BANKRUPTCY BY THE NUMBERS

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A TALE OF TWO CHAPTERS: FINANCIAL DATA

In our July/August 2002 **ABI Journal** article, we provided a brief comparison of chapter 7 and chapter 13 cases. In this article we take a closer look at the available information on collections and distributions in chapter 7 asset cases and chapter 13 cases. For a variety of reasons, direct financial comparisons between the two chapters cannot be made[2]. Nevertheless, it is possible to provide a general overview.

According to statistics compiled by the Administrative Office of the United States Courts, during the year ended September 30, 2001 (FY 2001) nationwide 960,844 chapter 7 cases and 333,700 chapter 13 cases were closed. Thus, nearly three times as many cases are closed in chapter 7 as in chapter 13.[3] Excluding cases from North Carolina and Alabama,[4] case closings during the year amounted to 928,980 chapter 7 cases and 302,046 chapter 13 cases

Chapter 13 is used primarily by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. Individuals are ineligible to file a chapter 13 case unless they have regular income, and most chapter 13 cases result in at least some payments to creditors. About one-third of chapter 13 debtors complete their repayment plans, and many

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[1] All views expressed in this article are those of the authors, and do not necessarily represent the views of the Executive Office for United States Trustees or the Department of Justice.

[2]As noted in our previous article:
" Several factors create difficulties for making case-based comparisons between chapter 7 and chapter 13 disbursements. Disbursements in chapter 7 cases are made when the case is closed and are reported at that time. The average life-span of chapter 7 cases filed by consumers in which assets are liquidated and disbursed is about three years. Chapter 7 trustees report the disbursements individually for each case. Chapter 13 payments, by contrast, are made monthly during the life of the case, typically three to five years. At the end of each fiscal year, standing chapter 13 trustees report, in the aggregate, the disbursements they made to various classes of creditors. Disbursements from a single case may be spread over five annual reports. Although the total disbursements from each case become part of the case file in the court, there is no national database of case-by-case distributions comparable to the one for chapter 7. Therefore, direct comparisons are not possible. Additionally, some chapter 13 payments include non-delinquent post-petition mortgage payments and installment payments to debtors' attorneys."

[3] The ratio of chapter 7 to chapter 13 filings is somewhat lower because the closing figures are based on the chapter at closing and many cases that are filed under chapter 13 or chapter 11 are converted to chapter 7. Also, most chapter 7 cases are closed about four months after filing, while chapter 13 cases are often three to five years old at closing.

[4] The six judicial districts in North Carolina and Alabama are not part of the U.S. Trustee program, and are served by Bankruptcy Administrators. The financial information in this article does not include Alabama and North Carolina cases. These two states account for about nine percent of chapter 13 filings and three percent of chapter 7 filings nationwide.

others make payments for a period of time before their case is dismissed.

In chapter 7, assets that are not exempt from creditors are collected and reduced to money, which is distributed to creditors by a private trustee appointed to administer the estate. Chapter 7 debtors are not required to have assets or equity, and relatively few chapter 7 cases result in collection and payment of funds to creditors. There were 35,874 chapter 7 asset cases closed during the year – about 3.9% of all chapter 7 cases closed during the year.

Total disbursements to creditors are much higher in chapter 13 than in chapter 7. During FY 2001, $5.17 billion was disbursed in chapter 7 and chapter 13 cases combined, with about 70% of this total coming in chapter 13 cases. More than $4 billion was disbursed to creditors, including about $2.52 billion distributed to secured creditors, $1.17 billion to general unsecured creditors, and $366 million to priority creditors. One would expect the costs associated with administering assets under chapter 7 to be higher than the costs of distributing the proceeds of voluntary payments from debtors under chapter 13, and they are. Table 1 shows the amount and percent of disbursements to the three main creditor categories and for all other payments during FY 2001.

TABLE 1.	**CHAPTER 13**	***PERCENT OF TOTAL DISBURSED***	**CHAPTER 7**	***PERCENT OF TOTAL DISBURSED***
TOTAL DISBURSEMENTS	**$3,809,111,908**		**$1,532,093,993**	
SECURED CREDITORS	**$2,065,694,506**	**54.2%**	**$451,101,002**	**29.4%**
PRIORITY CREDITORS	**$272,376,337**	**7.2%**	**$93,887,058**	**6.1%**
GENERAL UNSECURED CREDITORS	**$815,847,426**	**21.4%**	**$356,369,709**	**23.3%**
ALL OTHER DISBURSEMENTS[5]	**$655,193,639**	**17.2%**	**$630,736,224**	**41.2%**

In chapter 13 cases, the proportion of disbursements paid to secured creditors was much higher than in chapter 7, amounting to well over one-half of total disbursements. Due to recent changes in reporting requirements for chapter 13 standing trustees, a better breakdown of the nature of secured debt payments in chapter 13 cases is becoming available. During FY 2001, the amount reported included $460.9 million in post-petition mortgage payments, $233.5 million in mortgage arrears, $873.9 million in other secured debt payments, and $467.9 million where the type of secured creditor was not reported. Of course, chapter 7 payments of secured debts do not include any post-petition mortgage payments.

The reality of asset liquidation in chapter 7 is that a relatively small number of very large cases account for the bulk of all disbursements. About six percent of chapter 7 asset cases involved over $100,000 in disbursements, but these large cases accounted for more than 78% of the total amount disbursed. Although

[5] In chapter 7 cases 'other disbursements' include trustee and attorney fees, other professional fees, prior chapter costs, administrative expenses, and money returned to debtors A fuller breakdown of these expenses is included in Table 2. In chapter 13 cases the priority debt disbursements include $7.0 million in post-petition child support payments. The other chapter 13 disbursements include the cost of operating the Program (approx. $212 million), refunds to debtors ($169.6 million), plan payments to debtors' attorneys ($272 million), and several other relatively small expense categories.

we do not have case by case data on distributions in chapter 13 cases, we suspect that very few involve more than $100,000 in payments. Thus, an alternative comparison of financial data in the two chapters would exclude the very large chapter 7 cases, most of which are business cases or cases originally filed under chapter 11. Table 2 compares disbursements between the large and small chapter 7 cases.

TABLE 2 CHAPTER 7 ASSET CASES CLOSED FY 2001					(ALL $ FIGURES IN 1,000's)
	ALL CASES	CASES WITH DISB. UP TO $100,000		CASES WITH DISB. OVER $100,000	
TOTAL ASSET CASES CLOSED	35,834	33,686	% OF TOTAL DISBURSEMENTS	2,148	% OF TOTAL DISBURSEMENTS
TOTAL DISBURSEMENTS	$1,532,094	$335,650		$1,196,444	
TRUSTEE FEES	$83,561	$43,860	13.0%	$39,665	3.3%
ATTORNEY FEES	$180,239	$46,643	13.9%	$133,597	11.2%
OTHER PROF. FEES	$70,318	$14,659	4.4%	$55,659	4.7%
ADMIN. EXPENSES & PRIOR CHAP. COSTS	$208,841	$26,211	7.8%	$182,630	15.3%
SECURED CREDITORS	$451,101	$29,789	8.9%	$421,312	35.2%
PRIORITY CREDITORS	$93,887	$23,964	7.1%	$69,923	5.8%
GENERAL UNSECURED	$356,777	$126,942	37.8%	$229,836	19.2%
OTHER PAYMENTS	$87,370	$23,548	7.0%	$63,822	5.3%

When the largest chapter 7 asset cases are excluded, the proportion of total disbursements paid to secured creditors (8.9%) falls to less than one-sixth the average for chapter 13 cases (54.2%). However, the proportion paid to general unsecured creditors in the smaller chapter 7 cases is nearly double the proportion paid either in chapter 13 cases or the larger chapter 7 cases (See table 3).

TABLE 3.	CHAPTER 13	*PERCENT OF TOTAL DISBURSED*	CHAPTER 7	*PERCENT OF TOTAL DISBURSED*
TOTAL DISBURSEMENTS	$3,809,111,908		$335,649,547	
SECURED CREDITORS	$2,065,694,506	54.2%	$29,788,706	8.9%
PRIORITY CREDITORS	$272,376,337	7.2%	$23,963,644	7.1%
GENERAL UNSECURED CREDITORS	$815,847,426	21.4%	$126,941,728	37.8%
ALL OTHER DISBURSEMENTS[6]	$655,193,639	17.2%	$154,955,469	46.2%

CONCLUSIONS: Although direct financial comparisons between chapter 7 and chapter 13 cannot be made, sufficient data is available to make certain comparisons. Both the annual dollar amount and the percentage of total disbursements paid to creditors are much higher in chapter 13 cases, with the bulk of the payments being made to secured creditors. The majority of the money disbursed in chapter 7 asset cases comes from a small number of relatively large cases. In the smaller chapter 7 asset cases, a higher percentage of disbursements is paid to general unsecured creditors than in both chapter 13 cases and in larger chapter 7 cases.