

BANKRUPTCY BY THE NUMBERS

BY: ED FLYNN Executive Office for United States Trustees^{1/} Edward.Flynn@usdoj.gov
& GORDON BERMANT Burke, Virginia gordon.bermant@verizon.net

DELAWARE CHAPTER 11's:

It is hardly news to the bankruptcy community that the District of Delaware has become a preferred venue for large chapter 11 cases over the last decade. Within the past five years, the National Bankruptcy Review Commission proposed an amendment 28 U.S.C. § 1408 that would have prohibited a corporation from filing in a district based solely on its state of incorporation,^{2/} the Judicial Conference of the United States received a report on chapter 11 venue choices made by large public companies,^{3/} and academic commentators weighed in heavily with data and commentary on the significance of venue choice in large chapter 11 reorganizations.^{4/} Our purpose in this article is to summarize the filing trends from 1990 to 2001 and to emphasize that filing numbers in chapter 11 need to be interpreted with particular care.^{5/}

CASE FILINGS: The most common measure of chapter 11 activity is the annual number of chapter 11 filings. Between 1990 and 2001 there were 7,187 chapter 11 cases filed in Delaware, with the bulk of the filings occurring in the last three years. As shown in the following chart, Delaware has accounted for a significant percentage of chapter 11 filings nationwide since 1999.

^{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/} National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* 770-787 (1997)

^{3/} Gordon Bermant et al, *Chapter 11 Venue Choice By Large Public Companies: Report to the Judicial Conference Committee on the Administration of the Bankruptcy System*, Federal Judicial Center, 1997.

^{4/} Theodore Eisenberg and Lynn M. LoPucki, *Shopping for Judges: An Empirical Analysis of Venue Choice in Large Chapter 11 Reorganizations*, 84 Cornell L.Rev.967 (1999).

^{5/} 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. The FICS database does not include any information on chapter 11 cases filed in Alabama and North Carolina, which are served by Bankruptcy Administrators.

YEAR	NATIONAL FILINGS	DELAWARE FILINGS	PERCENT IN DELAWARE
1990	20,690	104	.5%
1991	24,056	102	.4%
1992	22,906	176	.8%
1993	19,180	101	.5%
1994	14,823	83	.6%
1995	12,771	235	1.8%
1996	11,726	211	1.8%
1997	10,554	205	1.9%
1998	8,283	365	4.4%
1999	9,181	2,106	22.9%
2000	9,716	2,277	23.4%
2001	10,967	1,222	11.1%

RELATED FILINGS: Many of the chapter 11 cases in Delaware involve multiple filings by related entities, and ignoring this fact may give a distorted picture of the amount of chapter 11 activity there. Some cases, particularly those filed since 1999, have a very large number of related filings. For example, between 1999 and 2001 there were 10 cases filed in Delaware that had at least 100 other related filings. Largest among these was Loewen Corp., whose filing in June 1999 included 871 corporations or related entities. This case accounted for nearly 10% of the national chapter 11 filings for the year.

To discern if two or more cases were related, we compared filing dates, state of origin, case name, and disposition dates. If at least two of these items matched, we concluded that the filings were related. We thereby run a slight risk of overestimating the number of cases with related filings.⁹ On this basis, the Delaware chapter 11 filings between 1990 and 2001 can be characterized as 537 solo filings and 330 other cases with one or more related cases. By this measure, although chapter 11 activity in Delaware has been higher than previously for the last three years, the increase has been much less than that indicated by raw filings.

⁹ Chapter 11 cases are classified as consolidated substantively (all activity is applied the lead case), or administratively (cases are viewed as independent by the bankruptcy court but dependent for administrative purposes).

YEAR	TOTAL FILINGS	SOLO CASES	CASES WITH RELATED FILINGS	TOTAL RELATED FILINGS	NET FILINGS
1990	104	42	4	(58)	46
1991	102	45	8	(49)	53
1992	176	70	16	(90)	86
1993	101	58	9	(34)	67
1994	83	47	11	(25)	58
1995	235	53	25	(157)	78
1996	211	43	25	(143)	68
1997	205	22	20	(163)	42
1998	365	34	30	(301)	64
1999	2,106	47	48	(2,011)	95
2000	2,277	45	69	(2,163)	114
2001	1,222	31	65	(1,126)	96

Delaware does account for a substantial portion of the largest cases are filed. BankruptcyData.com publishes a list of the 15 largest cases filed by publicly held companies each year. Of the 105 large cases listed for 1995 through 2001 (15 for each year), 56 were filed in Delaware. The Southern District of New York accounted for 18 of the large cases, and no other judicial district had more than three of the large cases.

ORIGIN OF CASES: To determine the origin of the chapter 11 cases filed in Delaware we reviewed the debtors' mailing addresses. We found that 94% of the Delaware chapter 11 debtors (including related filings) listed a non-Delaware address. For the rest of the country on the other hand, only about 5.3% of chapter 11 filings were from out-of-state.⁷ States with the most debtors filing in Delaware (including all related filings) were Ohio (998), Maryland (596), Pennsylvania (527), Texas (471), Florida (423), and Massachusetts (400).

Unfortunately, our method does not identify the lead filing in every case with related filings. Nevertheless, our best estimate of the states which had the most debtors file in Delaware between 1990

⁷ The FICS database allowed us to determine the number of cases filed in a different state than the address listed by the debtor. However, we were not able to determine the number of cases in which the debtor was located in a different judicial district than the district of filing, but within the same state.

and 2001 included New York (65), Texas (55), Pennsylvania (46), California (44), Florida (42), and New Jersey (42).

CONFIRMATION RATE: The large number of related filings also gives a misleading picture of the confirmation rate in Delaware. Including the related filings, nearly 80% of the cases filed there between 1990 and 1999 (2,907 out of 3,688) have been confirmed.^{8/} Discounting the related cases, the confirmation rate falls to 52.8% (347 out of 657). This figure is still much higher than the national average confirmation rate (29.0%) for chapter 11 cases filed during the 1990's. The median and average intervals from filing to confirmation of Delaware cases fall below the national average when the related filings are excluded.

CHAPTER 11 CASES FILED 1990 - 1999			
	NATIONAL	DELAWARE (ALL CASES)	DELAWARE (NO RELATED CASES)
CASES FILED	154,170	3,688	657
CASES CONFIRMED	44,666	2,907	347
% CONFIRMED	29.0%	78.8%	52.8%
AVERAGE DAYS TO CONFIRMATION	528	576	414
MEDIAN DAYS TO CONFIRMATION	445	564	359

According to the official filing statistics reported by the Administrative Office of the United States Courts, there have been well over 5,000 chapter 11 cases filed in Delaware in the last three years. However, the large number of related entities in these filings can provide a distorted picture. Most bankruptcy observers would be more interested to know that, if one considers related cases as part of a single large filing rather than as individual cases, there have actually been only about 305 chapter 11 cases filed in Delaware during that period.

^{8/} We did not include cases filed during 2000 and 2001 because many of these cases are still awaiting confirmation, conversion, or dismissal.