BANKRUPTCY BY THE NUMBERS

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CHAPTER 7 ASSET CASES: Part II:

This article continues the review of chapter 7 asset cases that we began in the December/January, 2003 issue.[2] In the earlier article we reported that about 4% of all chapter 7 cases included non-exempt assets which, for the 12 months ending June 30, 2002, resulted in $825 million being returned to pre-petition creditors. Further, we showed that a very large proportion of these funds are collected from a very small proportion of the asset cases. In fact, over 86% of all disbursements arose from only 10% of the cases. In this article we examine more closely the large proportion of small dollar asset cases. We define these "small asset cases" to be those with less than $10,000 in collections and distributions.

ADMINISTRATION OF SMALL ASSET CASES: The number of small asset cases that are administered is growing. As the following chart illustrates, the number of larger asset cases closed each year has remained fairly constant since the mid 1990s, while the volume of smaller asset cases closed has nearly doubled. In 2002 small asset cases were nearly three-quarters of all asset cases closed.

YEAR	TOTAL ASSET CASES CLOSED	LARGE ASSET ($10K OR MORE)	SMALL ASSET (UNDER $10,000)	PERCENT SMALL ASSET CASES
1994	29,157	10,006	19,151	65.7%
1995	23,417	8,559	14,858	63.4%
1996	24,617	9,097	15,520	63.0%
1997	25,534	8,657	16,877	66.1%
1998	30,746	9,631	21,115	68.7%
1999	33,884	10,293	23,591	69.6%
2000	38,433	10,962	27,471	71.5%
2001	36,326	10,357	25,969	71.5%
2002	39,368	10,320	29,048	73.8%

MONEY IN SMALL ASSET CASES: The total amount of money handled in the small asset cases was just under $100 million in 2002. This compares with the over $1.1 billion that was handled in the larger asset cases, and the over $4 billion that was disbursed in chapter 13 cases during the year. The following table compares the small asset cases with the larger ($10,000 and above) asset cases

[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] Flynn, Ed, and Bermant, Gordon, and Hazard, Suzanne, "Chapter 7 Asset Cases" 21 Amer. Bnkry. Inst. J. (December/January 2003).

ASSET CHAPTER 7 CASES CLOSED DURING CALENDAR YEAR 2002		
	SMALL ASSET CASES (UNDER $10,000)	LARGE ASSET CASES ($10,000 OR MORE)
TOTAL CASES CLOSED	29,048	10,320
TOTAL DISBURSED	$99,397,506	$1,165,865,159
TRUSTEE FEES	$21,861,969	$59,838,299
ATTORNEY FEES & EXPENSES TO TRUSTEE OR FIRM	$3,939,062	$40,759,293
OUTSIDE ATTORNEY FEES	$3,075,070	$103,171,646
OUTSIDE PROFESSIONAL EXPENSES	$1,629,005	$47,811,796
ADMINISTRATIVE EXPENSES	$4,492,136	$120,879,947
PRIOR CHAPTER COSTS	$288,361	$41,368,179
PAYMENTS TO SECURED CREDITORS	$1,066,059	$324,976,358
PAYMENTS TO PRIORITY CREDITORS	$4,419,609	$61,302,006
PAYMENTS TO GENERAL UNSECURED CREDITORS	$54,384,778	$278,449,120
OTHER PAYMENTS	$4,241,457	$87,308,515

The majority of all money collected is paid to general unsecured creditors. In 2002 nearly 55% of the money disbursed in small asset cases was paid to general unsecured creditors, compared to less than 24% of funds in the larger asset cases. Ninety percent of the small asset cases included at least some payments to general unsecured creditors.

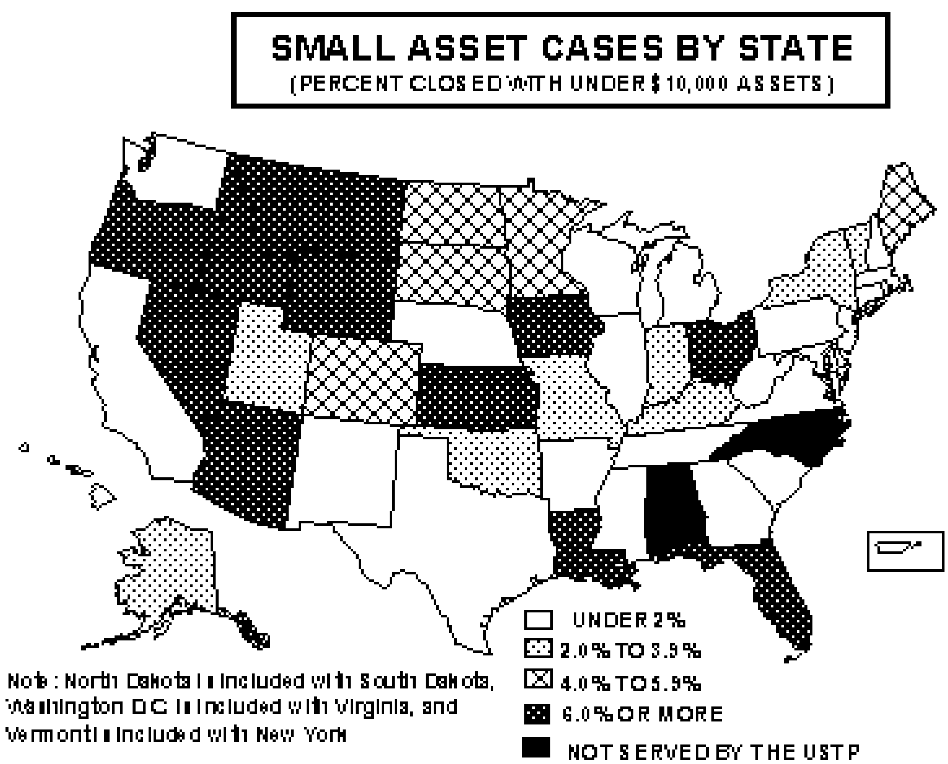
Trustee fees are proportionally high in the small asset cases under the statutory scheme. Section 326(a) of the Code allows a trustee fee of up to 25% of the first $5,000 distributed, and 10% for distributions between $5,000 and $50,000. Thus, in a case with $3,000 in distributions a trustee may be awarded up to $750, and in a case with $10,000 in distributions the maximum fee is $1,750. The court allowed the maximum fee in approximately 92% of the small asset cases closed during 2002.

Only about seven percent of total payments in the small asset cases were for attorney fees. In fact, more than three quarters of the cases had no post-petition attorney fees at all. In the cases where attorney fees were reported, they amounted to an average of 22.2% of total receipts. In about 70% of the cases with attorney fees, the attorney was actually the case trustee or his/her firm rather than outside counsel. In the larger asset cases, attorney fees were reported in 73.4% of the cases closed, and these payments accounted for 12.2% of total payments.

What is being liquidated in these cases? Right now the anecdotal data is that the assets are often tax refunds and non-exempt equity in autos. The United States Trustee Program, the chapter 7 trustees, and the trustees’ software providers have implemented a new reporting system that will provide an answer to this question in the near future.

Using the new Form 4 data collection tool described in the prior article, we can begin to delve further into the analysis of the small asset cases. Chapter 7 trustees provided Form 4 data for 26,828 of the small asset cases closed in 2002, and 92% of these cases distributed something to the unsecured creditors. These 24,350 cases generated $82 million in funds available for distribution, of which $50.5 million (62%) went to general unsecured creditors, an average of almost $2,100 per case. The average amount of allowed unsecured claims in these cases $30,300, meaning that these creditors, on average, recovered 6.8% as a result of the chapter 7 trustee's efforts.

STATE-BY-STATE VARIATION: In our prior article we noted that there was a wide variation in the percentage of asset cases by state. Closer examination of the data shows that most of this variation is due to the number of small asset cases closed in each state. In some states, small cases are routinely administered, while in others they are almost never administered. For example, a chapter 7 case filed in Louisiana is nearly 50 times more likely to be closed as a small asset case than is a chapter 7 case filed in Mississippi. We surmise that such a dramatic difference in outcomes is not fully attributable to state exemptions and different debtor circumstances in the two states. The following map shows the percentage of chapter 7 cases closed as asset cases in each state.[3]



[3] Most small asset cases are between one and three years old at the time of closing. To estimate the percentage for each state we divided the number of small asset cases closed in 2002 by average filings in the state during 2000 and 2001.

Five states accounted for nearly one-half of the small asset cases closed (Florida- 4,365, Ohio-3,305, Arizona-2,167, Nevada-1,803, and Louisiana-1,637). These same five states accounted for just under 20% of the larger asset cases closed (2,029 of 10,320), and less than 16% of all chapter 7 case filings. At the other extreme were six states that each had less than 30 small asset cases closed during the year (Delaware-5, New Mexico-12, New Hampshire-19, Rhode Island-26, Hawaii-28, and Mississippi-29).

INTRASTATE VARIATION: It is plausible to believe that differences in state exemption laws may account for some of the variability in the administration of small chapter 7 cases. On the other hand, there is such wide variation within many states that exemption law differences can not possibly explain all of the variation. For example, the proportion of small asset cases in the Eastern District of California is more than 10 times as high as in the Central and Southern Districts of California. In general, the proportion of small asset cases seems to be higher in the less urban portions of a given state. Here are a few examples that show substantial intrastate variation based on cases closed during 2002.

		PERCENT CLOSED AS SMALL ASSET CASES
CALIFORNIA:	Eastern District	2.24%
	Northern District	.87%
	Southern District	.13%
	Central District	.09%
FLORIDA:	Northern District	15.7%
	Middle District	9.3%
	Southern District	3.1%
INDIANA:	Northern District	4.4%
	Southern District	1.2%
MISSOURI:	Western District	5.4%
	Eastern District	2.6%
MICHIGAN:	Western District	3.1%
	Eastern District	1.0%

DIFFERENCES BY TRUSTEE: There are about 1,220 active panel trustees serving nationwide. For the year this works out to about 24 small asset cases closed per trustee. However, our records show that 12 trustees closed more than 200 small asset cases during the year- accounting for more than 10% of the national total. Additionally, 21 other high volume trustees closed at least 125 small asset cases during the year. At virtually every location, one or two trustees closed far more small asset cases than other trustees serving at the same location with similar case draws.

CONCLUSION: Most chapter 7 asset cases are involve relatively small amounts of money. A substantial proportion of the money in these small asset cases is paid to general unsecured creditors - a far higher percentage than in the larger chapter 7 asset cases or in chapter 13 cases. Whether or not a chapter 7 case results in collection and payment of funds by the trustee is often a function of where the case is filed, and which trustee from the panel is assigned to the case.