

Bankruptcy by the Numbers

By Ed Flynn

Chapter 13 Revisited: Can It Help Solve the Judiciary's Fiscal Problems?

Between 1999 and 2002, **Gordon Bermant** and I wrote about a dozen brief *Journal* articles on chapter 13. In this article, I update the data used in some of those articles. The sources of this data are filing statistics compiled by the Administrative Office of the U.S. Courts (AOUSC),¹ and financial and case-disposition data compiled by the Executive Office for U.S. Trustees (EOUST).²

Admittedly, there are problems with this data. They cover different time periods, and the financial as well as disposition data is not available for two states with high chapter 13 case loads — North Carolina and Alabama. Also, it is all summary data. Case-by-case data would provide a much more complete picture.

Filings

Chapter 13 filings more than tripled between 1983 and 2013. The peak year for chapter 13 filings was 2003 (472,811), with filings in 2013 about 26 percent below peak levels. The AOUSC data reveals that several aspects of chapter 13 cases have been relatively stable for many years (see Chart 1).

Chapter 13 as a Percent of Total Filings

Chart 2 shows that the proportion of all bankruptcy cases filed as chapter 13 has been fairly stable at between 25 and 30 percent for most of the last 30 years. The notable exceptions were 2005-07, due to unusual filing trends before and after the effective date of BAPCPA. Means testing, adjustment of chapter 13 debt limits, and changes to what can be discharged in chapter 13 seem to have had little lasting impact on the percentage of cases filed under chapter 13.

Geographic Patterns

Within individual states, the proportion of chapter 13 cases has also been quite stable. Chart 3 (P. 73) color-codes the states from relatively low chapter 13 activity (white) to very high chapter 13 activ-

ity (red). It is hardly news that chapter 13 filings are much more prevalent in most of the Southeast, but it is interesting to note that the maps reflect very little change in filing proportions in most states over the last 30 years.

Outcomes

The EOUST data shows the outcomes for most chapter 13 cases closed within a year.³ The cases closed in any particular year are a mix of cases that have been filed over the prior five to six years. Generally, dismissed cases are completed before converted cases, and converted cases are closed before cases that complete a plan. Therefore, it is not possible to determine from the available data the outcomes for a cohort of cases that were filed in any particular year.

However, over a number of years it is possible to estimate the outcomes of chapter 13 cases. EOUST data for cases completed between FY 2000 and FY 2012 shows that about 55.2 percent of chapter 13 cases were dismissed, 11.7 percent were converted and 33.2 percent resulted in a completed plan.⁴

At first glance, a one-third completion rate might appear to be a fairly weak result, but several other factors should be considered:

- Chapter 13 debtors who are dismissed often refile, and may be successful on their second time through. We don't have access to reliable refiling data,⁵ but it is quite common with chapter 13 debtors.
- Some debtors voluntarily dismiss after they have paid certain debts, such as mortgage and automobile arrearages and attorney fees.
- Many cases are dismissed or converted after some payments have been made to creditors.

Confirmation Rate

For the past eight years, the EOUST has included data on whether or not cases closed during the



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1 See Administrative Office of the U.S. Courts, Bankruptcy Statistics, available at www.uscourts.gov/Statistics/BankruptcyStatistics.aspx. I use their statistics for years ending June 30 because this site provides the most up-to-date filing figures, and they have posted data going back to 1983.

2 See Department of Justice, Chapter 13 Trustee Data and Statistics, available at www.justice.gov/ust/eo/private_trustee/data_statistics/ch13.htm. The EOUST posts this data in spreadsheets with information for each chapter 13 standing trustee. No data is available from the EOUST on chapter 13 cases filed in North Carolina and Alabama because these states are served by Bankruptcy Administrators. About 8 percent of chapter 13 cases are filed in these two states. The financial data is available for Fiscal Years 1994-2012. Due to changes in how the data is reported, I have generally limited the analysis to data from Fiscal Years 2000-12.

3 About 2 percent of cases closed cannot be categorized (*e.g.*, transfers, reopened cases, hardship discharges and other adjustments).

4 These figures are quite close to what two analysts from the AOUSC found for cases filed between 1980 and 1988. Susan Tuck and Michael Bork reported that, excluding cases filed in North Carolina and Alabama, 49.4 percent were dismissed, 15.0 percent were converted and 35.6 percent were discharged. Their paper was never formally published, but was included in its entirety as a footnote in a *University of Texas Law Review* article by Prof. Katherine PorterMichael Bok and Susan Tuck, *Bankruptcy Statistical Trends*, available at www.utexas.edu/law/journals/tlr/sources/Issue%2090.1/Porter/Porter.fn26.Bork-Tuck.Bankruptcy%20Statistical%20Trends.pdf.

5 The AOUSC reports that nearly 30 percent of chapter 13 filers in 2012 had filed a case in the prior eight years. No data is publicly available on how many of the refilers had a prior chapter 13 case dismissed. See Administrative Office of the U.S. Courts, 2012 BAPCPA Statistical Tables, available at www.uscourts.gov/Statistics/BankruptcyStatistics/bapcpa-report-archives/2012-bapcpa-report.aspx.

year had been confirmed. During this period, 71.1 percent of cases had been confirmed. Of these, about one-half resulted in a completed plan, 11 percent were converted and 39 percent were dismissed. The confirmation figures vary substantially at the state level. In four states, less than one-half of chapter 13 cases are confirmed (Connecticut, California, Massachusetts and Arizona), while in 17 other states, the confirmation rate is more than 80 percent.

Payments to Creditors

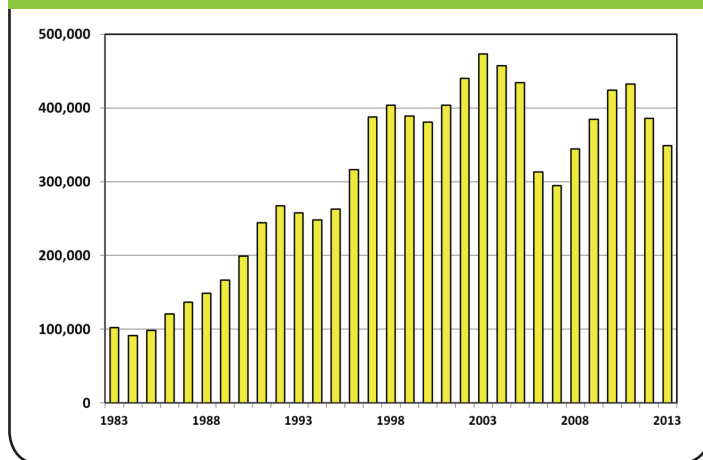
Between FY 2000 and FY 2012, chapter 13 trustees distributed more than \$61 billion to creditors. (Also during this time, about \$3 billion was returned to debtors and \$3.4 billion was used for trustee salaries and expenses.) Since 2000, trustees in seven states have distributed more than \$3 billion to creditors (California, Florida, Georgia, Michigan, Ohio, Tennessee and Texas).

Amounts paid to the four major categories of chapter 13 creditors between FY 2000 and FY 2012 included:

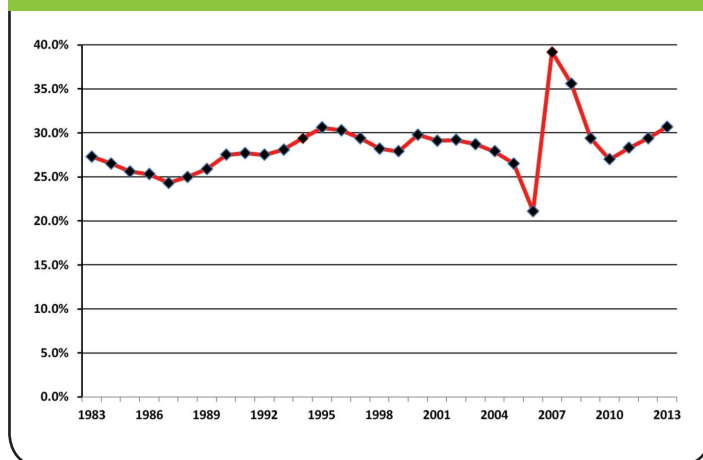
- \$36.8 billion to secured creditors
- \$3.8 billion to priority unsecured creditors
- \$15.2 billion to general unsecured creditors
- \$5.8 billion to debtors' attorneys

Payments to secured and unsecured creditors were about three times as high as payments made in all chapter 7 asset cases closed during this period.⁶

**Chart 1: Total Chapter 13 Cases Filed Nationwide
(Years Ended June 30, 1983-2013)**



**Chart 2: Percent of Cases Filed as Chapter 13
(Years Ended June 30, 1983-2013)**



Even though chapter 13 filings in 2012 were roughly equivalent to filings in 2000, the amount of money collected and distributed by chapter 13 trustees has nearly doubled. In FY 2012, almost \$7 billion was distributed to creditors in chapter 13 cases. The main components of the growth since FY 2000 have been mortgage arrearages (+398 percent), ongoing mortgage payments (+220 percent), attorneys' fees paid through the plans (+174 percent) and payments to general unsecured creditors (+156 percent) (see Chart 4, p. 73).

The Chart 4 figures do not include chapter 13 cases in North Carolina and Alabama, which would certainly put the FY 2012 total at more than \$7 billion. To put this amount in perspective, payments to creditors in FY 2012 in all chapter 13 cases were higher than the budget for the entire Judicial Branch of the Federal Government (\$6.97 billion) or the Legislative Branch (\$4.31 billion).

Disbursements Per Case

In a November 2000 *Journal* article, Bermant and I noted the increase in disbursements per chapter 13 case during the 1990s.⁷ Between FY 1990 and FY 1999, the average disbursement per case filed increased from about \$7,000 to nearly \$10,000. This trend has continued, and in FY 2012 nearly \$20,000 was disbursed per case filed. Data is not publicly available on the amount of allowed claims in chapter 13 cases, so it is not possible to calculate the percentage payout in chapter 13 cases.

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Trustee Fees

Pursuant to 28 U.S.C. § 586(e), a chapter 13 trustee may charge a fee of up to 10 percent of debtors' payments to pay for compensation and expenses of the trustee and staff. For more than one-half of the debtors who filed in FY 2012 the applicable fee was less than 5 percent. Fewer than 1 in 400 debtors who filed in FY 2012 were subject to the full 10 percent fee. As a result, about 95 percent of the net funds collected by chapter 13 trustees is paid to creditors — a figure that varies very little from year to year. Total fees have comprised between 4.7 percent and 6.1 percent of total disbursements for each of the last 19 years.

⁶ Based on 10.5 years of data reported by the EOUST, an estimated \$17 billion was paid to creditors in chapter 7 asset cases from FY 2001-12. See Department of Justice, Chapter 7 Trustee Final Reports, available at www.justice.gov/ust/ao/public_affairs/data_files/ch7_asset/index.htm.

⁷ See Gordon Bermant and Ed Flynn, *Stability and Change in Chapter 13 Activity (1990-1999)*, *ABI Journal* (November 2000), available at <http://journal.abi.org/content/stability-and-change-chapter-13-activity-1990-1999>. We calculated average disbursements per case by dividing payments in a year by average filings over the prior five years.

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Possible Source of Revenue to the Judiciary

The Federal Judiciary, along with all government agencies, is under tremendous pressure due to budget cuts and sequestration. In an August 2013 letter to congressional leaders that was signed by nearly every chief U.S. district judge, it was stated that “[d]eep funding cuts simply mean that the Judiciary cannot adequately perform its responsibilities.”⁸

Chapter 13 provides a valuable service to both debtors and creditors. It might also be used to provide a needed boost to funding the Judiciary during a time of austerity. It does not seem unreasonable to me for the courts to charge a fee of 1 percent or so on funds that are collected and distributed through the chapter 13 process. The fee in any single case would not be large, but cumulatively such a fee could raise a substantial amount for the Judiciary. While an additional \$70 million or so per year⁹ would not solve all of the Judiciary’s budget problems, it certainly would help. Of course, there would be a number of technical and administrative challenges associated with such implementing such a fee, but none appear to be insurmountable.¹⁰

Conclusion

While some aspects of chapter 13 have been quite stable over a number of years (*e.g.*, percent of total filings, geographic patterns, percent of collections required to fund trustee operations and the outcomes of cases), other areas of chapter 13 have showed sustained growth. The amount collected and distributed by chapter 13 trustees has increased nearly every year. The estimated amount collected and distributed per case has also shown steady growth, even during years that filings have declined.

The available data appears to me to show that chapter 13 has been an effective method to get money to creditors and to provide a large number of debtors with the relief that they

seek. A modest user fee on distributions in chapter 13 cases could raise needed revenue for the Judiciary and partially offset the cost of administering these cases. **abi**

Chart 3: Percent of Cases Filed as Chapter 13 (Years Ended June 30, 1983-2013)

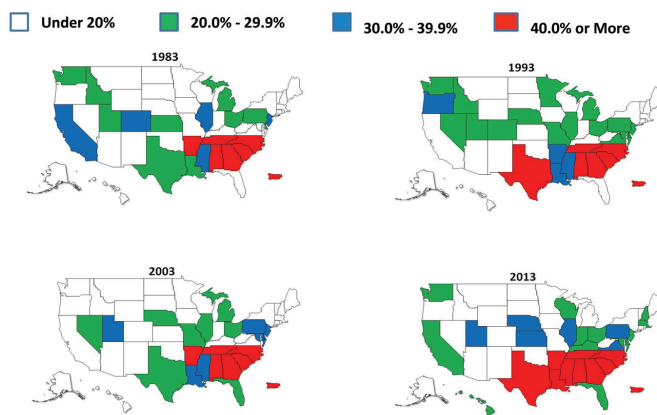
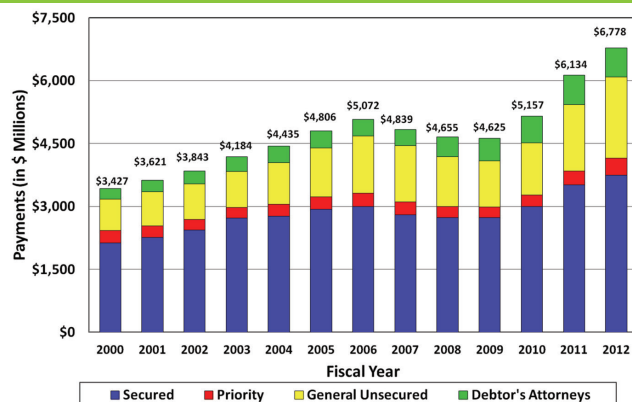


Chart 4: Payment (in \$ millions) to Creditors in Chapter 13 Cases (Fiscal Years 2000-2012)



Data does not include payments in cases filed in Alabama and North Carolina

⁸ See “87 Chief Judges Appeal to Congress for Funding Help,” *Administrative Office of the U.S. Courts News* (Aug. 15, 2013), available at <http://news.uscourts.gov/87-us-chief-judges-appeal-congress-funding-help>.

⁹ The \$70 million figure is based on a 1 percent fee on all payments to creditors in chapter 13 cases.

¹⁰ Two examples are: Would the fee apply to chapter 13 funds that are not currently subject to a fee, and would the fee be applied to cases currently pending or only to cases filed after a certain date?

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