

**BANKRUPTCY BY THE NUMBERS**  
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**OUTCOMES OF CHAPTER 11 CASES: U.S. TRUSTEE DATABASE SHEDS NEW LIGHT ON OLD QUESTIONS**

**I. Introduction**

Policy makers and commentators frequently remark on the lack of systematic, detailed, statistical information about the fate of entities in chapter 11.<sup>2/</sup> Even very basic facts such as the proportion of cases confirmed, converted, or dismissed, and the time intervals between filing and these three outcomes, have not been readily accessible.

Here we present a brief first look at data obtained from the Fee Information and Collection System (FICS) database maintained by the Executive Office for U.S. Trustees (EOUST) to support the U.S. Trustee Program's collection of quarterly fees from chapter 11 cases.<sup>3/</sup> The FICS database is the most reliable and comprehensive single source of basic information about chapter 11 cases that we have seen. The FICS database is updated monthly with case information transmitted from each Region. We anticipate that analyses of the data in FICS will be of considerable utility in answering a number of practical questions about chapter 11 issues.

We have begun to compare the data in FICS with the same fields in the bankruptcy data compiled by the Administrative Office of the United States Courts (AOUSC). The congruence of the two data sources has been encouraging. For example, FICS contains data on 131,089 chapter 11 filings between January 1, 1989 and December 31, 1995. The AOUSC data show 129,304 chapter 11 cases for the same period, excluding filings from Alabama and North Carolina.<sup>4/</sup> Part of this 1.4% difference is due to the inclusion in FICS of cases that were converted into chapter 11 from other chapters.

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<sup>1/</sup>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

<sup>2/</sup>For recent examples see *Report of the National Bankruptcy Review Commission (1997)*, at 308-309, 610-614, 646-649; Jennifer C. Frasier, *Caught in a Cycle of Neglect: The Accuracy of Bankruptcy Statistics*, 101 Com. L.J. 307 (1996)

<sup>3/</sup>Great credit is due to Santal Manos and others within the EOUST for creating FICS during 1996 and 1997 from data previously unavailable in a single source. Many data sources that serve administrative purposes do not achieve their research potential, generally because the data are either incomplete or it is archived from the database.

<sup>4/</sup>FICS does not contain information on cases filed in the six judicial districts in North Carolina and Alabama, which are not within the U.S. Trustee Program but rather are served by Bankruptcy Administrators.

## II. Overview of Outcomes

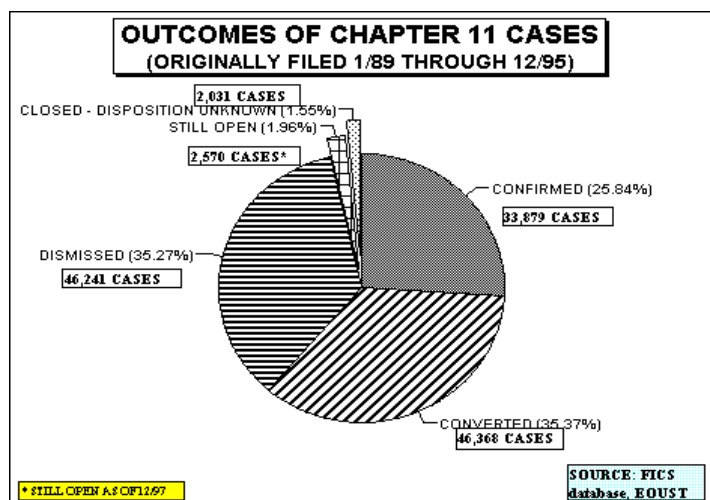


Figure 1 shows that about 70% of the FICS chapter 11 pie for cases filed between 1989 and 1995 contains two equal pieces: 35.3% of the cases were dismissed and 35.4% were converted. Confirmed cases composed approximately 26% of the total, two percent of the cases remained open as of 12/1/97, and the remaining 1.4% are reported by FICS as closed by the court but without further specification as to outcome.

## III. Confirmation Rates

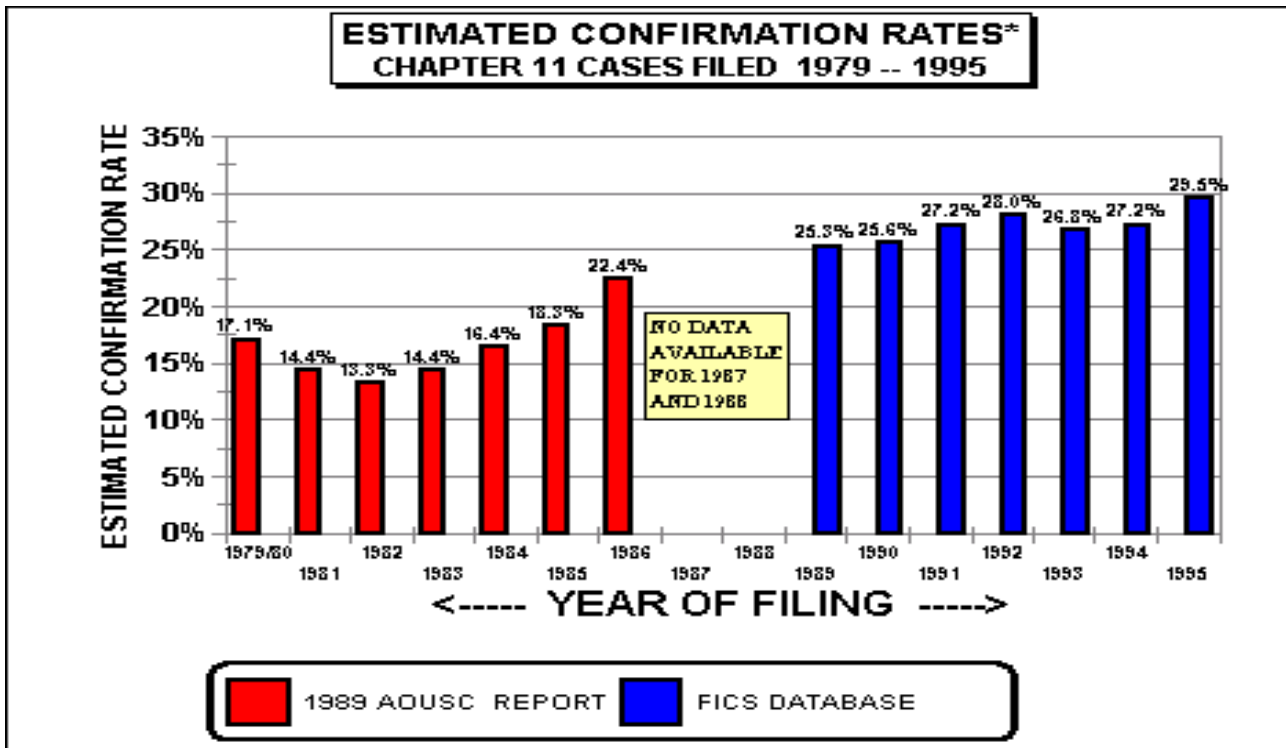
Heretofore, the most comprehensive source of information on national confirmation rates of cases of all sizes was a 1989 report by the AOUSC on cases filed in 15 judicial districts between 1979 and 1986.<sup>5/</sup> Two salient facts about confirmation rates emerged from that study: first, the estimated annual confirmation rate over the sampled period was 17%. Second, a trend of increasing annual confirmation rates was apparent between 1982 (13%) and 1986 (22%). This led to the prediction that confirmation rates would continue to rise during the 1980s.

We are now able to continue the time series of annual confirmation rates using FICS data. The graph in Figure 2 shows the rates from the AOUSC study for 1979/80-1986 and from FICS for 1989-1995.<sup>6/</sup> The national trend evident in the AOUSC data has been sustained in the FICS data. The average annual confirmation rate over the period measured in FICS, approximately 27%, is about twice the rate that was achieved in the early 1980s. The data for 1989-1995 include minor adjustments to include expected future confirmations of cases that are still open and closed cases for which FICS did not report the disposition.

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<sup>5/</sup>Ed Flynn, Statistical Analysis of chapter 11 (October 1989)

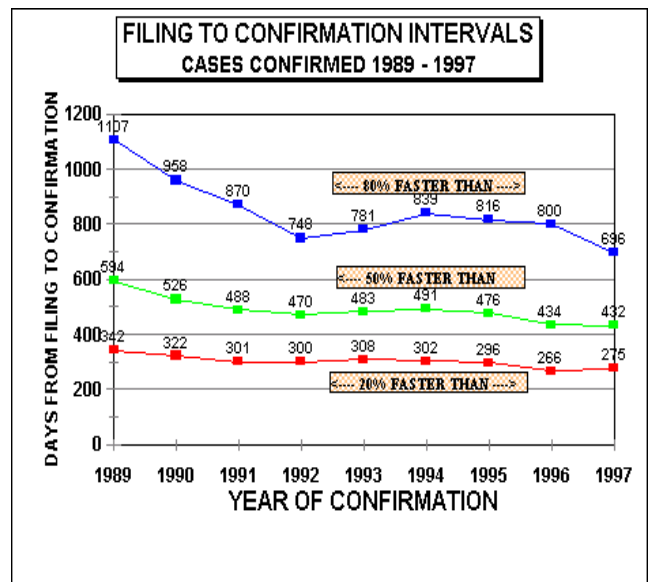
<sup>6/</sup>We omitted FICS data for 1987-1988 because information was missing on a substantial number of cases filed in those years. Note that all percentages are based on raw filings; substantive and administrative consolidations are not accounted for. This has the effect of increasing the confirmation percentages across the board, because large cases, which are more likely to comprise multiple filings, are also more likely to confirm. See n.8 below.



The strong national trend toward increased chapter 11 confirmation rates requires substantial analysis and interpretation to discern its causes. Some of the required additional information will be available in FICS, some will require linking FICS data with AOUSC databases, and some will require developing new databases gathered from diverse sources.

#### IV. Intervals from Filing to Confirmation

In addition to a higher than expected confirmation rate, the FICS data show a clear trend toward faster confirmations in chapter 11 cases. Figure 3 displays the 20<sup>th</sup>, 50<sup>th</sup>, and 80<sup>th</sup> percentiles of the distribution intervals from filing to confirmation for cases that were confirmed from 1989 to 1997. Viewed from this national perspective, the greatest changes have taken place among the cases slowest to confirm, e.g., those at the 80<sup>th</sup> percentile of each annual distribution. While intervals at the 20<sup>th</sup> percentile have decreased by approximately 18%, and intervals at the 50<sup>th</sup> percentile (median) by about 27%, intervals at the 80<sup>th</sup> percentile have decreased by about 37%.<sup>2/</sup>



<sup>2/</sup>Small proportions of open cases in recent filing years will confirm and thereby cause the median and 80<sup>th</sup> percentile numbers for these years to increase slightly. These confirmations will not significantly change the trends or percentage changes displayed in the graph

It is one thing to describe the trends toward more and faster confirmations, and quite another to explain them. Bankruptcy experts doubtless will have strong opinions about why chapter 11 cases are confirming faster and at a higher rate. These opinions should be treated as hypotheses to test with objective information and analysis.

The increasing speed to confirmation on the national level needs to be disaggregated in several ways. We need to know, for example, how confirmation speed varies with the size of the case; there are good reasons to believe that larger cases are more likely to confirm and also more likely to confirm quickly than are smaller cases.<sup>8/</sup> We also need to study how confirmation rates and intervals vary among judicial districts, U.S. Trustee Regions, and by assigned bankruptcy judge to assess the influence of local practices and to identify best practices wherever they may be found.<sup>9/</sup> For example, preliminary analysis shows that the confirmation rates range from 13% to 38% among the 21 U.S. Trustee Regions, and from 7.4% to 59.2% among the bankruptcy judges who handled at least 200 chapter 11 cases between 1989 and 1995. Further, the average time from filing to confirmation varied from 478 days to 860 days among the U.S. Trustee Regions, and from 292 days to 1,092 days among the judges who have had more than 100 Chapter 11 cases confirm since 1989.

## **V. Intervals from Filing to Dismissal or Conversion**

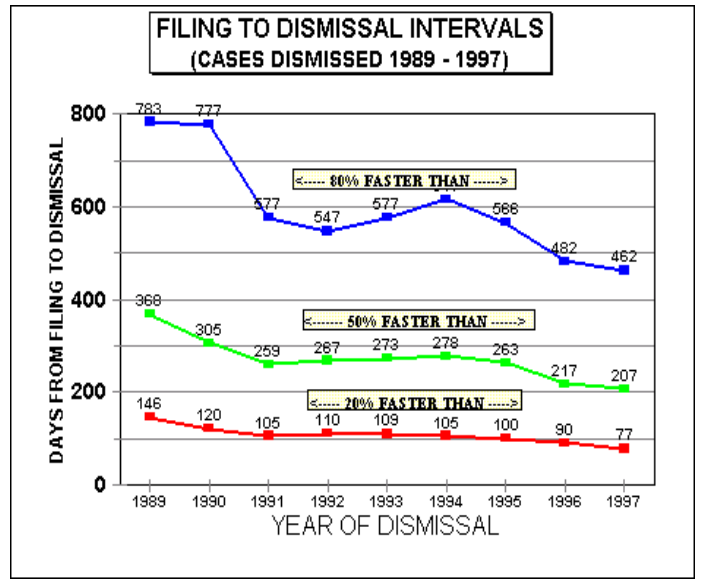
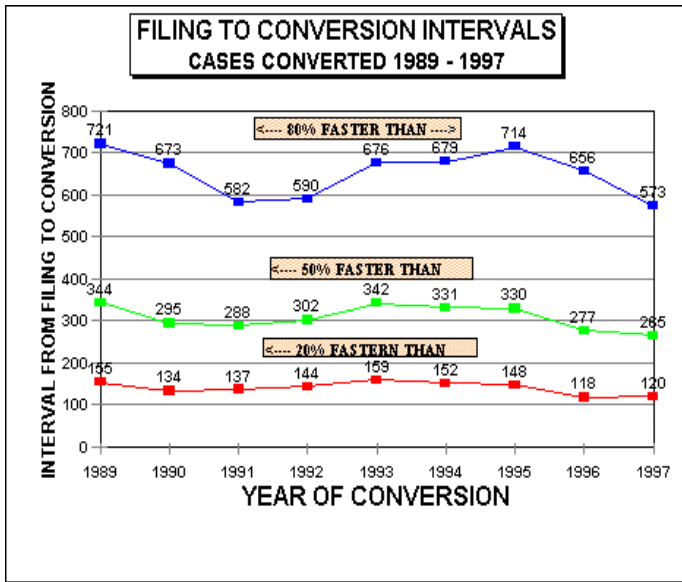
Confirmation is not a necessary condition for success in chapter 11. Dismissal sometimes follows a successful accommodation between a debtor and its creditors without the need for a court-approved plan of reorganization. It is also clear that moving appropriate cases quickly from filing to dismissal or conversion into chapter 7 is a *per se* benefit in terms of judicial administration, a reduction in the length of the queue for other cases awaiting judicial action, and a quickening of the time required for creditors to gain liquidation value from the bankrupt estate.

The FICS database allows us also to assess trends in the durations from filing to dismissal or conversion. The next two figures show these trends at the 20<sup>th</sup>, 50<sup>th</sup>, and 80<sup>th</sup> percentiles for cases converted or dismissed from 1989 to 1997.

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<sup>8/</sup>Larger cases are likely to have more experienced counsel, are more likely to have active creditors' committees, may be able to present truly feasible plans, and are much more likely to be pre-negotiated or pre-packaged. For reasons expressed in text and the next note, these factors need to be considered also in light of "local legal culture" i.e. salient traditions of the bankruptcy bench and bar in different districts.

<sup>9/</sup>The difference in speed to confirmation for very large cases is quite striking when, for example, New York Southern is compared with Delaware (the primary venues of very large cases). Some but not all of this difference is due to the greater prevalence of pre-negotiated and pre-packaged bankruptcies in Delaware. See Gordon Bermant, *Chapter 11 Venue Choice by Large Public Companies*, Federal Judicial Center (1997)



As was seen with the interval between filing and confirmation, the intervals from filing to conversion or dismissal have also shortened considerably over the last eight years. Most of the overall improvement in case disposition times during this period occurred during 1990-1991, and from 1995 to 1997.

The following table summarizes the percentage reductions from 1989 to 1997 in the intervals from filing to each type of termination.

PERCENTAGE REDUCTION IN THE INTERVAL FROM FILING TO TERMINATION (CASES TERMINATED IN CALENDAR YEARS 1989 AND 1997)			
TERMINATION PERCENTILE	OUTCOME OF CASE		
	CONFIRMED	CONVERTED	DISMISSED
20TH	18%	23%	47%
50TH	27%	23%	44%
80TH	37%	20%	41%

The graphs and summary table show unequivocally that terminations of all types, particularly dismissals, now occur faster than they did eight years ago. This is a national trend that no doubt has many local variations. Attributions of causality for these reductions in any district, as have been published recently, need to be evaluated in light of

the larger national trend.<sup>10/</sup>

## VI. Conclusion

Information in the FICS database will advance the understanding of the course of Chapter 11 cases through the bankruptcy system in recent years. We have much to do to derive all possible benefit from this useful source. During the next several months we will refine our analyses of the FICS database, explore the opportunities and challenges of linking FICS data with other bankruptcy data sources, and explore ways to make much of the FICS data available to other analysts. In the meantime, we welcome correspondence from the readership of the **ABI Journal** about our preliminary findings.

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<sup>10/</sup>See e.g. Samuel L. Bufford, *Chapter 11 Case Management and Delay Reduction: An Empirical Study*, 4 Am. Bankr. Inst. L. Rev. 85 (1996); Marcy J.K. Tiffany, *A Study of Chapter 11 Confirmation Statistics; Central District of California, Los Angeles Division for Cases Filed in 1994* (unpublished study on file with the EOUST).