

BANKRUPTCY BY THE NUMBERS

BY: ED FLYNN¹

Executive Office for United States Trustees

Edward.Flynn@usdoj.gov

GORDON BERMANT

Burke, Virginia gordon.bermant@verizon.net

RELATED CHAPTER 11 FILINGS:

By the time this article is published, the Administrative Office of the United States Courts will have released filing statistics for the first quarter of 2004. These figures show that chapter 11 filings during the quarter were about twice as high as for the first quarter of 2003.

The raw numbers are misleading. All of the apparent increase is due to one large case with multiple filings. On March 3, 2004, Footstar, Inc. filed in the Southern District of New York. This case included approximately 2,510 separate filings – about 20% of all of the chapter 11 cases that are expected to be filed nationwide this year. This is by far the largest number of related cases ever to be filed.

The Footstar filing illustrates a recurring problem with interpreting chapter 11 filing numbers. Some cases, particularly those filed since 1999, have included a very large number of related filings. Bankruptcy courts have several options on how to handle such related cases. They may handle them separately, administer them jointly under Bankruptcy Rule 1015 (b), or, exercising their equitable discretion, consolidate them if the relationships among the debtors justify substantive consolidation.²

The Footstar filing guarantees that the Southern District of New York will set a new annual record for chapter 11 filings in a judicial district, currently held by the Central District of California, which reported 2,587 chapter 11 filings during 1992.

The previous record holder for related filings in a single case was the filing of approximately 870 chapter 11 petitions in Delaware by the Loewen Group in June 1999. There have been several statistical consequences of the Loewen case. For example, the initial filing inflated chapter 11 filings for the year by about ten percent. Largely due to the Loewen filing, the confirmation rate for cases filed in 1999 rose to 44.7%, compared to the 30.2% confirmation rate for 1998 chapter 11 filings.

¹All 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.

²Courts review a variety of factors. See for example, *In re Drexel Burnham Lambert Group, Inc.* 138 BR 723, 764 (Bkry SDNY, 1992). Consolidation, as distinct from joint administration, is neither approved nor prohibited by Bankruptcy Rule 1015.

It is important to understand how raw filing numbers sometimes do not represent the activities of independent business entities. There is no nationally maintained database of chapter 11 filings that allows exact reporting of the numbers of chapter 11 petitions that represent coordinated activity by related business entities. Here we use an approximation based on data that were collected for other administrative purposes. Statistics for this article were obtained from the Fee Information and Collection System (FICS) database maintained by the Executive Office for United States Trustees to support collection of quarterly chapter 11 fees.³

To estimate related filings, we chose instances where 10 or more cases were filed in the same office and assigned to the same judge on a single day. This methodology identifies nearly all instances of multiple related filings because related cases are generally filed simultaneously. (One notable exception, however, is the Enron case, which involved about 180 cases filed on about 60 separate days over a two-year period.). A number of other related filings involve between two and nine cases, but here we concentrate only on those cases with numerous related filings. In our opinion, our method underestimates the numbers of related filings. This is because we exclude possible related filings with fewer than 10 cases, and we exclude related filings made on different days.

For purposes of exposition in the tables that follow, we define a “parent case” as the first in a list of cases as defined above, and a “child case” as one of the other cases following the first case. The first table shows total filings, numbers of parent and child cases, and the percentage of total filings that were child cases.

YEAR	TOTAL CHAPTER 11 FILINGS	FILINGS WITH 10 OR MORE RELATED CASES (PARENT CASES)	TOTAL RELATED CASES (CHILD CASES)	PERCENT OF FILINGS THAT WERE CHILD CASES
1990	20,586	39	776	3.8%
1991	23,969	39	645	2.7%
1992	22,842	32	563	2.5%
1993	19,114	14	336	1.8%
1994	14,750	8	101	.7%
1995	12,727	14	549	4.3%
1996	11,684	16	295	2.5%

³The FICS database does not include any information on chapter 11 cases filed in Alabama and North Carolina, which are served by Bankruptcy Administrators.

1997	10,515	14	323	3.1%
1998	8,224	17	393	4.8%
1999	9,173	44	2,422	26.4%
2000	9,854	63	2,691	27.3%
2001	11,098	85	2,345	21.1%
2002	10,968	75	2,420	22.1%
2003	9,075	58	1,182	13.0%

Prior to 1999 fewer than 5% of chapter 11 filings were child cases by our definition. Each year from 1999 through 2002 more than 20% of chapter 11 filings fell into this category. The number of child cases fell by more than one-half in 2003. This drop accounted for approximately two-thirds of the 17% drop in total chapter 11 filings. It is reasonable to interpret the overall drop in filings as a reduction in the filing of cases by large enterprises with many related entities filing together.

Cases with related filings are most often filed in Delaware or the Southern District of New York. As the following chart shows, nearly one-half of the parent cases and at least 60% of the child cases in multiple related filings were in these two districts.

FILINGS WITH 10 OR MORE RELATED CASES				
	NEW YORK (S) & DELAWARE		ALL OTHER DISTRICTS	
YEAR	PARENT CASES	CHILD CASES	PARENT CASES	CHILD CASES
1990	11	270	28	545
1991	10	225	29	459
1992	13	321	19	274
1993	3	103	11	247
1994	2	33	6	76
1995	6	296	8	267
1996	7	110	9	201
1997	7	244	7	93
1998	4	54	13	356

1999	24	1,924	20	542
2000	35	2,260	28	494
2001	52	1,663	33	767
2002	34	1,290	41	1,205
2003	28	592	30	648

Conclusion: It is important to understand the relationship between raw filing numbers and the structure of businesses filing for chapter 11 relief. Our purpose is to alert the reader that the existence of related case filings can create large swings in the raw filing numbers.