

BANKRUPTCY BY THE NUMBERS

DISTRIBUTIONS AND EXPENSES IN CHAPTER 13

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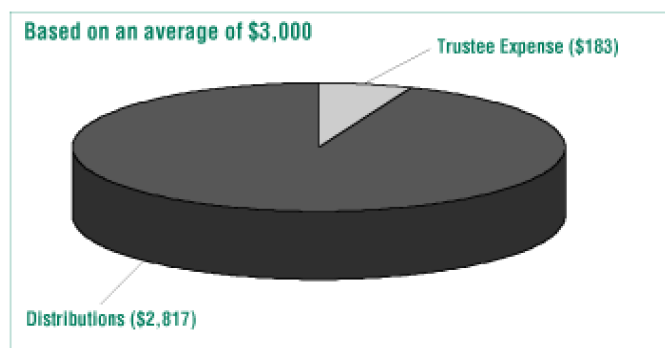
Executive Office for U.S. Trustees^{1/}

The emphasis in proposed legislation on increasing the use of chapter 13 naturally opens the question about how the chapter currently works to distribute estate funds to creditors—general unsecured creditors in particular. One recent study, based on information from a single judicial district, concluded that “debtors pay precious little general unsecured debt in chapter 13.”^{2/} Here we report on the distributions to creditor classes, and several forms of administrative expense, from chapter 13 cases reported by the chapter 13 standing trustees during Fiscal Year 1998.

During FY98, chapter 13 trustees collected approximately \$3 billion from approximately 1 million estates: an average of \$3,000 per estate.^{3/} How were these proceeds distributed?

To begin, we consider two major categories of distribution: disbursements to creditors of all kinds, and the expenses of the chapter 13 trustee.^{4/} As shown in Figure 1, for the nation as a whole, about \$2,817 of the average \$3000 per case was distributed by the trustee while \$183 was used to fund the trustee’s operation (93.9% and 6.1%, respectively). The range of distributions to creditors across 173 trustees ranged from 88.3% to 98.4%.^{5/}

Figure 1: Distributions and Expenses
Fiscal Year 1998



^{1/}The opinions expressed here are those of the authors and do not necessarily reflect the positions of the U.S. Trustees or the Department of Justice.

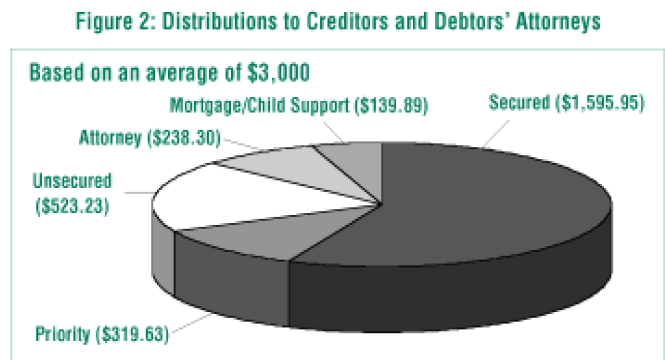
^{2/} Norberg, Scott F., Consumer Bankruptcy’s New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13. 7 Amer. Bnkry. Inst. L.Rev. 415, 461 (1999).

^{3/} These numbers do not include information from Alabama and North Carolina, which are not served by the U.S. Trustee Program.

^{4/} Keep in mind that this includes all estates that were open for any period of time during the year

^{5/} Excluded from this calculation were the accounts of several Assistant U.S. Trustees who acted as chapter 13 trustees for part of the fiscal year.

The distributions comprised five categories of recipient: secured, priority unsecured, and general unsecured creditors; debtors' attorneys payments scheduled within the plan; and current mortgage and child support payments made within the plan but without a trustee fee attached.⁶ Figure 2 presents a percentage breakdown of distributions into these categories for the nation as a whole. Secured creditors received 57% of the total distribution, general unsecureds 19%, priority creditors 11%, debtors' attorneys 8%, and non-fee payees 5%.



Here as practically everywhere on the chapter 13 landscape, these distributions are subject to large geographical differences, whether these are aggregated at the level of U.S. Trustee region, judicial district, or state. To take but one example, the percentage of fee-liable creditor distributions going to general unsecureds ranged from 8% in Connecticut to 49% in South Dakota. For all the states, the average (whether mean or median)⁷ was 25%.

The question of lawyers' fees. Figure 2 shows that, on average, debtors' attorneys received about \$240 through the chapter 13 plan. The annual reports of the standing trustees to the U.S. Trustees do not contain information about the debtors' attorneys total compensation for their cases—thus we cannot determine from these reports how much of the attorney's fee is, on average, collected before filing and how much to be collected thereafter. This information must be gained from the disclosure statements filed with the petition and the terms of the plan. Moreover, even this information is incomplete for those cases that do not complete successfully, because the official case file will not reveal whether non-scheduled attorneys' fees due after filing were in fact paid after dismissal. Without a different sort of labor-intensive data collection, therefore, we cannot estimate total lawyer's fees for chapter 13. Our impression at present, based on a review of a limited set of case files, is that it ranges from \$500-\$1500 per case, often with specific provisions for an hourly rate to be paid for additional services covering contested matters or adversary proceedings.

Conclusions. The operating expenses of chapter 13 trustees are, taking the nation as a whole, a small proportion of the payments made into chapter 13 plans. The percentage of creditor distributions available for general unsecured creditors is about 19% of all distributions, but there

⁶ Distributions within this fifth category are relatively unusual. In FY98, fewer than 20% of the trustees distributed funds in this fashion. The practice tends to be geographically concentrated. We will deal with local variation in this and other practices in future articles. See below for one example of significant variation.

⁷ The equality of mean and median is a good sign that the spread of values of this statistic is symmetrical about its midpoint.

are large geographic variations along that dimension. Notice, for example, that the payout to unsecured creditors is 19% of distributions, but when the percentage payouts are calculated separately for each state, then averaged across the states, the average payout to unsecured creditors is 25%. Estimated payouts to unsecureds fluctuate within this range when national averages are taken across other natural units within the bankruptcy system, i.e. standing trustee, U.S. Trustee region, and judicial district. Such differences are inevitable consequences of demographic variability and the nature of averaging. The variability can be confusing if published reports do not specify the details of their calculations carefully. Expressed as percentages, the difference between 25% and 19% might not seem very large. In dollar terms, however, it amounts to more than \$32 million. Given the tendency of numbers in this area to become part of the political rhetoric, it is important that we understand the calculations from which the numbers derive.