the court system.

*Filings by Individuals.* The Administrative Office’s demographic data shows that, in this district, more than twice as many business bankruptcy cases under all chapters were filed by individuals as were filed by all other types of entities combined. [FN76](#) We do not, however, have a breakdown showing what proportion of these filings were chapter 11 cases. Based upon analysis of the Study Subgroup Cases, this two-to-one ratio is substantially reversed in chapter 11: approximately 40% were filed by individuals and approximately 60% by partnerships, corporations, or other entities. [FN77](#)

Individual chapter 11 cases are not necessarily small or simple. They often present legal and factual issues as complex as their entity counterparts. Among our Study Cases, for example, one joint case involved immigrants who built a large real estate investment and property management business that scheduled more than 20 apartment buildings that were valued in excess of \$91 million. Other individual filings included real estate entrepreneurs scheduling multiple properties totaling in excess of \$20 million, and several in excess of \$40 million. In still another case, one individual filing involved liabilities on guarantees of bank debt exceeding \$250 million. FN78

#### 4.Types of Businesses: The Hidden Predominance of Real Estate–Based Filings

Debtors are supposed to indicate on the petition what type of business is involved in the filing by choosing among 11 categories such as real estate, retail/wholesale, and manufacturing. FN79 This information is frequently incomplete or entirely omitted. Sometimes the response is at odds with the information provided in the schedules and statement of affairs. As reported on the petitions, approximately 40% of the Study Cases involved real estate businesses; 33% operating businesses; and 16% consumers. For nearly 12%, no business type was indicated. These results are illustrated in Table 7 and Graph E.

Use of the Statistical Division business type categories masks the degree to which chapter 11 cases are being filed primarily to stop foreclosures and to restructure real property debt. An earlier phase of the Study analyzed two years of chapter 11 filings to determine what percentage involved either single or multiple asset real estate cases. The results were published as Profile of Single Asset Real Estate Cases. FN80 The specific goal of that analysis was to determine the proportion of the chapter 11 cases involving only real estate assets, rather than operating businesses.

#### GRAPH E

#### ACTUAL TYPES OF BUSINESS

(510 Study Cases)

#### TABLE 7

#### ACTUAL TYPES OF BUSINESSES

(510 Study Cases)

Number of Cases\*Percentage of Cases

Professional184

Retail/Wholesale7715

Manufacturing316

Construction112

Real Estate20340

Other275

Consumer8016

Not Available6012

\* Out of the 510 Study Cases, we found two farming cases and one stock broker case. These three cases

were not included in the percentage calculation for types of business because they were so small in number

that the data was statistically insignificant.

The Single Asset Real Estate Cases Study did not employ the Statistical Division categories, but rather examined the scheduled lists of assets. Four types of real estate cases were identified, each of which scheduled *de minimus* personal property and no other operating business. FN81 The case types identified were: single asset real estate cases, in which the only scheduled asset was one property ( SARE ); multi-asset real estate cases, involving two or more properties ( MARE ); consumer house cases, in which the sole purpose of the filing was to forestall foreclosure of homesteaded property; and non-business house plus one cases, in which the homestead was accompanied by a small income property such as a duplex or quadplex. FN82 Using these definitions, Fenning & Tucker found that:

45% of the SARE cases were filed by individuals, not by corporate or partnership entities. FN83

Approximately one in six SARE cases was filed *pro se*. FN84

SARE cases accounted for 33% of the total chapter 11 filings on Judge Fenning's docket during 1992 and 1993, and for 51% of the real estate related filings. FN85

MARE cases constituted 15% of the chapter 11 filings during this period and nearly 23% of the real estate related filings. FN86

House cases during the study period were essentially over-limit chapter 13 cases. These filings were intended to cure home mortgage arrearages in excess of \$350,000 from debtor's future earned income. Due to the especially high cost of homes in the Los Angeles area, these cases constituted 12% of Judge Fenning's chapter 11 filings, and 18% of the real estate related segment of the chapter 11 case load. FN87

House plus one or small real estate consumer cases involved wage earners owning a homestead plus one additional income property held as an investment. These cases constituted 4% of Judge Fenning's chapter 11 cases during the two-year period. FN88

Virtually all of the house and house plus one cases scheduled debts that would have come within the increased debt limits for chapter 13 cases provided by the Bankruptcy Reform Act of 1994. FN89 Together these two categories accounted for 16% of Judge Fenning's chapter 11 filings. FN90 Assuming that most similar cases would be filed under chapter 13 after the effective date of the 1994 amendments, Fenning & Tucker predicted that a significant drop in chapter 11 filings would be coupled with a slight increase in chapter 13 filings in our district. FN91 As predicted, the Central District has experienced a drop in chapter 11 filings from 1994 to 1995 of about 21%. However, the predicted rise in chapter 13 filings did not occur; both chapter 13 and total filings stayed essentially level. FN92 These house and house plus one cases are probably still being filed, but under chapter 13 instead of chapter 11. The proportion of real estate cases may have been somewhat higher than usual because of the severity of the real estate downturn in Southern California during the early 1990s. FN93 However, such cases have consistently accounted for a large proportion of Judge Fenning's case load throughout the past decade.

*Other Classification and Counting Issues.* We also identified several recurring classification problems. From our analysis of the cover sheets and petitions, several types of businesses posed problems for debtors trying to identify their proper category. For example, are restaurants in the retail or other category? Are mortgage bankers in the professional or real estate category? Are plumbers in the retail, construction, or other category? Should doctors who lost their shirts in real estate be categorized as professional or real estate, given their overwhelmingly real estate related debt?

Another categorization and counting problem is whether a debtor that is a wholly owned subsidiary of a publicly held company qualifies as publicly held ? The counting of multiple affiliate clusters has also been problematic. For example, how many chapter 11 cases are counted when a single, very large apartment complex in West Los Angeles consisting of 35 separate parcels is owned by ten different limited partnerships, nine of which file chapter 11? While

these cases were almost immediately consolidated on debtors' motion, no guidelines exist to ensure consistent reporting of these types of filings.

Some of these gray areas are inevitable and do not lend themselves to either/or choices. Some of these coding problems, however, are common enough that the current Statistical Division categories should be modified or clarified by instructions on the face of the petition. In particular, the petition should indicate how restaurants are to be classified and how to report the nature of a defunct business.

#### *D. Progress and Outcomes in Chapter 11 Cases*

One of the major goals of the Study was to investigate whether different types or sizes of businesses demonstrate different life histories in chapter 11. We started by collecting information about whether the exclusivity period had been extended, whether relief from stay had been granted, and whether the case was dominated by a single creditor. The docket did not provide specifics enough entries to tell us about these case events. Review and analysis of the relevant pleading in each file proved far too time-consuming and involved too much subjective interpretation.

We also tried to assess the outcome of each confirmed plan by evaluating the disclosure statements and plans. The complexities of the legal and business issues described in the plans and disclosure statements involved substantial interpretation questions, making it too difficult to resolve categorization issues within the time available for the project. For example, should a plan promising a 20% payment to unsecured creditors in four months be treated as providing the same outcome as another promising a 20% payment over four years? What about a plan that offers a range of possible payments depending upon the outcome of a lawsuit or sale of property? Should a plan calling for the sale of two properties and the retention of three be considered a liquidation, partial liquidation, or a reorganization? [FN94](#)

We also investigated whether the size of the case was correlated with how long it took to confirm a plan or to dismiss or convert the case. We found no clear pattern. The results are shown in Table 8, 9 and 10 and Graphs F, G & H. The smallest and largest cases appeared to take slightly longer than medium size cases to reach these case milestones, but we have too few cases in the smallest and largest categories to draw any conclusions. It is also possible that a disproportionate number of smaller cases were excluded from the Study Subgroup Cases because they failed to file schedules and were dismissed early in the case, which would affect the representativeness of this data.

#### GRAPHS F

##### MEDIAN TIME TO DISMISSAL BY SIZE

(Study Subgroup Cases)

[Click Here To Continue. . . .](#)

---

#### Footnotes

FN\* United States Bankruptcy Judge for the Central District of California.

FN\*\* Law clerk to Judge Fenning, 1994–95; Law clerk to Judge Richard W. Goldberg of the United States Court of International Trade, 1995–97.

We would especially like to acknowledge the contributions of Judge Fenning's temporary law clerk, Thomas A. Johnson (Golden Gate Univ. Law School, J.D. 1991), who coordinated a portion of the research tasks, and her full-time 1995–96 law clerk, Jacqueline Sloan (Southwestern Univ. Law School, J.D. 1995), who completed the final data review and preparation. We also acknowledge and thank the law students and undergraduate externs who provided invaluable research assistance: Leo E. Brandt (USC, B.S. 1991); Alison Chen (UCLA, B.A. 1995); Amy Haugen (UCLA, B.A. 1995); Ernest Kim (Cornell Univ. Law School, J.D. 1995); Karyn Lim (UCLA, B.A. 1995); Varun Pathria (UCLA, B.A. Candidate 1996); Erik Speier (UCLA, B.A. Candidate 1996); Gil Strauss (UCLA, B.A.

Candidate 1996); Anna Tran (UCLA, J.D. Candidate 1996); and Roberto Verdin (USC, B.A. 1994; Cal. St. Univ. Northridge, B.A. 1988). We express our special thanks to our extern Ashod Mooradian (Southwestern Univ. Law School, J.D. 1995), whose technical expertise and dedication made possible the computerization of the data base and preparation of the graphics.

In addition, we recognize and extend our thanks to the members of Judge Fenning's judicial team in the Clerk's Office: Beryl Dixon, Team II supervisor; Yamira Rodriguez, courtroom deputy; all of the docket clerks; and members of the Records Department who assisted us in retrieving files. Their continuing support in case and calendar management is an essential part of any progress we are able to achieve.

Finally, we have received thoughtful comments and suggestions, as well as much useful information regarding both the overall study and this Article, from many sources, including Bankruptcy Judges Samuel L. Bufford (C.D. Cal.), Leif M. Clark (W.D. Tex.), and Geraldine Mund (C.D. Cal.); Professors Judy Beckner Sloan of Southwestern University Law School and Elizabeth Warren of Harvard Law School; and Jon Ceretto, Clerk of the Bankruptcy Court (C.D. Cal.). However, we take full and sole responsibility for the analysis, findings, conclusions and recommendations set forth in this Article, which do not necessarily reflect the views of those who have assisted us.

**FN1** Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 1994 U.S.C.C.A.N. (108 Stat. 4106) 3368 (Title VI).

**FN2** The leading critiques of chapter 11 have been concisely summarized and dissected by Professor John D. Ayer in *The Role of Finance Theory in Shaping Bankruptcy Policy*, 3 AM. BANKR. INST. L. REV. 53 (1995). *See also* Robert K. Rasmussen & David A. Skeel, Jr., *The Economic Analysis of Corporate Bankruptcy Law*, 3 AM. BANKR. INST. L. REV. 85 (1995); Barry E. Adler, *A World Without Debt*, 72 WASH. U. L.Q. 811 (1994); James W. Bowers, *Rehabilitation, Redistribution or Dissipation: The Evidence for Choosing Among Bankruptcy Hypotheses*, 72 WASH. U. L.Q. 955 (1994); Philippe Aghion et al., *Improving Bankruptcy Procedure*, 72 WASH. U. L.Q. 849 (1994); Lynn M. LoPucki, *The Trouble With Chapter 11*, 1993 WIS. L. REV. 729; Michael Bradley & Michael Rosenzweig, *The Untenable Case for Chapter 11*, 101 YALE L.J. 1043 (1992).

**FN3** *See* 28 U.S.C. § 604(a)(2) (1994) (requiring director of Administrative Office of Courts to prepare and transmit semiannually . . . statistical data and reports as to the business of the courts ).

**FN4** *See, e.g.,* Lynn M. LoPucki & William C. Whitford, *Corporate Governance in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 141 U. PA. L. REV. 669 (1993).

**FN5** *See* Lynn M. LoPucki, *The Debtor in Full Control Systems Failure Under Chapter 11 of the Bankruptcy Code? (Part II)*, 57 AM. BANKR. L.J. 247, 264 (1983) (noting that study found only 2 of 35 surveyed companies in chapter 11 had more than 3 shareholders and were not family owned).

**FN6** *See infra* part II.

**FN7** *See, e.g.,* ADMIN. OFF. OF THE U.S. CTS., 1994 DIRECTORS REPORT (reporting 82,616 bankruptcy cases in Central District, compared to 28,091 cases for second highest district for period ending June 30, 1995).

**FN8** *See* discussion *infra* part III.C.4. An earlier phase of the empirical study focused on real estate filings. It concluded that 64% of Judge Fenning's 1992-93 chapter 11 filings essentially involved only real estate assets, as opposed to operating businesses or other types of assets. Lisa Hill Fenning & Brian Tucker, *Profile of Single Asset Real Estate Cases*, 1994 AMER. BANKR. INST. ANN. SPRING MEETING 1 (Apr. 1994), *available in* WL 709 PLI/COMM. 537, *reprinted in* COMM. L. & BANKR. SEC. NEWSL. (Los Angeles County Bar Assoc.), Summer 1994, at 4.

**FN9** EDWARD M. FLYNN, STATISTICAL ANALYSIS OF CHAPTER 11, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (Oct. 1989) (on file with author).



**FN10** Gordon Bermant et al., *A Day in the Life: The Federal Judicial Center's 1988–1989 Bankruptcy Court Time Study*, 65 AM. BANKR. L.J. 491, 496–98, 522–23 (1991).

**FN11** Non–real estate categories of businesses listed on the bankruptcy petition include retail/wholesale, manufacturing/mining, farming, construction, industry/business. *See* FED. R. BANKR. P., VOLUNTARY PETITION FORM at 695 (Norton 1994) (Form B1) [hereinafter VOLUNTARY PETITION].

**FN12** *See infra* part II.

**FN13** *See* Appendix A, *infra*.

**FN14** FLYNN, *supra* note 9, Introduction.

**FN15** *See* 28 U.S.C. § 604 (1994).

**FN16** ADMIN. OFF. FORM BC–103.

**FN17** *Id.*

**FN18** *See* Bermant et al., *supra* note 10 (reporting FJC results).

**FN19** The absence of completed cover sheets for a substantial portion of our chapter 11 cases filed in 1991 prevented any comparison between scheduled and reported data for about 20% of our study cases.

**FN20** VOLUNTARY PETITION, *supra* note 11.

**FN21** *Id.*

**FN22** *Id.*

**FN23** FED. R. BANKR. P., LETTER OF TRANSMITTAL FROM ADVISORY COMMITTEE TO JUDICIAL CONF. 683 (Norton 1994) (describing process by which forms were revised).

**FN24** These forms are frequently completed by debtor's counsel. In fact, even attorney filing services often fill in blanks at the filing window at the insistence of the intake clerk.

**FN25** BANCAP stands for Bankruptcy Court Automation Project and NIBS is an acronym for National Interim Bankruptcy System or, as it was later named, National Integrated Bankruptcy System. *See Federal Court Improvement Act of 1994: Hearings Before the Subcomm. on Intellectual Property and Judicial Admin. of the Comm. on the Judiciary*, 103d Cong., 2d Sess. 152 (1994) (statement of Henry R. Wray, Director, Administration of Justice Issues, General Gov't Div., U.S. Gen. Accounting Office); J. Owen Forrester, *The History of the Federal Judiciary's Automation System*, 44 AM. U. L. REV. 1483, 1486 (1995). NIBS was developed by personnel because of initial delays in the installation of BANCAP. *Improvement Hearings* at 152.

**FN26** *See supra* text following note 13.

**FN27** Errors are frequently discovered by bankruptcy judges reviewing incoming petitions and schedules, or by Assistant U.S. Trustees or panel trustees conducting the first meeting of creditors, as required by Bankruptcy Code § 341(a).

**FN28** ANALYSIS AND INFO. DIV., U.S. BANKRUPTCY COURT, CENT. DIST. OF CAL., CASELOAD STATISTICS 1994 (1995) (on file with author) [hereinafter CENT. DIST. BANKRUPTCY STATISTICS].

**FN29** *Id.*

**FN30** *Id.*

**FN31** The most frequently cited Administrative Office of the United States Courts statistics are annually reported for the statistical year ending June 30. ANNUAL REPORT OF THE DIRECTOR OF THE ADMIN. OFF. OF THE U.S. CTS. Because the study data was collected on a calendar year basis, this Article has relied instead on calendar year statistical information that is also regularly reported by the Administrative Office and republished in other convenient reference sources. *See* FED. JUD. WORKLOAD STATS. (Dec. 31, 1991–94); BANKR. CT. DECISIONS, WKLY NEWS & COMMENT, Mar. 19, 1992, at A8 (YE 12/91), BANKR. CT. DECISIONS, WKLY NEWS & COMMENT, Apr. 8, 1993, at A12 (YE 12/92); BANKR. CT. DECISIONS, WKLY NEWS & COMMENT, Feb. 10, 1994, at A12 (YE 12/93); BANKR. CT. DECISIONS, WKLY NEWS & COMMENT, May 16, 1995, at A4 (YE 12/94).

**FN32** *See id.*

**FN33** *See* 11 U.S.C. § 350 (1994). The process of closing a case involves a checklist verification that all required papers are in the file and all required docket entries have been made. Once a case is closed, the file can be shipped to inactive records storage.

**FN34** *See* § 330 (awarding trustee reasonable compensation for services rendered); FED. R. P. 5009 (1994) (stating presumption that chapter 7 estate has been fully administered upon trustee certification and final report); 11 U.S.C. § 507 (1994) (stating administrative expenses under 11 U.S.C. § 503(b) have first priority upon distribution of estate); *id.* § 726(a)(1) (authorizing payment under § 507 to occur during distribution of estate).

**FN35** *See id.* § 362(c)(2)(A) (providing that automatic stay terminates at time case is closed).

**FN36** *See id.* § 704(9) (requiring trustee to make final report and file final account of the administration); *id.* § 1202(b) (requiring chapter 12 trustee to comply with requirements of § 704); *id.* § 1302(b) (imposing same requirements for chapter 13 trustee).

**FN37** *See* 11 U.S.C. § 1106 (a)(7) (1994) (authorizing court to order chapter 11 trustee to file report of payouts which is not otherwise required). No such reports are required for debtors in possession or their successors.

**FN38** *See id.* §§ 1129, 1141. After confirmation, the court generally receives no further information on the payout, even if the cases is later converted to chapter 7. *See id.* § 1112 (conversion of chapter 11 to chapter 7 allowed without mention of results of original chapter 11).

**FN39** FLYNN, *supra* note 9 (examining cases in period of 1980–1989). This report analyzed an empirical study of nearly 2,400 confirmed cases in 15 districts that was conducted by Ernst & Young, Inc. *Id.* at 9. In addition, the report drew on SARD data. *Id.* at 7.

**FN40** *Id.* at 10–11.

**FN41** Susan Jensen–Conklin, *Do Confirmed Chapter 11 Plans Consummate? The Results of a Study and Analysis of the Law*, 97 COM. L.J. 297, 318 (1992) (finding confirmation rate of 17% in study of 260 cases).

**FN42** Our study population generally included related cases converted to chapter 11 or transferred to Judge Fenning. However, a cluster of 160 oil and gas limited–partnership chapter 11 cases were eliminated from the Study Cases because they were specifically transferred to Judge Fenning for the purposes of joint administration. This group of cases was also anomalous in that virtually no secured or unsecured creditors were scheduled; the only interested parties were the limited partners.

During the entire study period, Judge Fenning received assignments of only chapter 7 and 11 cases. The handful of chapter 9 and 12 cases in the district were specially assigned, while chapter 13 cases were handled by a team of four judges in the Los Angeles division. As of January 1, 1995, all 13 of the division’s judges went on the chapter 13

wheel. It should also be noted that the total number of new cases assigned to Judge Fenning was reduced temporarily in 1993 for medical reasons, but the temporary reduction would not have affected randomness.

**FN43** There are several respects in which the Study Subgroup Cases may be unrepresentative. First, incomplete filings (in which schedules were never filed) constitute a large proportion of the cases omitted from the subgroup. Such cases account for the bulk of our early dismissals, so that the median dismissal times for the Study Subgroup Cases are probably overstated. Moreover, most of these cases remained incomplete because relief from stay was granted very early in the case to allow completion of a foreclosure, or sometimes a commercial eviction. The lifting of the stay would have mooted the original purpose of the filing, resulting in abandonment of the case. This suggests that the proportion of real estate cases among the entire population of Study Cases may be somewhat higher than our statistics. Finally, the Study Subgroup probably includes most of the cases that fell into the larger three SARD asset categories, because they were more likely to file schedules and move forward with the case, and less likely to be derailed by a single relief from stay motion at the outset.

**FN44** A major study of business bankruptcy cases is currently underway by Professors Jay Westbrook and Teresa Sullivan of the University of Texas, and Professor Elizabeth Warren of Harvard Law School. *See* Elizabeth Warren & Jay Westbrook, *Searching for Reorganization Realities*, 72 WASH. U. L.Q. 1257 (1994) (explaining scope, methods and purpose of study). Unlike our study, conclusions from that random sample should be generalizable to the entire population of business bankruptcies. Funded by the National Conference of Bankruptcy Judges Endowment for Education, the National Bankruptcy Conference and other sources, this comprehensive longitudinal study of bankruptcy cases filed in 1993 should shed much light on the demographics of the debtors and the outcomes of their bankruptcy cases.

**FN45** *See* Jim Carlton, *Southern California is Rattled as Prices of Homes Keep Falling*, WALL ST. J., Oct. 13, 1992 at A1 (discussing drop in Southern California home prices).

**FN46** For an explanation of some of the impacts of local legal culture on the practice of bankruptcy law, *see* Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J.L. & PUB. POL'Y 801, 806 (1994) (claiming local legal culture exercises unanticipated, but pervasive and systematic influences on federal bankruptcy system).

**FN47** Until the end of 1994, all docketing in the Central District of California was manually entered on paper dockets; on-line computerized case information was not available from the clerk's office.

**FN48** *See* Appendix A, *infra* (describing study design and procedure in more detail).

**FN49** The Central District of California reported 6,530 business cases, out of a total of 9,063 chapter 11 filings. *See* CENT. DIST. BANKRUPTCY STATISTICS, *supra* note 28.

**FN50** *Id.* Central District's higher rate of non-business filings is probably due to our high housing costs. Many consumers filed under chapter 11 during this period to save houses subject to mortgages in excess of the \$350,000 secured debt limit then in effect for chapter 13 cases. *See* 11 U.S.C. § 109(e) (1988); *infra* section III(c)(4) (discussing the prevalence of real estate based filings).

**FN51** STATISTICAL ANALYSIS AND REPORTS DIVISION, REVISED BANKRUPTCY STATISTICAL REPORTING INSTRUCTIONS, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 15 (July 1991) [hereinafter SARD REPORTING INSTRUCTIONS].

**FN52** ADMIN. OFF. FORM BC-103.

**FN53** *See* Bermant, *supra* note 10 (describing relevance of this distinction in analysis of case loads).

**FN54** *See* FED. R. BANKR. P. 1001 (creating and defining the role of the Bankruptcy Rules as the official source for forms).

**FN55** VOLUNTARY PETITION, *supra* note 11.

**FN56** *See supra* text accompanying notes 20–22.

**FN57** VOLUNTARY PETITION, *supra* note 11.

**FN58** This phantom megacase problem does not affect the judicial workload formula, developed by the FJC, because the new categories were added *after* the development of the formulas.

**FN59** FED. R. BANKR. P. 1007(c).

**FN60** *See id.* (allowing extension to be granted on motion for cause shown and notice to United States Trustee, creditor committees and any other party court may direct); *see also* U.S. BANKR. CT. LOCAL R. C.D. CAL. 103(7)(b) (providing certain documents can be filed after petition).

**FN61** The small cases may be underrepresented in the Study Subgroup Cases. *See supra* notes 42–43 and accompanying text (discussing make-up of group).

**FN62** *See* Table 5 and Graph C, *infra* p. 138.

**FN63** VOLUNTARY PETITION, *supra* note 11.

**FN64** The information obtained from the responses to this inquiry is not generally available by chapter of filing on a district-by-district basis. Therefore, out of necessity, our data for chapter 11 is compared to the Administrative Office's data for all filings under *all* chapters in this district.

**FN65** *See* VOLUNTARY PETITION, *supra* note 11.

**FN66** SARD REPORTING INSTRUCTIONS, *supra* note 51, at 14. Those instructions referred to corporation closely held as the alternative to publicly held, even though the petition used the term corporation not publicly held. That terminology was a carry-over from the old bankruptcy cover sheet.

**FN67** THE ADMIN. OFFICE OF THE U.S. COURTS, JUD. CASELOAD PROFILE, U.S. BANKR. CTS: CAL. CENTRAL (*Profile Draft*) (May 1995) [hereinafter JUD. CASELOAD PROFILE] (on file with Judge Fenning). This new report format is still under development. It reports most categories of Statistical Division data at the district level. This format produces an extremely informative report, which we encourage the Administrative Office to finalize and include as one of the regular official reports. We would suggest, however, that the Profile report filings according to entity type separately for chapters 11 and 7.

**FN68** *Id.*

**FN69** *Id.*

**FN70** *Id.*

**FN71** THE 1995 BANKRUPTCY YEARBOOK & ALMANAC 46, 68, 69 (Christopher M. McHugh ed., 5th ed.) [hereinafter BANKRUPTCY YEARBOOK]. During the four years of our study, approximately 372 publicly traded companies filed chapter 11 cases, constituting less than 1% of the more than 80,000 chapter 11 filings nationwide during that period. *Id.* at 46. The proposition that publicly held corporations constitute only a fraction of 1% of all chapter 11 cases is further confirmed by a study of chapter 11 bankruptcy filings by corporations listed on the New York Stock Exchange, which found only 162 such cases in the *decade* ending in 1989. *See* Bradley & Rosenzweig, *supra* note 2, at 1059–60. As noted, we found one publicly traded corporation among 510 chapter 11 cases in our study.

How many filings by publicly held corporations that might be expected depends, in part, on how many such corporations there are. Unable to locate any readily available official figures, we contacted the Securities Exchange Commission to determine the number of publicly held corporations that are registered with the SEC. According to sources at the SEC, there is no official number of publicly held corporations for a variety of reasons. For its own resource and staffing purposes, the SEC uses an estimate of between 11,000 and 13,000 publicly held corporations in the United States at any given time. Telephone Inquiry with Herb Scholl, Security Exchange Commission, Division of Corporate Finance (January 29, 1996).

**FN72** BANKRUPTCY YEARBOOK, *supra* note 71, at 68.

**FN73** *Id.* at 46.

**FN74** JUDICIAL CASELOAD PROFILE, *supra* note 67, at 46.

**FN75** BANKRUPTCY YEARBOOK, *supra* note 71.

**FN76** *See* JUD. CASELOAD PROFILE, *supra* note 67.

**FN77** *See* Table 6, *supra* p. 140; *see* Graph D, *supra* p. 149.

**FN78** This case is not included in the Study Subgroup Cases statistics because neither SARD nor scheduled data is available. We know about these extraordinary debts from stipulations to nondischargeability and other pleadings filed with the court. The case was commenced as an involuntary filing, and later converted to a voluntary chapter 11 with a trustee in possession. The debtor has taken the Fifth Amendment with respect to almost all relevant questions on the schedules and statement of affairs.

**FN79** VOLUNTARY PETITION, *supra* note 11.

**FN80** Fenning & Tucker, *supra* note 8.

**FN81** *Id.* at 4.

**FN82** *Id.* at 4–5.

**FN83** *Id.* at 4.

**FN84** *Id.*

**FN85** Fenning & Tucker, *supra* note 8, at 4.

**FN86** *Id.*

**FN87** *Id.*

**FN88** *Id.* at 5.

**FN89** 11 U.S.C. § 109(e) (1994).

**FN90** Fenning & Tucker, *supra* note 8, at 5.

**FN91** *Id.*

**FN92** *See* CENTRAL DISTRICT OF CALIFORNIA BANKRUPTCY COURT, IN-HOUSE CODE REPORT, REPORTING MONTH: December 1995 (on file with author).

**FN93** *See* Carlton, *supra* note 45.

**FN94** A copy of the coding sheet that we employed is included in Appendix B.