

Bankruptcy by the Numbers

By ED FLYNN

Chapter 7 Asset Cases and Trustee Compensation

Since at least 1980, chapter 7 cases have comprised about 70 percent of all bankruptcy filings. A trustee is appointed in each chapter 7 case to liquidate the debtor's nonexempt assets, and most chapter 7 cases are closed as "no-asset" cases in which the trustee does not collect any funds for distribution to creditors. In this article, I look at available data on the chapter 7 cases that do result in funds being collected and distributed by the trustees, and the compensation that trustees receive for administering these cases.

The Executive Office for U.S. Trustees (EOUST) has posted certain case-by-case information on chapter 7 asset cases closed between

January 2000 and June 2011.¹ This data can be compared with summary data contained in an earlier EOUST report.² Neither of these reports include asset cases closed in North Carolina and Alabama, which are served by bankruptcy administrators. About 3 percent of all chapter 7 cases are filed in those two states. Table 1 showcases key figures from the EOUST data for two five-year periods. The first is for asset cases closed during calendar years 1996-2000, and the second is for asset cases closed during the five years ending June 30, 2011. Several of these figures are discussed in greater detail below.



Ed Flynn
ABI; Alexandria, Va.

Ed Flynn is a consultant with ABI and serves as a coordinating editor for the ABI Journal. He previously worked for more than 30 years at the Executive Office for U.S. Trustees and the Administrative Office of the U.S. Courts.

Table 1: Asset Cases Closed During Two Five-Year Periods

	Time Periods for Case Closing	
	January 1996 to December 2000	July 2006 to June 2011
Total Asset Cases Closed	153,174	325,671
Percent of Cases Closed as Asset Cases	3.6%	7.9%
Net Receipts (in \$ Millions)*	\$7,513	\$12,167
Average Receipts per Case	\$49,049	\$37,360
Paid to Unsecured Creditors (in \$ Millions)	\$2,428	\$3,792
Percent Paid to Unsecured Creditors	32.3%	31.2%
Paid to Secured Creditors (in \$ Millions)	\$2,188	\$3,940
Percent Paid to Secured Creditors	29.1%	32.4%
Percent of Cases with No Payments to Secured or Unsecured Creditors	8.2%	2.6%
Trustee Percentage Fee (in \$ Millions)	\$328**	\$765
Percent Paid to Trustees	4.4%	6.3%
Percent of Cases Closed		
– Within 2 Years	23.4%	52.8%
– Within 3 Years	53.5%	79.2%
– Within 5 Years	82.1%	95.1%

* Net receipts include total receipts less funds returned to the debtor or third parties who are not parties in interest.

** Most of this was from cases filed before the percentage fees were increased in 1994.

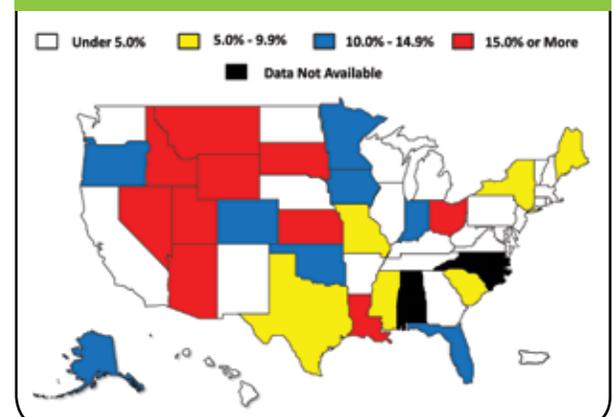
Percent Asset Cases

It is not possible to get a precise figure from the EOUST data for the percentage of chapter 7 cases that end up as asset cases (the date of filing is not listed, and some of the asset cases were originally filed under another chapter). However, a reasonable estimate can be made. Most asset cases are closed one to three years after filing. The estimates in Chart 1 were made by dividing asset cases that were closed during the given five-year periods by chapter 7 case filings one to six years prior. Based on this methodology, the percentage of cases closed as asset cases more than doubled between the two five-year periods.

1 Although this data is now several years out of date, it is the most up-to-date publicly available data on chapter 7 asset cases. See Chapter 7 Trustee Final Reports, U.S. Department of Justice, available at www.justice.gov/ust/eo/public_affairs/data_files/ch7_asset/index.htm (last visited May 5, 2014).

2 See Bankruptcy Statistics - Statistical Reports, U.S. Department of Justice, available at www.justice.gov/ust/eo/public_affairs/statistics/stats_reports.htm (last visited May 5, 2014).

Chart 1: Percent of Chapter 7 Cases Closed as Asset Cases Between July 2006 and June 2011



The asset case percentages vary widely by state, mainly due to varying state exemption laws. Although about 8 percent of chapter 7 cases nationwide are now closed as asset cases, few states are close to the national average. In nearly one-half of the states, the asset case percentage is below 5 percent (Rhode Island and Georgia are under 2 percent). In contrast, the asset case percentage exceeds 30 percent in Kansas, Montana and Wyoming.

Case Size (Based on Net Receipts)

Most asset cases are quite small; well over half involve under \$5,000 in funds administered, and more than 90 percent are under \$50,000. Most of the money administered in asset cases is in the 1 percent or so of the cases that involve more than \$500,000 in receipts. The 1996-2000 cohort of cases with assets of more than \$500,000 accounted for 58 percent of total assets administered in chapter 7 asset cases. In the most recent five-year cohort period, large cases accounted for 59.1 percent of total receipts (see Table 2).

Case Distributions

The EOUST reported that 8.2 percent of the cases closed from 1996-2000 resulted in no payments to secured or unsecured creditors. During the most recent five-year period, only 2.6 percent of asset cases resulted in no payments to secured or unsecured creditors. In fact, nearly 96 percent of these cases resulted in payments to unsecured creditors (both priority and general).

In the smallest cases, nearly two-thirds of net receipts are now paid to unsecured creditors. This percentage has increased over the last decade because a lower percentage of receipts are going to attorneys' fees and other fees and expenses.

In the larger cases (more than \$50,000), less than 30 percent of net receipts are now paid to unsecured creditors, with more than one-third of receipts being paid to secured creditors. Tables 3 and 4 show estate distributions to the five main categories of recipients.³

Case Processing Time

Chart 2 (p. 92) shows that substantial improvements have been made in the time that is necessary to administer an asset case from filing to completion. A portion of this change, but certainly not all of it, is a result of the increased percentage of smaller cases in the asset case pool. Less than 5 percent are now closed after five years or more. The time from filing to closing is closely related to the size of the case.

Trustee Compensation

Chapter 7 trustees receive \$60 of the filing fee from each case.⁴ They also earn a commission based on the amount of assets administered in the case. The trustee may receive up to 25 percent of the first \$5,000 disbursed, 10 percent of the next \$45,000 disbursed, 5 percent on disbursements between \$50,000 and \$1 million, and 3 percent on amounts of more than \$1 million. EOUST data indicates that the maximum allowable fee is paid in more than 90 percent of asset cases, and that more than three-quarters of trustee compensation is a result of the percentage fee on disbursements.⁵

³ "Unsecured creditors" includes both general and priority unsecured creditors. "Attorneys' fees" includes both private attorneys and attorneys' fees paid to the trustee or trustee's firm. "Other fees and expenses" include administrative expenses, prior chapter costs, and other professional fees and expenses.

⁴ The \$60-per-case fee became effective in October 1995; the fee was previously \$45 per case. See 11 U.S.C. § 330(b). Trustees do not receive the \$60 fee in cases in which a fee waiver is granted. See 28 U.S.C. § 1930(f).

⁵ Between July 2006 and June 2011, there were about 325,000 asset chapter 7 cases closed, and the total trustee fees amounted to \$764.6 million. During the same period, a little more than four million cases were filed, providing the trustees with about \$234.6 million from the \$60-per-case fee.

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Table 2: Number and Size of Asset Cases Closed

Size of Case	January 1996 to December 2000			July 2006 to June 2011		
	Cases Closed	Percent of Cases	Percent of Receipts	Cases Closed	Percent of Cases	Percent of Receipts
Under \$5,000	83,288	54.4%	2.4%	201,003	61.7%	4.1%
\$5,000 - \$49,999	51,480	33.6%	10.3%	100,606	30.9%	11.8%
\$50,000 - \$499,999	16,135	10.5%	29.3%	20,712	6.4%	25.0%
\$500,000 or More	2,311	1.5%	58.0%	3,350	1.0%	59.1%

Table 3: Distribution of Assets in Cases Closed 1996 to 2000

Case Size	Unsecured Creditors	Secured Creditors	Trustees' Fees	Attorneys' Fees	Other Fees and Expenses
Under \$5,000	59.0%	1.1%	22.2%	8.5%	9.2%
\$5,000 - \$49,999	47.7%	8.3%	10.4%	17.2%	16.4%
\$50,000 - \$499,999	30.3%	29.6%	4.3%	13.9%	21.9%
\$500,000 or More	29.5%	33.7%	2.6%	9.7%	24.5%
All Cases	32.3%	29.1%	4.4%	11.7%	22.5%

Table 4: Distribution of Assets in Cases Closed July 2006 to June 2011

Case Size	Unsecured Creditors	Secured Creditors	Trustees' Fees	Attorneys' Fees	Other Fees and Expenses
Under \$5,000	65.3%	0.4%	24.7%	4.5%	5.0%
\$5,000 - \$49,999	56.3%	3.5%	14.9%	16.5%	8.7%
\$50,000 - \$499,999	29.5%	33.4%	6.3%	15.8%	15.0%
\$500,000 or More	24.5%	39.9%	3.3%	11.8%	20.5%
All Cases	31.2%	32.4%	6.3%	13.1%	17.1%

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The fee structure for chapter 7 panel trustees has not changed in nearly 20 years, but various fees and salaries associated with bankruptcy cases have increased substantially. Table 5 shows that changes in other fee and compensation amounts have increased since 1995. In addition, attorneys' fees have increased,⁶ and the quarterly fees paid to U.S. Trustees and bankruptcy administrators in chapter 11 cases have at least doubled since 1994.⁷

Many of the dollar figures in bankruptcy are subject to automatic adjustment every three years pursuant to 11 U.S.C. § 104. Six such adjustments have been made since 1998. Fees paid to chapter 7 trustees are not covered by § 104.

A discussion of the duties of chapter 7 trustees and how they have expanded over time is beyond the scope of this article. Nonetheless, it is clear that their compensation has not kept up with the amount of work that is expected of them.

Discussion

The following conclusions can be drawn from this data: (1) the percentage of chapter 7 cases closed as asset cases has nearly doubled; (2) the growth in asset cases has primarily been with smaller cases; (3) most of the money administered in the smaller cases is paid to unsecured creditors; (4) the majority of total assets administered are in a relatively small number of cases; (5) chapter 7 asset cases are being administered more quickly now than in the past; (6) the percentage of chapter 7 asset cases with no payments to creditors has been reduced; and (7) the average asset case size based on net receipts has decreased over time.

Conclusion

Most of the available data on asset cases appears to be quite positive. The number and percentage of chapter 7 asset cases have increased, case disposition times have improved, and nearly all asset cases result in at least some payment to unsecured creditors. These results are largely due to the efforts of the 1,100+ chapter 7 trustees that serve nationwide.⁸ I think that it is about time

that their compensation was increased. Who else goes half a working career without a raise? **abi**

6 Historical data on attorneys' fees is not available, but debtor attorneys' fees increased substantially after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. See Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report* (Dec. 1, 2011), available at <http://dx.doi.org/10.2139/ssrn.2132913>.

7 A precise comparison is not possible because the number of categories has increased from five to 12, and the fee now applies to confirmed cases. The current fees can be found at <http://law.abi.org/#/title28/1930>. For the fees effective in 1995, visit <http://docs.uscode.justia.com/1995/title28/USCODE-1995-title28/pdf/USCODE-1995-title28-partV-chap123-sec1930.pdf> (last visited May 5, 2014).

8 See U.S. Trustee's Program Annual Report, FY 2012, at 38, available at www.justice.gov/ust/eo/public_affairs/annualreport/docs/ar2012.pdf: "At the end of FY 2012, the Program supervised the activities of 1,103 chapter 7 trustees."

Table 5: Fee and Salary Compensations 1995 vs. 2014

	1995	2014	Percent Change
Consumer Price Index*	153.7	236.3	+54%
Chapter 13 Compensation**	\$124,933	\$196,853	+58%
Bankruptcy Judge Salary***	\$122,912	\$183,712	+49%
Chapter 7 Case Filing Fee****	\$175	\$335	+91%
Chapter 13 Filing Fee	\$160	\$310	+94%
Chapter 11 Filing Fee	\$800	\$1,717	+115%

* See Table 24 at www.bls.gov/cpi/cpid1403.pdf.

** Figures shown include maximum allowed salary plus benefits. Some chapter 13 trustees earn less. See www.justice.gov/ust/eo/private_trustee/data_statistics/ch13.htm.

*** Bankruptcy judge salaries have been set at 92 percent of district court judge salaries since 1988. Since then, increases have been sporadic and have generally not kept up with inflation. See www.fjc.gov/history/home.nsf/page/js_3.html.

**** The filing fees for 2014 include the increased miscellaneous fees that are effective as of June 1, 2014.

Chart 2: Time from Filing to Closing Based on Case Size (Chapter 7 Asset Cases Closed July 2006 to June 2011)

