

Chapter 11 Filing Trends in History and Today

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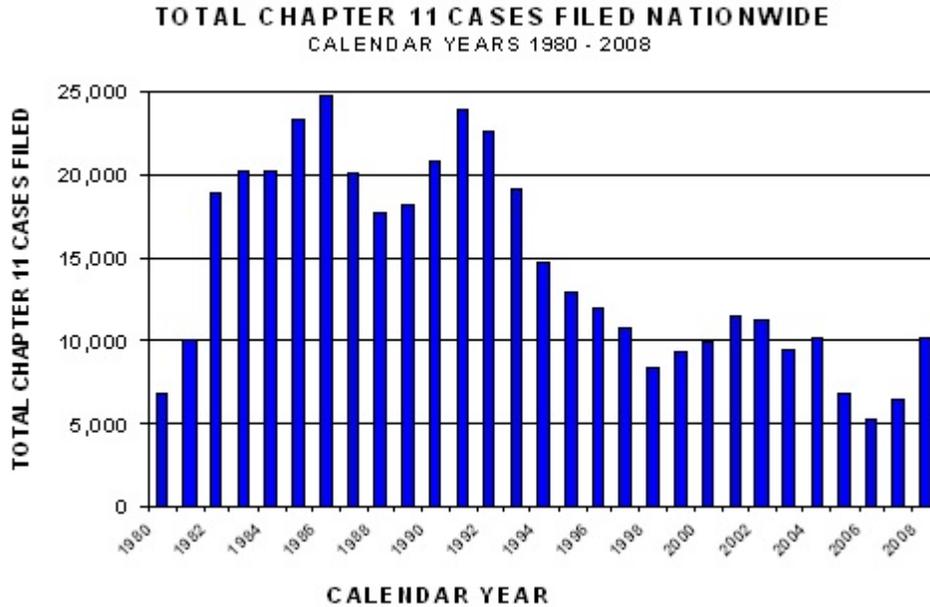
In this article we describe the characteristics of chapter 11 filings from both a historical and a contemporary perspective. In contrast to many legal articles and news accounts that focus on the largest corporate bankruptcies, this paper focuses on the available statistics for all chapter 11 cases, most of which involve smaller entities. After providing a historical perspective, we will explore recent trends in small business cases, individual chapter 11 cases, outcomes, and disposition times.

Historical Filing Trends

Prior to the October 1979 effective date of the Bankruptcy Code, business and individual reorganizations were handled under Chapters X, XI, and XII of the Bankruptcy Act of 1898. Total filings under these three chapters averaged about 1,250 per year between 1940 and 1978, and never exceeded 4,000 in a single year.

More than 415,000 chapter 11 cases have been filed since the Bankruptcy Code became effective in 1979. While this averages out to about 14,000 filings per year during that 30-year period, annual filing numbers have varied markedly, as shown in Figure 1. There were more than 20,000 chapter 11 filings a year during eight of the 10 years between 1983 and 1992. In contrast, filings were below 10,000 a year during seven of the 10 years between 1998 and 2007. Chapter 11 filings reached a historical low in 2006. By 2008, the number of chapter 11 filings was nearly twice the number filed in 2006. From a historical perspective, however, the 2008 filing level was only about 40 percent of the peak level in 1986.

Figure 1.



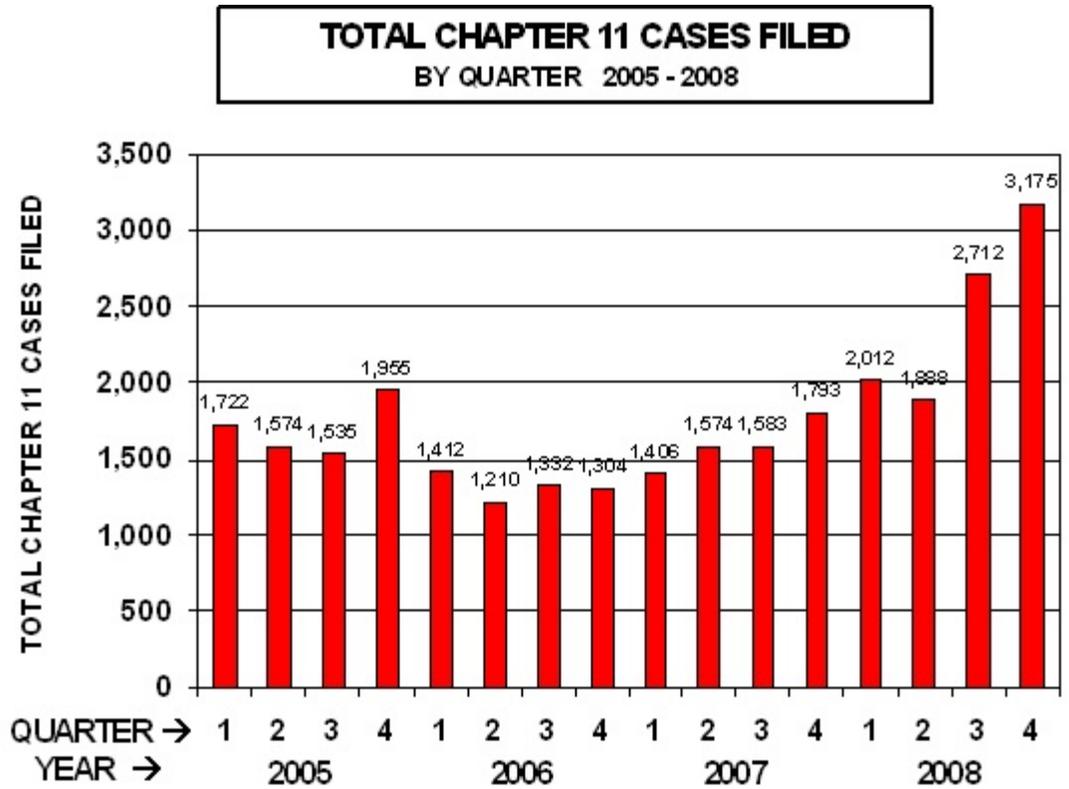
Source: Administrative Office of the United States Courts (AOUSC) official filing statistics¹

Recent Filing Trends

A mini-surge in chapter 11 filings occurred just prior to the October 17, 2005, effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). In the first 16 days of October 2005, there were 600 to 700 more chapter 11 filings than historical trends would have predicted. After BAPCPA took effect, chapter 11 filings bottomed out at just over 5,000 cases during calendar year 2006, or about 1,300 cases per quarter. As shown in Figure 2, chapter 11 filings have rebounded in recent quarters. Preliminary indications are that, in the first quarter of calendar year 2009, chapter 11 filings will continue the trend from the fourth quarter of 2008 and again exceed 3,000.

Figure 2.

¹All data on case filings in this article are either the official filing statistics compiled by the Administrative Office of the United States Courts or data from U.S. Trustee Program databases, as designated under the particular figure. The U.S. Trustee Program databases do not contain information on cases filed in the six judicial districts in North Carolina and Alabama, which are served by Bankruptcy Administrators.

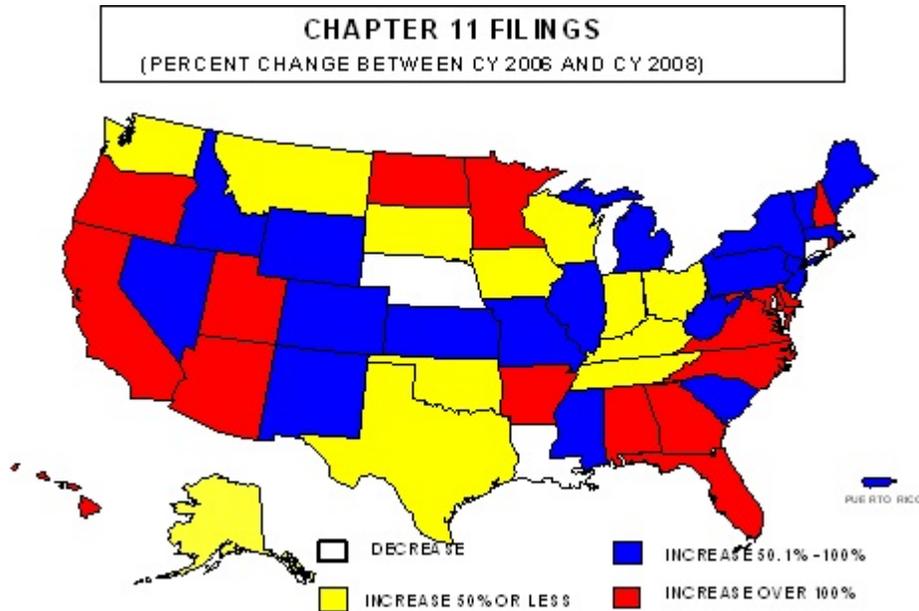


Source: AOUSC official filing statistics

Geographic Filing Trends

The recent increases in chapter 11 filings are not evenly distributed among all states. In general, as shown in Figure 3, the increases are more pronounced in clusters of the Southeastern and Southwestern states. In three states—Louisiana, Connecticut and Nebraska—chapter 11 filings decreased between 2006 and 2008.

Figure 3.



Source: AOUSC official filing statistics

Small Business Chapter 11 Cases

BAPCPA classified chapter 11 cases as “small business cases” if they are filed by “small business debtors,” as defined in 11 U.S.C. §§ 101(51C) and (51D). Essentially, a small business debtor must be engaged in business or commercial activities other than primarily owning or operating real property, have less than \$2.19 million² in debts, and not have an active creditors’ committee. In 2006 and 2007, nearly one-third of the chapter 11 cases filed were small business chapter 11 cases. In 2008, the proportion of chapter 11 cases that were small business cases dropped to about one-fourth.

Figure 4.

SMALL BUSINESS CHAPTER 11 CASES	
CALENDAR YEAR FILED	PERCENT SMALL BUSINESS
2006	33.0%
2007	32.5%
2008	25.7%

Source: USTP databases

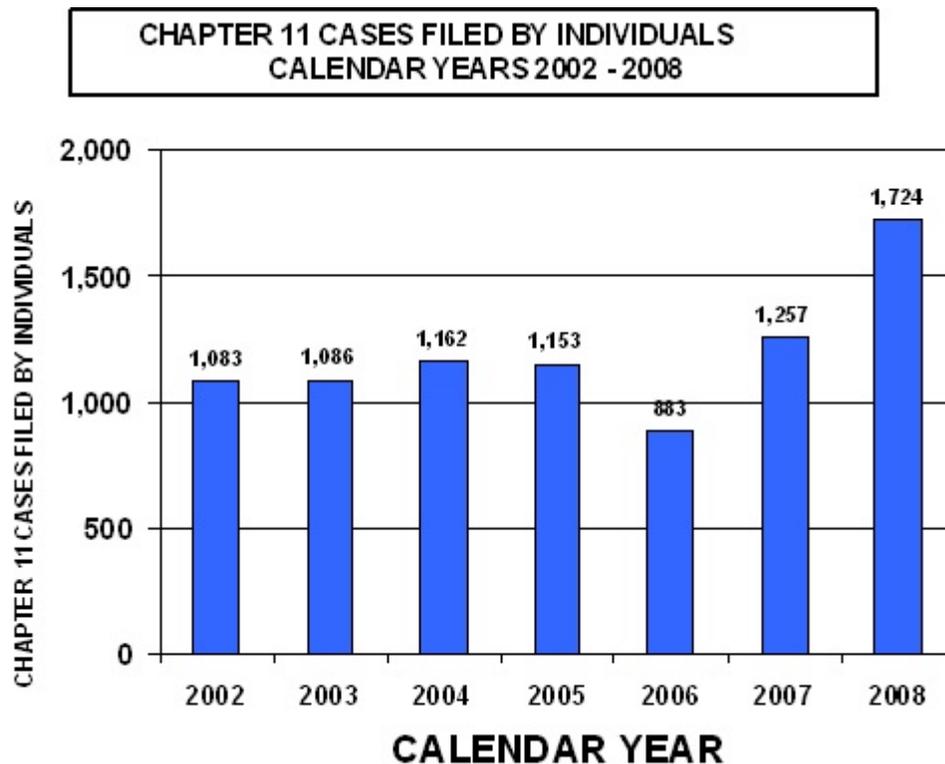
²The dollar amount is subject to adjustment every three years, pursuant to 11 U.S.C. § 104(b).

Individual Chapter 11 Filings

Individuals who are ineligible to file bankruptcy under chapter 7 or chapter 13 may seek relief under chapter 11. 11 U.S.C. § 109(d). Figure 5 shows that the number of individual chapter 11 cases filed was fairly stable between 2002 and 2005, declined in 2006, and rose sharply in 2007 and 2008. After a low of 883 individual chapter 11 cases filed in 2006, both 2007 and 2008 had the highest number of individual chapter 11 cases filed in the past seven years.

After excluding 17 states with fewer than 50 chapter 11 cases in calendar year 2008, the states with the highest proportion of individual chapter 11 filings include South Carolina (36.2 percent), Maryland (36.2 percent), Washington (33.3 percent), California (30.8 percent), and Tennessee (30.7 percent). The states with the lowest proportion of individual chapter 11 cases include Delaware (.5 percent), New York (7.4 percent), Arkansas (8.2 percent), Minnesota (10.2 percent), and Michigan (11.3 percent).

Figure 5.



Source: USTP databases

Outcomes and Disposition Times

BAPCPA amended a number of provisions applicable to chapter 11 cases. In particular, amendments to 11 U.S.C. §§ 1112, 1121, and 1129 set deadlines for the filing of plans and disclosure statements and for plan confirmation.

In the following two tables, the pre-BAPCPA group includes cases filed during the year ended June 30, 2005, and the post-BAPCPA group includes cases filed during calendar year 2006. For both groups, case status was determined as of 26 months after the end of the group's filing period: i.e, August 31, 2007, for the pre-BAPCPA cases and February 28, 2009, for the post-BAPCPA cases.

Figure 6 presents case outcomes—confirmation, conversion, or dismissal—for the two chapter 11 groups. There is a statistically significant difference in the percentage of cases confirmed pre-BAPCPA and post-BAPCPA. The post-BAPCPA cases had a slightly higher confirmation rate than the pre-BAPCPA cases.³ The other comparisons between pre- and post-BAPCPA outcomes were not statistically significant.

Figure 6.

OUTCOMES OF CHAPTER 11 CASES

	<u>Pre-BAPCPA</u>	<u>Post-BAPCPA</u>	<u>Comparison p-value*</u>
CONFIRMED	29.4%	33.2%	< 0.0001
CONVERTED	23.2%	21.9%	0.105
DISMISSED	36.4%	35.0%	0.128
STILL OPEN	11.0%	9.9%	0.062
NUMBER OF CASES	6,290	4,799	

* Difference of proportions z-test, 2-tailed.

Source: USTP databases

Figure 7 presents the average disposition times—the times for confirmation, conversion, and dismissal—in months for the two groups. There is a statistically significant difference in the mean disposition time for confirmed cases and for all completed cases pre-BAPCPA and post-BAPCPA. The post-BAPCPA cases took one month less to be confirmed, and about 10 days less to complete, including plan confirmation, conversion, and dismissal.⁴ In addition, statistical analyses found that the variability of

³A 2-tailed z-test is a statistical test used to determine whether there is a statistically significant difference between two population proportions.

⁴A 2-tailed t-test is a statistical test used to determine whether there is a statistically significant difference between two population means.

disposition times decreased after BAPCPA.⁵ Overall, there is a pattern of shorter disposition times post-BAPCPA.

Figure 7.

AVERAGE DISPOSITION TIMES (MONTHS)

	Pre-BAPCPA	Post-BAPCPA	<u>Comparison p-value*</u>
	(Std Dev)	(Std Dev)	
CONFIRMED	13.7	12.6	<0.0001
	(7.0)	(6.2)	
CONVERTED	8.9	8.6	0.247
	(6.8)	(6.3)	
DISMISSED	7.5	7.3	0.298
	(6.9)	(6.8)	
ALL COMPLETED CASES	9.9	9.6	0.009
	(7.4)	(6.9)	
NUMBER OF CASES	6,290	4,799	

* Difference of means t-test, 2-tailed.

Source: USTP databases

Conclusion

An examination of the available statistics for chapter 11 filings reveals several identifiable trends. Although current chapter 11 filing rates are less than one-half of the filing rates from 1983 to 1992, they are rising rapidly. The rising case filing rates are not uniform from state to state, but occur with substantial regional variation. Calendar year 2008 saw a decline in the proportion of chapter 11 filings that are small business cases, and an increase in individual chapter 11 filings. Disposition times for confirmed and completed cases appear to be lower in the post-BAPCPA cases as compared with pre-BAPCPA cases, and a greater proportion of the post-BAPCPA cases are being confirmed. These findings should not be viewed as conclusive evidence of a link between BAPCPA and the changes observed. There are many other factors—in particular, differing case characteristics—that could have affected the outcomes reported in this paper.

⁵The statistical analyses were based on tests for unequal variances. Variability is reflected in the standard deviation measure in Figure 7. A larger standard deviation indicates a greater degree of variability.