

BANKRUPTCY BY THE NUMBERS
BY: ED FLYNN Executive Office for United States Trustees^{1/}

CHAPTER 11 CASES: According to statistics compiled by the Administrative Office of the United States Courts, approximately 10% to 15% of chapter 11 cases are consumer rather than business cases. The AOUSC obtains this information from the case cover sheets prepared by debtors or their attorneys. In contrast, recent research by Professors Elizabeth Warren and Jay Westbrook indicated that more than one-third of chapter 11 filings in 1994 were filed by individuals.

Part of the difference is definitional. AOUSC figures revolve around whether the debt is primarily consumer or business in nature. Warren and Westbrook looked at whether the case was filed by a business entity or a natural person, and found that many chapter 11 cases designated as "business" 11 cases has actually been filed by individuals.

A U.S. Trustee database^{2/} on chapter 11 cases can provide additional information on this issue. It contains information on the Social Security Number (SSN) and the Employer Identification Number (EIN) of chapter 11 debtors. Most cases list one or the other number for the debtor. Nearly all of the cases with an SSN appear to have been filed in the name of an individual (or couple), and nearly all of the cases with an EIN carry a business name. A review of this data gives a rough approximation^{3/} of the business/individual breakdown for chapter 11 cases.

^{1/} All views expressed in this article are those of the author, and do not necessarily represent the views of the Executive Office for United States Trustees.

^{2/} The Fee Information and Collection System (FICS) database is maintained by the Executive Office for the U.S. Trustees (EOUST) to support the U.S. Trustee Program's collection of quarterly fees from chapter 11 cases. The FICS database contains information on more than 163,000 chapter 11 cases filed since 1989 in 88 of 94 judicial districts.

^{3/}A precise breakdown is not possible from this data. About five percent of the cases in FICS reported both an EIN and SSN, or neither. A small proportion of the cases with an EIN were named after an individual rather than a business, and some of the cases with only an SSN carried a business name.

Several interesting facts emerge from this data. The percentage of individual chapter 11 cases rose from 28.2% in 1989 to 36.2% in 1993. The 33.4% figure for 1994 is consistent with the 36% figure reported by professors Warren and Westbrook. In late 1994, the debt limits for chapter 13 cases were raised substantially, and the percentage of individual cases immediately dropped to the 20% to 23% range. This indicates that each year prior to 1995 several thousand cases were filed under chapter 11 because the debtor had too much debt to be eligible for chapter 13.

YEAR OF FILING	PERCENT INDIVIDUAL
1989	28.2%
1990	29.0%
1991	31.3%
1992	33.9%
1993	36.2%
1994	33.4%
1995	23.2%
1996	21.4%
1997	21.2%
1998 (THROUGH NOV.)	20.1%

The individual chapter 11 cases are less likely to result in confirmation than the business cases. Approximately 29.2% of the business cases filed between 1989 and 1996 have been confirmed, compared with only 22.8% for the individual cases. Additionally, the individual chapter 11 cases take somewhat longer to reach confirmation than business chapter 11 cases (683 days on average for individual cases vs. 586 days for business cases).

Chapter 11 filings declined by about 40% between 1994 and 1998. It appears that about one-half of this decline has occurred in filings by individuals, in large part due to the higher chapter 13 debt limits. The higher debt limits may have also resulted in a remaining pool of chapter 11 cases that are more likely to be confirmed, and to be confirmed more quickly.

